

## **Ghamandi Lal Agarwal, Rakesh Kumar Agarwal and Tilak Raj Bedi Vs The State of U.P.**

**Court:** Allahabad High Court

**Date of Decision:** Nov. 15, 2008

**Acts Referred:** Uttar Pradesh Motor Vehicles Taxation Act, 1997 "Section 18

**Hon'ble Judges:** Rajes Kumar, J; Amitava Lala, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### **Judgement**

1. By means of the present writ petition, petitioners are challenging the various order of the Assistant Regional Transport Officer/Taxation Officer

(A), Aligarh dated 11.10.2008, by which the claim of the petitioners for surrender of the vehicles have been rejected and road tax and additional

tax have been demanded.

2. It appears that the petitioners have surrendered their vehicles and furnished Form F as required under Rule 22(1) of Uttar Pradesh Motor

Vehicles Taxation Rules, 1998 and also surrendered the various documents. As per the claim of the respondent that on the inspection dated

05.09.2008 the vehicles were not found at the place declared by the petitioners in Form F and, therefore, the claim of the petitioners for the

surrender has been rejected and the demand has been raised.

3. Learned Standing Counsel has raised the preliminary objection that against the impugned orders, petitioners have alternative remedy by way of

appeal u/s 18 of the Uttar Pradesh Motor Vehicles Taxation Act, 1997 (hereinafter referred to as "Act") and, therefore, the writ petition is not

maintainable.

4. Learned Counsel for the petitioners submitted that the allegation of the respondent is absolutely wrong. He submitted that in reply filed against

the notice, petitioners have categorically stated that no inspection was made on 05.09.2008, therefore, the rejection of the claim is wholly

unjustified.

5. He submitted that Apex Court in the case of State of Gujarat and Others Vs. Kaushikbhai K. Patel and Another, has held that mere

apprehension of clandestine use of a vehicle cannot be a ground for imposing tax on omnibuses which are not put on road or kept away from use.

6. He further submitted that Division Bench of this Court in the case of *Daya Shanker Yadav v. State of Uttar Pradesh and Ors.* reported in 2008

(2) ALJ 571 has held that if any order passed by the Taxation Officer u/s 12 of the Act with respect to such refund is not to the satisfaction of such

person, he may file appeal u/s 18 of the Act and, therefore, against the impugned order no appeal lies u/s 18 of the Act.

7. u/s 18 of the Act appeal lies against the order passed u/s 12 of the Act. In the present case, the impugned orders have been passed under the

provision of Section 12(2) of the Act, which reads as follows:

12. Non-use of vehicle and refund of tax.

1....

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.

8. In the present case, according to the Taxation Officer the vehicles were not found at the place declared in Form F and, therefore, he inferred

that the vehicles were in operation and during the relevant period the claim of the surrender has been rejected, resulting in the demand of tax and

penalty. Therefore, the present impugned orders are passed under the proviso of Section 12(2) of the Act.

9. Before the Division Bench of this Court in the case of *Daya Shanker Yadav v. State of Uttar Pradesh and Ors.* (Supra), the dispute was relating

to refund. It seems neither of the parties raised about proviso to Section 12(2) of the Act possibly on the pretext that only a question of refund u/s

12(1) of the Act is applicable therein. Therefore, the aforesaid decision of the Division Bench of this Court cannot be the authority on the subject

involved in the present case.

10. In the circumstances, we are of the view that the against the impugned orders, appeal lies u/s 18 of the Act. Moreover, in the decision of the

Apex Court in the case of State of Gujarat and Ors. v. Kaushikbhai K. Patel and Anr. (Supra), Apex Court considered the appeal from the

Special Civil Application No. 10356 of 1966 and not against the order passed in the writ jurisdiction. The case of the petitioners is that no

inspection was made on 05.09.2008 while the case of the Revenue is that on the inspection dated 05.09.2008 vehicles were not found at the place

declared in Form F. It may be mentioned that in Form F, the person who surrenders the vehicle gives a declaration of a place where the vehicle is

to be parked and not to remove the vehicle from the place without prior permission of the Taxation Officer except in case of any untoward

occurrence thereof. These questions are disputed questions of fact, which can not be examined by this Court in the writ jurisdiction and can more

appropriately be examined by the appellate court. In the circumstances, we declined to interfere in the matter.

11. In the result, writ petition fails and is accordingly, dismissed on the ground of alternative remedy. However, in case the petitioners file appeal, it

can be heard by the appellate authority expeditiously.