

Mahindra And Mahindra Financial ... vs The State Of Uttar Pradesh on 22 February, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1217 OF 2022

Mahindra and Mahindra
Financial Services Ltd.

...Appellant(s)

Versus

State of U.P. and Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.12.2019 passed by the Full Bench of the High Court of judicature at Allahabad, Bench Lucknow in Writ Petition No. 4529 of 2018 by which the High Court has dismissed the said writ petition preferred by the appellant herein and held that the appellant herein as a financier-in-possession of the transport vehicle is liable to pay tax under the U.P. Motor Vehicles Taxation Act, 1997, the original writ petitioner, the financier has preferred the present appeal. The said financier had extended a loan for the purchase of the transport vehicle and on default in payment of the loan is in possession of the vehicle in question.

2. As above stated, that the appellant – Mahindra and Mahindra Financial Services Limited, is a financier, who had extended a loan for purchase of a transport vehicle. On default in payment of loan, it had taken the possession of the vehicle in question. The dispute is liability to pay tax under the U.P. Motor Vehicles Taxation Act, 1997 (hereinafter referred to as the “Act, 1997”) on such financier-in-possession of the vehicle. Before the High Court, the following question was referred to the Full Bench:-

“1. Whether in view of Sections 2(g), 2(h), 4, 9, 10, 12, 13, 14 and 20 of the Act, 1997 read with Sections 39, 50 and 51 of the Act, 1988 and other relevant provisions of the said enactments and the Rules of 1998 and 1989, a Financier of a motor vehicle/ transport vehicle in respect of which a hire-purchase, lease or hypothecation agreement has been entered, is liable to tax from the date of taking possession of the said vehicle under the said agreements, even if, its name is not entered in the Certificate of Registration or not? If not, who is liable in this regard?

2.1 By the impugned judgment and order, the High Court has held against the appellant – financier and has held that the appellant being in possession of the vehicle as a financier is liable to pay tax under the Act, 1997.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order holding that the appellant as a financier-in-possession of the transport vehicle in question is liable to pay the tax under the Act, 1997, the appellant – financier has preferred the present appeal.

3. Shri Prashant Kumar, learned counsel has appeared on behalf of the appellant and Ms. Garima Prasad, learned Senior Advocate has appeared on behalf of the State of U.P.

4. Learned counsel appearing on behalf of the appellant has taken us through the relevant provisions of the Act, 1997 and also the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as “Act, 1988”) in support of his submission that being a financier-in-possession of the transport vehicle, who has taken the possession of the transport vehicle in question on default in payment of the loan, unless the said transport vehicle is put to use and/or is being actually used, there shall not be any liability on the appellant-financier to pay the tax payable under the Act, 1997.

4.1 Learned counsel appearing on behalf of the appellant has vehemently submitted that the appellant is the financier, who had extended a loan for purchase of the transport vehicle in question and on default in payment of the loan, it took possession of the vehicle in question. That the registered owner had paid all the taxes prior to the date of such possession by the appellant-financier.

4.2 It is submitted that the taxes due and payable under the Act, 1997 are on the ‘use’ of the transport vehicle. It is submitted therefore that unless and until the transport vehicle possessed by the financier is put to use, there shall not be any liability of the financier to pay the tax.

4.3 It is vehemently submitted by learned counsel appearing on behalf of the appellant by relying upon Section 4(2-A), Section 6 and Section 9 that the Scheme of the Act emphasizes the operation of the vehicle specifically a transport vehicle. It is submitted that on the operation/use of a transport vehicle preliminary and additional

tax is imposed on such a public transport vehicle. It is contended that it is for this reason, both, the operator and owner of the vehicle are included in the definition for payment of tax in addition to registered owner. It is urged therefore that the most important factor is operation/running of a vehicle as a pre-

