

(2011) 7 ADJ 591

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 3673 of 2008

Lakhimpur Finvest
Company Ltd.

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Aug. 4, 2011

Acts Referred:

Central Motor Vehicles Rules, 1989 " Rule 35#Constitution of India, 1950 " Article 226#Motor Vehicles Act, 1988 " Section 2(3), 2(30), 2(4), 39, 48#Uttar Pradesh Motor Vehicles Taxation Act, 1997 " Section 12, 13, 14, 18, 2

Citation: (2011) 7 ADJ 591

Hon'ble Judges: Satish Chandra, J; Devi Prasad Singh, J

Bench: Division Bench

Judgement

Devi Prasad Singh, J.

Instant writ petition under Article 226 of the Constitution of India has been preferred against the impugned notice

dated 25.4.2008 contained in Annexure No. 1 to the writ petition calling the Petitioner to pay taxes of the vehicle No. U.P 32 A 1517.

2. Brief facts giving rise to the present controversy is discussed hereinafter:

3. The Petitioner is a registered company under the Indian Companies Act, 1956 engaged in the business of finance, mainly deals with motor

vehicles. The Petitioner financed the motor vehicles through higher purchase agreement to the interested parties. Trade certificate has also been

issued to the Petitioner under Rule 35 of the Central Motor Vehicles Rules, 1989.

4. The Respondent No. 6 moved an application to provide finance for the purchase of TATA truck, later on registered as U.P 32 A1517. The

Petitioner and the Respondent No. 6 entered into higher purchase agreement on 21.10.2004 and in pursuance thereof, the Petitioner has financed

the Respondent No. 6 for purchase of truck with monthly instalment of Rs. 4,400/- for a period of two years. A copy of the higher purchase

agreement dated 21.10.2004 is Annexure No. 2 to the writ petition. The hire amount was Rs. 80,000/- with interest at the rate of 16% resulting

into agreed total consideration to be paid by hirer was Rs. 1,05,600/- , payable into 24 equal monthly instalments. The Respondent No. 6 hirer

has also executed a promissory note on 21.10.2004 (Annexure-3). In terms of the higher purchase agreement, vehicle was handed over to the

opposite party No. 6 and also registered in his name under the Motor Vehicles Act, 1988, in short, Act. The certificate of registration reveals the

Respondent No. 6 as owner and the Petitioner as finance company. The vehicle was used as public service vehicle covered by permit granted by

the transport authorities.

5. On account of default of payment of instalments, it is alleged that the Petitioner has issued a registered notice on 6.5.2005 to the opposite party

No. 6, inter alia stating to pay the outstanding instalment of Rs. 26,363/- for the period up to 21.5.2005, failing which to repossess the vehicle. A

notice was also alleged to be sent to the guarantor. It is stated that in spite of notice, the opposite party No. 6 has not paid the dues and after

waiting for a month, the vehicle was repossessed by the Petitioner in terms of the agreement on 13.7.2005. After repossessing the vehicle, an

auction notice was issued on 20.7.2005 by the Petitioner but no one turned up. On 10.8.2005, the Petitioner submitted an application to the

transport authority for registration of the vehicle in its name according to the provision contain in Sub-section (5) of Section 51 of the Motor

Vehicles Act, 1988 in prescribed form No. 34. It appears that during pendency of the application for registration, the Petitioner had sold the

vehicle to a Kabari on 6.9.2005 for consideration of Rs. 70,000/- . According to the Petitioner"s counsel, in spite of return of Rs. 70,000/- , the

Petitioner was in loss of Rs. 28,040/- . Hence, another registered notice was sent on 19.9.2005 (Annexure-7) for payment of remaining dues. An

account payee cheque dated 3.10.2005 was given by the Respondent No. 6 to the Petitioner but the cheque was dishonoured because of closure

of account which was duly informed to the Petitioner by the Bank of India concerned by letter dated 24.10.2005 (Annexure-9). The Petitioner

stated that in spite of information communicated to the transport authorities that the vehicle has been sold and registration has been cancelled, the

transport authority has not paid any heed to his request and sent a notice dated 6.2.2008 (Annexure No. 10) asking to appear on 15.2.2008 with

documents. The parties appeared before the Assistant Regional Transport Officer (Administration) and submitted a representation dated

