

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 1075 of 2004

AJAY SINGH
V/S
STATE & ANR

Mr. SANGEET LODHA, for the appellant / petitioner

Mr. SN TIWARI, Dy.GA, for the respondent

Date of Order : 29.11.2004

HON'BLE SHRI N P GUPTA, J.

ORDER

The matter comes up for consideration of the application under Article 226(3) of the Constitution filed by the respondents.

It is contended by the learned counsel for the petitioner that the interim order dt. 16.3.2004 was granted in presence of the learned counsel for the respondent, as such the application under Article 226(3) is not maintainable.

From perusal of the file it transpires that the writ petition has not been admitted so far, as such, at the request of the learned counsel for the parties, I heard the matter for admission today itself.

By this petition, the petitioner seeks to challenge Annexures-6, 9, 14, 15 and 17. Annexure-6 is the demand notice dt. 4.2.2002 calling upon the petitioner to pay the assessed tax being Rs. 57279/-, while Annexure-9 is another demand notice dt. 17.7.2003 calling upon the petitioner to pay a sum of Rs. 52368 as tax for the subsequent period, then Annexure-14 is the order of assessment dt. 6.2.2004 assessing the tax for the period 8.9.2000 to February 2004 and raising a demand of Rs. 138704/-. This demand was raised after adjusting the amount of Rs. 33107/- already deposited by the petitioner. In this background, it may be noticed that Annexure-6 is the demand notice for the period 8.9.2000 to 31.1.2002 while Annexure-9 is the demand notice

for the period April 2002 to March 2003. Then Annexure-15 is the demand notice issued consequent upon Annexure-14 while Annexure-17 is the Seizure Memo seizing the petitioner's vehicle in question on account of non-payment of the dues. Thus, in substance the order under challenge remains Annexure-14, as Annexure-6 & 9 have merged into Annexure-14 while Annexure-15 and 17 are only consequent actions taken pursuant to Annexure-14. In my view, under Section 14 of the Rajasthan Motor Vehicle Taxation Act the order Annexure-14 is appealable within a period of 30 days. The present writ petition has been filed within a period of 15 days from the date of passing of the order Annexure-14, and vide order dt. 9.3.2004 show cause notice was issued. Then, vide order dt. 16.3.2004 recovery in pursuance of Annexure-17 was ordered to remain stayed, and the vehicle in question was ordered to be released provided the petitioner furnishes the solvent surety to the satisfaction of the respondent no.2.

It is not in dispute that the petitioner has furnished solvent surety and the vehicle has been released.

The controversy appears to be as to whether the petitioner is liable to make payment of tax notwithstanding the fact that the inter-state permit granted to the petitioner was not counter signed by the concerned authority of Haryana State. According to the petitioner, the petitioner is not liable in absence of counter signature while according to the respondents the petitioner is liable as the petitioner is operating the vehicle on the strength of the permit on the route lying within the state. Needless to say that all these questions as to whether the petitioner is liable to tax in absence of counter signature, or not, and if liable, to what extent, are all question which can very well be gone into by the appellate authority.

In these circumstances, I am not inclined to entertain the present writ petition, and instead leave the petitioner to file an appeal under Section 14 of the Rajasthan Motor Vehicle Taxation Act within a period of 30 days from today. It will be open to the petitioner to move appropriate stay application before the appellate authority, and the recovery from the petitioner pursuant to Annexure-14 and 15 shall remain stayed for a period of six weeks, or till the stay application is disposed of by the authority whichever is earlier. However, it is made clear that this order will not entitle the petitioner to maintain the

appeal without fulfilling the requirement of pre-deposit, if there be any, under the Rajasthan Motor Vehicle Taxation Act. The writ petition is thus disposed of.

(N P GUPTA),J.

/Sushil/