condition for imposition of tax. It is submitted that the aforesaid condition becomes absolutely essential for the purpose of Section 12, which provides that even in case the tax is paid in advance for running of vehicle for a particular period and the same is not actually run for that period then the refund may be sought and granted in appropriate case. It is submitted that even for the purpose of refund also, as the financier, who will not be in possession of a token or permit or the registration certificate will not be in a position to even pray for refund. 4.4 It is vehemently submitted by learned counsel appearing on behalf of the appellant that as the original certificate of registration and the permit would be with the registered owner, the appellant-financier cannot use the transport vehicle in the absence of having any permit and/or certificate of registration. Therefore, there cannot be any liability on the financier to pay the tax imposed under the Act, 1997. 4.5 Making the above submissions and relying upon a decision of this Court in the case of State of Maharashtra and Ors. Vs. Sundaram Finance and Ors., (1999) 9 SCC 1, it is prayed to allow the present appeal and to hold that the appellant being a financier-in-possession of the transport vehicle is not liable to pay any tax under the Act, 1997 unless it is put to use.

5. Ms. Garima Prasad, learned Senior Advocate appearing on behalf of the State has taken us through the entire Scheme of the Act, 1997. She has submitted that under the provisions of the Act, 1997, every “owner” and “operator” are liable to pay tax leviable under Section 4. 5.1 It is submitted that the financier, after taking possession of the transport vehicle under the agreement – hire purchase or lease or hypothecation, becomes the “owner” under Section 2(h) of the Act, 1997. That once the financier-in-possession of the transport vehicle becomes the “owner”, he is liable to pay the tax leviable under Section 4 of the Act, 1997. It is contended that as per Section 2(h) of the Act, 1997 and Section 2(30) of the Motor Vehicles Act, the financier-in-possession can be said to be the “owner”.

5.2 It is further submitted that in the case of ‘motor vehicles other than a transport vehicle’, one-time tax is required to be paid at the time of registration of the vehicle, without which the vehicle cannot be registered nor can it be used. It is submitted that a case of arrears of tax, additional tax and penalty would not arise in such a case. That in the case of a “transport vehicle”, since there is no provision of one-time tax, operators/owners are required to pay the tax at uniform intervals of time as per law. It is submitted that as per Section 9(3) read with Section 20(3) both the “owner” and “operator” would be jointly and severally liable. It is urged that as far as arrears which are due prior to the financier taking the possession, the primarily liability to pay is on the owner or operator, and if it is not possible to recover from such a person for any reason whatsoever, the same is recoverable from financier, as according to Section 20(2), arrears are first charged over the motor vehicle. It is submitted therefore that in order to satisfy the first charge, the person in possession is liable to satisfy the same. But since the primarily liability is on the registered owner, the financier, after depositing the arrears of tax, shall be entitled to recovery of the same as per law. 5.3 It is submitted by Ms. Garima Prasad, learned Senior Advocate appearing on behalf of the respondent –

State of U.P. that Section 4 of the Act, 1997 is the charging section. That as per Section 4 (2-A) save as otherwise provided by or under the Act no public service vehicle other than those referred in sub-section (1-A) and sub-section (2) shall be USED in any public place in Uttar Pradesh unless a monthly tax at such rate as may be notified by the State Government is paid in respect thereof. As per the proviso, instead of monthly tax, a quarterly or a yearly tax may be payable at such rate as may be notified by the State Government. It is submitted that as per Section 9(1)(iv)(a) the tax payable under sub-section (2-A) of Section 4 shall be payable in advance for one calendar month at the time of registration of the vehicle under the Act, 1988 and thereafter on or before the fifteenth day of each calendar month next following. It is submitted that such a tax is required to be paid in advance and hence the liability to pay the tax is first and then only can the vehicle be used. Therefore, the financier-in- possession of the transport vehicle being an “owner”, as defined under the Act, 1997, is liable to first pay the tax. That in case, after the payment of tax, the vehicle is not used, then, after following the procedure and subject to compliance of Section 12, such a financier/owner can claim refund of the tax paid. That the question of refund on non-use will arise only in a case where the tax is first paid. It is submitted therefore that the liability to pay the tax would arise first and only thereafter the refund can be claimed under Section 12 of the Act, 1997.