15.2.2008. Thereafter, the opposite party No. 4 issued another notice dated 19.2.2008, contained in Annexure No. 12 to the writ petition. In

consequence thereof, the Petitioner again appeared and submitted a representation. It is stated by the Petitioner before the Respondent No. 4 that

he is not liable to pay tax since the vehicle has been sold to Kabari. However, before awaiting the decision, it is alleged, the taxing officer issued

the letter dated 25.4.2008 directing the Petitioner to pay tax for the period 1.7.2005 to 30.6.2008. It is vehemently argued that once the vehicle

has been sold, the Petitioner is not liable to pay tax and secondly since the vehicle has been sold to a Kabari, no tax can be imposed by the

Respondent. The Petitioner"s counsel has also relied upon the circular of the Transport Commissioner dated 8.2.2005 which requires inspection of

vehicle whenever an application is moved for cancellation of registration certificate.

6. On the other hand, it has been submitted by the Learned Counsel for the Respondent owner that the agreement was entered into on 21st day of

October, 2004 between the Petitioner and the Respondent. The Petitioner is deemed to be owner of the vehicle as first party and the Respondent

is hirer. A perusal of the agreement also shows that in the agreement, the Petitioner has been termed as owner whereas the private Respondent has

been indicated as hirer. Under the contract, hirer is at liberty to terminate the contract at any time and return the vehicle to the owner at Lakhimpur.

Clause-5 of the agreement further provides that the owner may terminate with or without notice the contract of hiring and retake and recover

possession of the vehicle. According to Clause 6 of the contract after termination of contract, the hirer shall be liable to pay the arrears of hire

accrued upto the date of termination, cost of repair, compensation for owner's loss of profit, all taxes due and payable in respect of motor vehicle.

Relevant portion of Clause 6 of the agreement is reproduced as under:

6. The HIRER shall upon such termination be liable to pay to the OWENERS.

(a) The arrears of hire accrued up to the date of termination.

(b) the cost of all repairs required to be done to the vehicle to render it in good and serviceable order and condition, the estimate of a garage

owner appointed by the OWNERS to be final and binding on the HIRER as to the repairs required and the cost thereof.

(c) A compensation for the OWNER'S loss of profit.

(d) All taxes due and Payable in respect of the motor vehicle.

(e) The tentative value of the vehicle as fixed by the owner in case the hirer fails to surrender possession of the vehicle to the owner at the time of

termination.

In the event the agreement is terminated by the owner under the terms hereof and the hirer is called upon to restore repossession of the said

vehicle to the owner and the hirer fails to give possession thereof or create any opposition to their repossession, the hirer shall be liable for criminal

misappropriation of the said vehicles as they hold the vehicle as bailee for the owner.

Any such termination shall be without prejudice to any claim the OWNERS may have in respect of any terms and conditions of this agreement and

it is further agreed that if the hiring is determined by the owners or by the hirer in the manner herein provided all hire and amounts due under this

agreement up to the date of determination and damages for breach of this agreement shall be paid by the hirer of the owners.

7. In view of above, it appears that as and when the higher purchase agreement is terminated and the vehicle is repossessed by the owner, i.e. the

Petitioner finance company, then the liability of the hirer shall be governed by Clause 6 of the agreement (supra). Thus the contract also reveals that

the liability of hirer with regard to payment of tax and other items in terms of Clause 6 shall be for the period up to the date of termination of

contract or repossession of vehicle.

8. In the present case, admittedly, the vehicle was repossessed by the Petitioner finance company on 13.1.2005. Accordingly, the liability to pay

taxes to the transport department of the hirer shall be only for the period up to 12.7.2005, i.e. up to the preceding day when the vehicle was

repossessed by the finance company. For the later period, the tax shall be payable by the Petitioner finance company. Apart from the terms and

conditions in the agreement, it shall be appropriate to look into the statutory provisions:

9. Sub-section (4) of Section 2 of the Motor Vehicles Act, 1988(in short Act) makes it mandatory to obtain registration certificate issued by the

competent authority to establish that the vehicle has been duly registered under Chapter IV of the Act.

Sub-section (3) of Section 2 of the Act defines owner of the vehicle which is reproduced as under:

(30) ""owner"" means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and

in relation to a motor vehicle which is the subject of a hire purchase, agreement, or an agreement of lease or an agreement of hypothecation, the

person in possession of the vehicle under that agreement;

The definition of the owner reveals that it includes the person in whose name the motor vehicle stands registered and where a vehicle is subject to

higher purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

10. Thus, under the definition clause also, it borne out that in the event of higher purchase agreement or hypothecation or lease, the possession of vehicle shall be determinative factor to establish ownership, meaning thereby whenever a finance company takes possession of the vehicle, the liability to pay tax fastens on such company and not on hirer.

11. The provisions contained in Chapter IV of the Act deals with procedure with regard to registration of motor vehicle. Section 39 of the Act makes it mandatory for registration of motor vehicle. Unless a vehicle is registered, the vehicle cannot be driven and permit with regard to such vehicle cannot be issued at any public place.

12. Section 50 deals with transfer of ownership. It provides that whenever a vehicle is transferred to other person, an application shall be sent by registered post with acknowledge to the registering authority in terms of Section 48 of the Act, i.e. along with no objection certificate. The transferee within 30 days of transfer report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept along with the certificate of registration, requisite fee etc, failing which action may be taken under the Act.

13. Section 51 contains a special provision with regard to motor vehicle subjected to hire purchase agreement. Sub-section (5) of Section 51

provides that where a person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into agreement and satisfied that he has taken the possession of the vehicle from the registered owner owing to the default of the registered owner under the provisions of agreement and the registered owner refuses to deliver the certificate of registration after providing reasonable

opportunity, it shall be open to the registering authority to cancel the certificate and issue a fresh certificate of registration. For convenience, Sub-

section (5) of Section 51 is reproduced as under:

51 (5) where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered

into the said agreement, satisfies the registering authority that he has taken possession of the vehicle³[from the registered owner] owing to the

default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of

registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to

make (by sending to him a notice by registered post acknowledgment due at his address entered in the certificate of registration) and

notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the

name of the person with whom the registered owner has entered into the said agreement:

Provided that a fresh certificate of registration shall not be issued in respect of a motor vehicle, unless such person pays the prescribed fee:

Provided further that a fresh certificate of registration issued in respect of a motor vehicle, other than a transport vehicle, shall be valid only for the

remaining period for which the certificate cancelled under this Sub-section would have been in force.

Thus, it is the duty of the finance company to inform the transport authorities whenever the vehicle is repossessed and in case the registration is not

cancelled, the finance company shall be liable to pay taxes from the date of repossession of the vehicle.

14. u/s 53, registration may be suspended and such suspended registration may be cancelled u/s 54 of the Act.

15. Section 55 deals with the cancellation of the registration and the order passed under these provisions shall be appellable u/s 57 of the Act.

Meaning thereby, any decision taken by the transport authority is appellable u/s 57 of the Act. For any grievance, the financier has got option to prefer an appeal.

16. Taxes are imposed by the transport department under the U.P. Motor Vehicles Taxation Act, 1997 (in short 1997 Act).

17. Sub-section (g) of Section 2 and Sub-section (h) of Section 2 defines the word, ""operator"" and ""owner"" which is reproduced as under:

2(g) ""Operator"" in respect of a transport vehicle means a person whose name is entered in the permit or in an authorisation certificate issued under

the Uttar Pradesh Motor Vehicles (Special Provisions) Act, 1976, and where there is no such permit or authorisation certificate, the person whose

name is entered in the certificate of registration in respect of such vehicle, and where the transport vehicle is the subject of a hire purchase

agreement, the person in possession of the vehicle under that agreement and where any such person is a minor, the guardian of such minor;

(h) ""owner"" in respect of a motor vehicle means the person whose name is entered in the certificate of registration issued in respect of such vehicle,

and where such vehicle is the subject of an agreement of hire purchase or lease or hypothecation, the person in possession of the vehicle under that

agreement and where any such person is a minor, the guardian of such minor;

Thus, operator means in respect of transport vehicle a person whose name is entered in the permit or in an authorisation certificate. With regard to

vehicles subjected to higher purchase agreement, the person in possession of the vehicle under the agreement shall be deemed to be operator.

Similarly, the owner shall be a person whose name is entered in the certificate of registration but when a vehicle is subject to an agreement of higher

purchase, lease or hypothecation, the person in possession of the vehicle under the agreement shall be owner. The provision is para meteria to

Sub-section (30) of Section 2 of the Motor Vehicles Act, 1988.