5.4 So far as the submission on behalf of the appellant-financier that, as the appellant-financier is not the registered owner and/or the registration is not transferred in favour of the appellant-financier and the original permit and certificate of registration of the vehicle, which would be in the name of the registered owner will be with the registered owner and therefore the appellant-financier even cannot claim the refund is concerned, it is contended that it is for the financier, while taking the possession, to ensure that all the documents are seized. Even the financier can also pray for another certificate of registration as per the provisions of the Act, 1988. It is submitted that on the aforesaid ground, the liability of the financier-in-possession as an “owner” to pay the tax in advance as per Section 4(2-A) read with Section 9(1)(iv)(a) would not cease.

5.5 Learned Senior Advocate appearing on behalf of the State has heavily relied upon the decision of this Court in the case of Jagir Singh and Ors. Vs. State of Bihar and Ors., (1976) 2 SCC 942 : 1976 (2) SCR 80 and the decision of the Gujarat High Court dated 25.01.2017 in Abdul Samad Abdul Hamid Shaikh Vs. State of Gujarat, Special Civil Application No.5788 of 2012 in support of her submission that the financier-in-possession of the vehicle can be said to be the “owner” and is liable to pay the tax in advance and the only remedy available to such a financier is to claim refund in case of vehicle is not used, otherwise he is liable to pay the tax dues.

5.6 Making the above submissions and relying upon above decisions, it is prayed to dismiss the present appeal.

6. Heard the learned counsel for the respective parties at length.

7. The issue before this Court is, whether, a financier of a motor vehicle/transport vehicle in respect of which a hire-purchase, lease or hypothecation agreement has been entered, is liable to tax from the date of taking possession of the said vehicle under the said agreements.

8. While deciding the present issue, the relevant provisions of the U.P. Motor Vehicles Taxation Act, 1997 are required to be referred to and considered. They are Sections 2(h), 4, 9, 10, 12 and 20, which read as under:-

“2(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;

4. Imposition of tax.- (1) Save as otherwise provided in this Act or the rules made thereunder, no motor vehicle other than a transport vehicle, shall be used in any public place in Uttar Pradesh unless a one-time tax at the rate applicable in respect of such motor vehicle, as may be specified by the State Government by Notification in the Gazette has been paid in respect thereof:

Provided that in respect of an old motor vehicle instead of a one time tax, annual tax applicable to such motor vehicle as may be specified by the State Government by Notification in the Gazette may be paid.

(1-A) Save as otherwise provided in this Act or the rules made thereunder no three wheeler motor cab and goods carnage having gross vehicle weight not exceeding 3000 kilograms, shall be used in any public place in Uttar Pradesh unless yearly tax at such rate of such motor vehicle, as may be specified by the State Government by notification in the Gazette, has been paid in respect thereof:

Provided that in respect of a motor vehicle under this sub-section in lieu of yearly tax such amount of one time tax may be payable as specified by the State Government by notification in the Gazette.

Provided also that from the date of commencement of the Uttar Pradesh Motor Vehicles Taxation (Amendment) Act, 2014 no motor vehicle other than a transport vehicle shall be used in any public place after the expiry of validity of registration under the Motor Vehicles Act, 1988 unless a green tax at the rate applicable to such Motor Vehicles as may be specified by notification, by the State Government has been paid in respect thereof.

(2) Save as otherwise provided by or under this Act no goods carriage other than those specified in sub-

section (1-A), construction equipment vehicles, specially designed vehicles, motor cab (other than three wheeler motor cab), maxi cab and public service vehicles owned or controlled by the State Transport Undertaking, shall be used in any public place in Uttar Pradesh unless a quarterly tax at the rate applicable to such motor vehicle as may be specified by the State Government by

notification in the Gazette, has been paid in respect thereof:

Provided that in respect of a motor vehicle under this sub-section instead of quarterly tax, an yearly tax at such rate as may be specified by the State Government may be payable.