18. Section 12 of 1997 Act contains the provision with regard to non-use of vehicle and refund of tax and Section 13 contains the provision with

regard to declaration for vehicle by the person having possession in prescribed form. For convenience, Sections 12 and 13 are produced as under:

12. Non-use of vehicle and refund of tax.--(1) When any person who has paid the tax in respect of transport vehicle, proves to the satisfaction of

the Taxation Officer in the prescribed manner that the motor vehicle in respect whereof such tax has been paid, has not been used for a continuous

period of one month or more since the tax was last paid, he shall be entitled to a refund of an amount equal to one-third of the rate of quarterly tax

payable in respect of such vehicle for each (thirty days) of such period for which such tax has been paid:

Provided that no such refund shall be admissible unless such person has surrendered the certificate of registration, the token, if any, issued in

respect of the vehicle and the permit, if any, to the Taxation Officer, before the period for which such refund is claimed.

(2) Where the operator or, as the case may be, the owner of a motor vehicle, does not intend to use his vehicle for a period of one month or more

he shall, before the date the tax or additional tax, as the case may be, is due, surrender the certificate of registration, the token, if any, issued in

respect of the motor vehicle and the permit if any, to the Taxation Officer of the region where the tax or additional tax was last paid and on such

surrender, no tax or additional tax under this Act shall be payable in respect of such vehicle for each complete calendar month of the period during

which the vehicle remains withdrawn from use and the aforesaid documents remain surrendered with the Taxation Officer:

Provided that in case such vehicle is found plying during the period when its documents as mentioned in this Sub-section remain surrendered with

the Taxation Officer, such owner or operator, as the case may be, shall be liable to the tax as if the said documents were not surrendered and shall

also be liable to the penalty payable under Sub-section (3) of Section 9.

(3) Where the owner of a motor vehicle other than a transport vehicle, in respect whereof one-time tax has been paid under this Act proves to the

satisfaction of the Taxation Officer in prescribed manner that such motor vehicle has not been used for a continuous period of one month or more,

he shall be entitled to a refund of such tax at the rates specified in part "A" of the Second Schedule for the said period;

Provided that no such refund shall be admissible, unless the certificate of registration and the token, if any, issued in respect of the vehicle are

surrendered by the owner with the Taxation Officer:

Provided further that the total amount of refund under Sub-section (3) any portion of the period being less than a month, shall be ignored.

(4) in calculating the amount of refund under Sub-section (3) any portion of the period being less than a month, shall be Ignored.

(5) The owner of a motor vehicle other than a transport vehicle, in respect whereof one-time tax has been paid under this Act shall be entitled to

refund of such tax at the rates specified in part "B" of the Second Schedule on the ground that he has, after payment of such tax, paid tax in

respect of such vehicle under any enactment relating to any tax on motor vehicles in any other State or Union Territory as a consequence of such

vehicle having been brought over permanently to such other State or Union Territory or that such motor vehicle has been converted into a transport

vehicle or that the registration of such motor vehicle has been cancelled.

(6) Where any person who has paid the tax other than one-time tax in respect of an old motor vehicle, proves to the satisfaction of the Taxation

Officer that the motor vehicle, in respect of which such tax has been paid, has not been used for a continuous period of one month or more since

the tax or instalment was last paid, he shall be entitled to a refund of an amount equal to one-twelfth of the rate of annual tax payable in respect of

such vehicle for each complete calendar month of such period for which such tax has been paid:

Provided that no such refund shall be admissible unless such person has surrendered the certificate of registration and the token, if any, issued in

respect of the vehicle to the Taxation Officer, before the period for which such refund is claimed.

(7) An operator of a transport vehicle entitled to any refund of tax under Sub-section (1), shall also be entitled to refund of such portion of the

additional tax paid u/s 5 or, as the case may be, u/s 6, as is attributable to the period for which he is entitled to refund under Sub-section (1); and

the amount of such refund shall be calculated on the same principle as is laid down in the said Sub-section.

Section 13. Declaration by person keeping vehicle for use.--(1) The owner or operator of every motor vehicle shall make a declaration in respect

of it in the prescribed form and shall deliver the declaration within the prescribed time to the Taxation Officer and shall pay to him the tax or the

additional tax which he appears by such declaration to be liable to pay in respect of such vehicle, as required by or under this Act.