(2-A) Save as otherwise provided by or under this Act no public service vehicle other than those referred in subsection (1-A) and sub-section (2) shall be used in any public place in Uttar Pradesh unless a monthly tax at such rate as may be notified by the State Government is paid in respect thereof:

Provided that in respect a motor vehicle under this sub-section instead of monthly tax, a quarterly or an yearly tax at such rate as may be notified by the State Government may be payable.

(2-B) Where any reciprocal agreement relating to taxation of goods carried by road is entered into between the Government of Uttar Pradesh and any other State Government or a Union Territory, the levy of tax under sub-section (1-A) or sub-section (2) shall, notwithstanding anything contained in the said sub-section, be in accordance with the terms and conditions of such agreement:

Provided that the tax so levied shall not exceed the tax which would otherwise been levied under the Act.

(3) Where any motor vehicle other than a transport vehicle is found plying as a transport vehicle, such tax therefore as may be notified by the State Government, shall be payable.

(4) The State Government may, by notification, increase by not more than fifty percent, the rates of tax, specified in Part 'B', Part 'C' or Part 'D' of the First Schedule.

9. Payment of tax and penalty—(1) Subject to the provisions of Section 11—

(i) the tax payable under sub-section (1) of section 4 shall be paid at the time of the registration of the vehicle under the Motor Vehicles Act, 1988:

Provided that in respect of an old motor vehicle, the tax shall be payable in advance on or before the fifteenth day of January in each year;

(ii) the tax payable under sub-section (1-A) of Section 4, shall be payable in advance for one year at the time of the registration of the vehicle under the Motor Vehicles Act, 1988 and thereafter on or before the fifteenth day of the first calendar month of the each year next following.

(iii) the tax payable under sub-section (2) of Section 4 shall be payable in advance for one quarter at the time of registration of the vehicle under the Motor Vehicles Act, 1988 and thereafter on or before the fifteenth day of the first calendar month of the each quarter next following."

(iv) (a) the tax payable under sub-section (2-A) of Section 4 shall be payable in advance for one calendar month at the time of registration of the vehicle under the Motor Vehicles Act, 1988 and thereafter on or before the fifteenth day of each calendar month next following.

(b) the special tax payable under Section 4A in respect of vehicles covered by temporary permit issued for the conveyance of passengers on special occasions, such as to and from fairs and religious gatherings or to carry marriage parties, tourist parties or such other reserved parties shall be paid at the time of issuance of such temporary permit.

(2) When any person transfers a motor vehicle registered in his name to any other person, then without prejudice to the liability of the transfer or in this regard, the transferee shall be liable to pay the arrears of tax, additional tax and penalty, if any, in respect of the motor vehicle so transferred, due on or before the date of its transfer, as if the transferee was the owner of the said motor vehicle during the period for which such tax, additional tax or penalty is due.

(3) Where the tax or additional tax in respect of a motor vehicle is not paid within the period specified in sub-section (1), in addition to the tax or the additional tax due, a penalty at such rate not exceeding the due amount as may be prescribed, shall be payable, for which the owner and the operator if any shall be jointly and severally liable.

(4) In computing the amount of tax, additional tax or penalty under this Act the amount shall be rounded off to the nearest rupee, that is to say a fraction of a rupee being fifty paise or more shall be rounded off to the next higher rupee and any fraction less than fifty paise shall be ignored.

10. Vehicles not to be used in Uttar Pradesh without payment of tax— (1) Notwithstanding anything contained in Section 9, no transport Vehicle shall ply in Uttar Pradesh—

(a) under a temporary permit granted under the Motor vehicles Act, 1988 by an authority having jurisdiction outside Uttar Pradesh unless there has been paid in respect thereof a tax under Section 4 for its use or stay in Uttar Pradesh.

(b) under a national permit granted under sub-

section (12) of Section 88 of the said Act by an authority having jurisdiction outside Uttar Pradesh unless there has been paid in respect thereof a tax under Section 4 calculated at the rate specified by the State Government by Notification in the Gazette in the manner prescribed.

(c) under a permit granted under sub-section (9) of Section 88 of the said Act read with the Motor Vehicles (An India Permit for Tourist Transport Operators) Rules, 1993 by an authority having

jurisdiction outside Uttar Pradesh unless there has been paid in respect thereof a tax under Section 4 at the rate specified by the State government by notification in the Gazette in the manner prescribed:

Provided that the State Government may, by notification, increase by not more than fifty per cent, the rates of tax or additional tax, as the case may be, specified in the said Schedules.

(2) For the purpose of levy and payment of tax under sub-clause (i) of clause (a) of sub-section (1), the tax payable for any two weeks or part thereof shall be $\frac{2}{13}$ th of the rate specified in the First Schedule.

(3) In such transport vehicle is found plying in Uttar Pradesh without payment of the tax or additional tax payable under this Act such tax or additional tax along with a penalty, equivalent to five times of the due tax shall be payable.

Provided that the tax under this section shall not be payable in respect of Motor Cabs plying exclusively within the notified area of Noida, Greater Noida and Ghaziabad Development Authority from Delhi on the basis of permit issued by the Transport Authorities of National Capital Territory Delhi.

Provided further that the tax under this section shall not be payable in respect of motor cabs (CNG operated) plying exclusively within the limits of National Capital Region under the permit granted as per agreement entered into with the Governments of Uttar Pradesh, Haryana, Rajasthan and the National Capital Territory of Delhi.

12. Non-use of vehicle and refund of tax—(1) When any person who has paid the tax in respect of a 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 or one twelfth of the yearly tax, as the case may be, 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.

Provided further that where one time tax has been paid for a motor vehicle under sub-section (I-A) of Section 4, the amount equivalent to $\frac{1}{120}$ for each month shall be refunded in respect of such vehicle.

(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 and the additional tax as if the documents were not surrendered and shall also be liable to the penalty equivalent to five times of the tax and additional tax.

(3) Where the owner of a motor 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 as may be specified by the State Government by notification in the Gazette 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 this sub-section shall not exceed the one-time tax paid under this Act.

(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 by the State Government by notification in the Gazette 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 installment 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 under Section 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.

(8) Where the operator, or as the case may be, the owner of a motor vehicle is unable to use his motor vehicle due to an accident of the said vehicle and the certificate of registration, the token, if any, issued in respect of the said vehicle and the permit, if any are surrendered to the Taxation Officer within a week from the date of such accident together with a copy of the first information report, such surrender shall be deemed to have been made on the date of the accident.

20. Recovery of tax—(1) Arrears of any tax or additional tax or penalty payable under this Act shall be recoverable as arrears of land revenue.

(2) The tax, the additional tax and penalty payable under this Act shall be first charge on the motor vehicle including its accessories, in respect whereof it is due.

(3) The Taxation Officer shall raise a demand in the form as may be prescribed, from the owner or operator, as the case may be, for the arrears of tax and additional tax and penalty of each year, which shall also include the arrears of tax, additional tax or penalty, if any, of preceding years.” 8.1 Section 2(30) the Motor Vehicles Act defines “owner”, which reads 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;” 8.2 Section 51 of the Motor Vehicles Act provides for special provisions regarding motor vehicle subject to hire-purchase agreement, etc. Section 51(1) to Section 51(5) reads as under:-

“51. Special provisions regarding motor vehicle subject to hire-purchase agreement, etc.—(1) Where an application for registration of a motor vehicle which is held under a hire-purchase, lease or hypothecation agreement (hereafter in this section referred to as the said agreement) is made, the registering authority shall make an entry in the certificate of registration regarding the existence of the said agreement.

(2) Where the ownership of any motor vehicle registered under this Chapter is transferred and the transferee enters into the said agreement with any person, the last registering authority shall, on receipt of an application in such form as the Central Government may prescribe from the parties to the said agreement, make an entry as to the existence of the said agreement in the certificate of registration and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(3) Any entry made under sub-section (1) or sub-

section (2), may be cancelled by the last registering authority on proof of the termination of the said agreement by the parties concerned on an application being made in such form as the Central Government may prescribe and an intimation in this behalf shall be sent to the original registering authority if the last registering authority is not the original registering authority.