(2) Where a motor vehicle is altered so as to render the owner or operator thereof liable to payment of enhanced tax or additional tax u/s 14, such

owner or operator shall make, within the prescribed time, an additional declaration in the prescribed form showing the nature of the alteration made

and shall deliver it to the Taxation Officer and shall pay to him the difference in tax or additional tax payable u/s 14.

A combined reading of Sections 12 and 13 reveals that in case the vehicle is not used or is repossessed by any person including the finance

company, then appropriate information should be communicated to the appropriate transport authority.

19. u/s 18 of 1997 Act, any person aggrieved by an order of the Taxation Officer made u/s 12 has right to file an appeal. Section 24 provides for

provision for compounding of offences.

20. A combined reading of the aforesaid provisions under the Act as well as 1997 Act makes it clear that in case a vehicle is repossessed by the

finance company, then the liability to pay tax shall be fastened on the finance company from the date of repossession of vehicle and for earlier

period, the hirer shall be liable to pay taxes and accordingly, appropriate order may be passed by the taxing officer and transport department.

21. The liability of the Petitioner shall be only from the date the vehicle was repossessed and in case the vehicle is not in use, then the Petitioner

finance company or the hirer both will have right to move appropriate application before the transport authorities and in case such applications are

moved, it shall be obligatory on the part of the competent authority to decide the same.

22. It is well settled proposition of law that while interpreting the statutory provisions, statute should be considered section by section, word by

word, phrase by phrase and not in piecemeal vide *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, *Easland Combines v. CCE 2003*

SCC (1) 410 ; and. *A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh*, and *Deewan Singh and Others Vs. Rajendra Pd.*

Ardevi and Others,

23. According to Maxwell, any construction which may leave without affecting any part of the language of a statute should ordinarily be rejected.

Relevant portion from Maxwell on the Interpretation of Statutes (12th edition page 36) is reproduced as under:

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an

appeal from one quarter sessions to another, it was observed that such a provision, through extraordinary and perhaps an oversight, could not be

eliminated.

24. It is also settled law that the taxing statute should be construed strictly vide *The State of West Bengal Vs. Kesoram Industries Ltd. and Others*,

Ordinarily *Causus Omisus* should not be supplied by judicial interpretative process. Court cannot read anything into a statutory provision or rewrite

a provision which is plain and ambiguous vide *Union of India (UOI) Vs. Rajiv Kumar*, The same principle has been reiterated in the cases in

Vemareddy Kumaraswamy Reddy and Another Vs. State of A.P., Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others, *Nalinakhya*

Bysack Vs. Shyam Sunder Haldar and Others, and Dental Council of India and Another Vs. Hari Parkash and Others,

25. In a case in State of Maharashtra and Others Vs. Sundaram Finance and Others, Hon"ble Supreme Court held that during the period between

transfer and resumption in default, the transferer is not the operator of the vehicle, hence not liable for arrears of tax outstanding against the

transferee in respect of the said period.

26. In a recent case in Pushpa @ Leela and Others Vs. Shakuntala and Others, their Lordships of Hon"ble Supreme Court held that after transfer

of ownership of a vehicle, in case the vehicle is not registered in the name of transferee, then the transferer shall deem to continue as owner of the

vehicle for the purpose of Motor Vehicles Act and liable to pay compensation. On the same analogy, in the present case, after repossession of

vehicle, it remained in the name of financier, hence it shall liable to pay taxes under the Act.

27. A perusal of the impugned notice reveals that the tax officer has taken note of the fact that the vehicle was repossessed by the Petitioner on

13.7.2005 and the Petitioner has not submitted any response. However, it has been pleaded that the matter was pending with the Regional

Transport Officer (Administration) which seems to be precisely not denied. Whether the vehicle was in use or not, all are disputed question of

facts.

28. In view of above, while holding the Petitioner"s liability to pay tax on or after 13.7.2005, the Petitioner is permitted to submit a representation

within a month to the tax officer who shall consider his objection and decide the issued keeping in view the observation made in the body of the

judgment in accordance with law by passing a speaking and reasoned order, expeditiously say within a period of two months from the date of

receipt of a certified copy of the present judgment along with the representation and communicate the decision.

29. The writ petition is disposed of accordingly. No order as to costs.