(4) No entry regarding the transfer of ownership of any motor vehicle which is held under the said agreement shall be made in the certificate of registration except with the written consent of 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.

(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 vehicle 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 acknowledgement 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.” 8.3 As per Section 2(h) of the Act, 1997 read with Section 2(30) of the Act, 1988, even a person in possession of the vehicle under the hire-

purchase agreement or an agreement of sell or an agreement of hypothecation can also be said to be the “owner”. Therefore, a financier like the appellant, who is in possession of the transport vehicle in question owing to non-payment of the loan amount is an “owner” under the relevant provisions of the Act, 1997 and Act, 1988. 8.4 Section 4 of the Act, 1997 is the charging section. As per Section 4,

no motor vehicle other than a transport vehicle, shall be used in any public place in Uttar Pradesh unless a one-time tax at the rate applicable in respect of such motor vehicle has been paid in respect thereof. Section 4 (2-A) provides that no public service vehicle (transport vehicle) other than those referred in sub-section (1-A) and sub-section (2) SHALL BE USED in any public place in Uttar Pradesh unless a monthly tax at such rate as may be notified by the State Government is paid in respect thereof. It further provides that in respect of a motor vehicle under Section 4(2-A) instead of monthly tax, a quarterly or a yearly tax at such rate as may be notified by the State Government may be payable. Section 9 provides for payment of tax and penalty. As per Section 9(1)(iv)(a) the tax payable under sub-section (2- A) of Section 4 shall be payable in advance for one calendar month at the time of registration of the vehicle under the Motor Vehicles Act, 1988 and thereafter on or before the fifteenth day of each calendar month next following. Section 12 provides for non-use of vehicle and refund of tax. As per Section 12(1) when any person who has PAID THE TAX in respect of a 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 or one twelfth of the yearly tax, as the case may be payable in respect of such vehicle for each thirty days of such period for which such tax has been paid. However, Section 12(2) provides that 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 Act, 1997 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. As per proviso to sub-section (2) of Section 12 in case such vehicle is found plying during the period when its documents as mentioned in sub-section (2) of Section 12 remain surrendered with the Taxation Officer, such owner or operator, as the case may be, shall be liable to tax and additional tax as if the documents were not surrendered and shall also be liable to penalty equivalent to five times of the tax and additional tax.

9. On a conjoint reading of the aforesaid provisions, it can be seen that in respect of a transport vehicle, the tax is to be paid in advance as monthly tax or yearly tax, as the case may be, and only thereafter such vehicle shall be put to use.

Therefore, before any transport vehicle is put to use or used, the owner is liable to pay the tax in advance and only thereafter the vehicle can be used or operated. The wordings of Section 4(2-A) are very clear that no public service vehicle SHALL BE USED in any public place unless a monthly tax at such rate as may be notified by the State Government is paid in respect thereof. As per Section 9(1)(iv)(a), the tax payable under sub-section (2-A) of Section 4 shall be payable in advance on or before fifteenth day of each month next following. Therefore, the requirement under law is to first pay the tax in advance as provided under Section 9 and thereafter to use the vehicle. In other words, it is 'pay the tax and use' and not 'use and pay the tax'. Therefore, the submission on behalf of the appellant-financier that tax has to be paid at the time of use or thereafter cannot be accepted. If such

a submission is accepted, in that case, Section 9(1)(iv)(a), which provides for the amount of tax to be paid in advance will become redundant and/or nugatory.

9.1 However, in a case where, after the tax is paid as per Section 4(2- A) read with Section 9, the vehicle is not used and there is non-use of the vehicle, the operator and/or the owner, as the case may be, may apply and claim for refund as per Section 12 and may get the refund subject to fulfilling all the requirements as provided under Section 12. The question of refund will come only when the tax is first paid and thereafter on non-use, the tax paid is to be refunded, of-course subject to fulfilling the requirements of claiming the refund as provided under Section 12 of the Act, 1997.

10. The sum and substance of the aforesaid discussion would be that the owner or operator has to first pay the tax in advance and thereafter if the transport vehicle is not used for a continuous period of one month or more since the tax was last paid, he may have to apply for the refund, which may be granted subject to compliance of the necessary requirements as per first proviso to Section 12 and subject to satisfaction of the Taxation Officer that the transport vehicle has not been used for a continuous period of one month or more since the tax was last paid. 10.1 There is only one eventuality where no tax or advance tax under the Act, 1997 shall be payable namely under sub-section (2) of Section 12, 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 only on such surrender, no tax or additional tax under Act, 1997 shall be payable in respect of such vehicle for each completed calendar month of the period during which the vehicle remains withdrawn from use and the aforesaid documents remain surrendered with the Taxation Officer.

11. The submission on behalf of the petitioner is that many a time, the documents referred to in sub-section (2) of Section 12 are not with the financier/owner and they remain with the registered owner and therefore such a financier/owner may not be able to get the refund under sub-section (1) of Section 12 or exemption from payment of tax as per sub-section (2) of Section 12 is concerned, on the aforesaid ground, the liability of the owner/financier to pay the tax will not cease. It is for the financier to acquire the documents such as original registration certificate, permit, token etc. from the registered owner at the time of seizure of the vehicle. If, for any reason, the financier/owner is not able to secure the documents, then he has to follow the procedure for getting fresh certificate of registration as provided under Section 51 of the Act, 1988. Therefore, before seeking refund under sub-section (1) of Section 12 or before he is exempted from payment of tax under sub-section (2) of Section 12, such an operator / owner has to comply with and fulfill all the conditions, which are mentioned therein.

11.1 An identical question came to be considered by the Gujarat High Court in the case of Abdul Samad Abdul Hamid Shaikh (supra), where in paragraphs 5.3 and 5.4, it is observed and held as under:-

“5.3If the vehicle is repossessed by the financier subsequently, in that case the remedy available to such financier would be by submitting an appropriate application before the appropriate authority of non-use of such vehicle and for the period of such non- use the liability to pay the tax shall not arise. Otherwise, the liability to pay the tax continues.

5.4 Section 4(1) of the Act, 1958 provides that the tax is required to be paid in advance by every registered owner, or any person having possession or control, of such motor vehicles. Section 8 of the Act, 1958 provides that if the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof, and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall also be liable to pay the said tax to the Taxation Authority.....”

12. In view of the above discussion and for the reasons stated above, it is held that a financier of a motor vehicle/transport vehicle in respect of which a hire-purchase or lease or hypothecation agreement has been entered, is liable to tax from the date of taking possession of the said vehicle under the said agreement. If, after the payment of tax, the vehicle is not used for a month or more, then such an owner may apply for refund under Section 12 of the Act, 1997 and has to comply with all the requirements for seeking the refund as mentioned in Section 12, and on fulfilling and/or complying with all the conditions mentioned in Section 12(1), he may get the refund to the extent provided in sub-section (1) of Section 12, as even under Section 12(1), the owner / operator shall not be entitled to the full refund but shall be entitled to the refund of an amount equal to one-third of the rate of quarterly tax or one twelfth of the yearly tax, as the case may be, payable in respect of such vehicle for each thirty days of such period for which such tax has been paid. However, only in a case, which falls under sub-section (2) of Section 12 and subject to surrender of the necessary documents as mentioned in sub-section (2) of Section 12, the liability to pay the tax shall not arise, otherwise the liability to pay the tax by such owner/operator shall continue.

Under the circumstances, the impugned judgment and order passed by the Full Bench of the High Court does not warrant any interference by this Court. The appeal stands dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J .
[M.R. SHAH]

NEW DELHI;
FEBRUARY 22, 2022.

..... J .
[B.V. NAGARATHNA]

