

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

M/S DHILLON TRANSPORT CO., AND ANOTHER,—*Petitioners.*

versus

THE ASSESSING AUTHORITY AND OTHERS,—*Respondents.*

Civil Writ No. 1685 of 1963.

1964

August, 6th.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—S.16—Punjab Passengers and Goods Taxation Rules (1952)—Rule 28—Petition for revision before Commissioner—Assessee not paying the assessed tax—Commissioner—Whether can dismiss the petition on that score alone.

Held, that there is no power in the Punjab Passengers and Goods Taxation Act to impose a condition for payment of the tax before a hearing can be granted in a petition for revision. No doubt a petition under section 16 of the Act is a discretionary remedy but it cannot be inferred therefrom, that the revisional authority has the power to impose conditions which are not warranted by a statute. Though the condition of payment of tax as stated in Rule 25 can be justified in the case of appeals, the same having been provided in section 15 of the Act itself, it cannot be read to be an essential corollary in the hearing of a revision petition. The fetter which is now sought to be imposed on section 16 and rule 28 cannot be justified on the simple ground that the prerequisite of payment of the assessed tax is not provided for in section 16 and the rule-making power cannot travel beyond the specific terms of this section in the Act.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari, Mandamus or any other writ, order or direction be issued quashing the orders of respondents Nos. 2 and 3, dated 30th April, 1963, and 20th August, 1963, respectively and the assessment order, dated 6th December, 1961.

BHAGIRTH DASS, ADVOCATE, for the Petitioners.

M. R. SHARMA, ADVOCATE, for the Advocate-General, for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—The common question of law which arises for determination in these Civil Writ petitions Nos. 1685, 1686 and 1687 of 1963 is whether the Commissioner under section 16 of the Punjab Passengers and Goods Taxation Act, 1952 can dismiss a petition for revision on the ground that the assessee has not paid the assessed tax?

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There is no basic difference in regard to facts in these three petitions except that these relate to three different assessment years 1959-60, 1960-61 and 1961-62. It would be sufficient to give the facts only with regard to petition No. 1685 of 1963.

The petitioner is the Dhillon Transport Company engaged in the business of motor transport. The petitioner is plying stage carriages between Budhlada-Sardulgarh and Bhiki-Reyond via Budhlada-Boha, both being *kacha* routes. The petitioner is using only two permits with one return trip on each of these two different routes. The petitioner had been paying the passenger tax by affixing adhesive stamps on the passenger tickets. Mention may be made of clause 9 of the Punjab Passengers and Goods Taxation Rules 1952, under which tax can be paid either by stamping the ticket or receipt with an impressed, embossed, engraved or adhesive stamp issued by the State Government for the purposes of the Act, or where such adhesive stamps are not available or the Commissioner so directs the tax shall be deposited by the owner in cash into the Government Treasury in the manner prescribed in subsequent rules.

According to the petitioner, the method of using adhesive stamps had been used to make the payment of tax and

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during the relevant year stamps of the value of Rs. 13,334.68 had been used on the passenger tickets. By an order of 6th of December, 1961, the Assessing Authority made an *ex parte* assessment on the basis of the statements made by one Des Raj and the amount of tax was calculated at Rs. 31,666.66 p. on an estimated gross receipts of Rs. 1,90,000. Against this *ex parte* assessment an appeal was filed which was heard and decided against the petitioner on 30th of April, 1963. A revision petition was preferred to the Commissioner under section 16 and this has been dismissed as the amount of the assessed tax has not been paid by the petitioner.

Under section 15 of the Act:—

“An appeal shall lie to the appellate authority appointed by the State Government.....within 60 days of the passing of any order appealed against.

Provided that no appeal shall be entertained by such authority unless he is satisfied that the amount of tax assessed has been paid:.

Provided further that such authority, if satisfied that an owner is unable to pay the tax assessed may, for reasons to be recorded in writing, entertain an appeal without such tax having been paid.”

The revision under section 16 lies before a Commissioner who “of his own motion, or, on application made to him in the prescribed manner, may, call for the record of any proceedings, which are pending before or have been disposed of by any other authority subordinate to him under this Act for the purpose of satisfying himself as to the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may think fit.....”

It would be observed that there is no proviso in section 16 to make the payment of the assessed tax a prerequisite for the hearing of the revision. Admittedly, the petitioner has not paid the assessed tax and though his appeal was also dismissed at first on the ground that no tax

had been paid an order was made in Civil Writ No. 784 of 1962 on 3rd of December, 1962, that he should be given a hearing without being first required to make payment of the assessed tax.

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Reliance has been placed by the learned counsel for the Assessing Authority on the rules which have been framed under the Act in pursuance of section 22. Clause (g) of sub-section (2) of section 22 says that the State Government may make rules, *inter alia*, for "prescribing the manner in which revision application may be preferred". The relevant rule with regard to revision is rule 28 which says that "the provisions of rules 25 and 26 shall apply *mutatis mutandis* to every application for revision". In rule 25, which relates to appeal, clause (3) says that the appellant or his agent shall endorse the memorandum that the amount of tax and penalty imposed has been paid. It is argued that a similar provision has to be read in regard to the revisions under Rule 28. This contention, in my opinion, is not acceptable. For one thing, there is no power in the Act to impose a condition for payment of the tax before a hearing can be granted in a petition for revision. No doubt, a petition under section 16 is a discretionary remedy but it cannot be inferred therefrom that the revisional authority has the power to impose conditions which are not warranted by the statute. Rule 25 and especially the condition with regard to the payment of tax can be justified under the first proviso to section 15 of the Act which says that no appeal shall be entertained by an authority unless satisfied that the amount of tax assessed has been paid. Rules 25 and 26 have to be applied in the case of revision "*mutatis mutandis*" which phrase is defined in Shorter Oxford Dictionary to mean "thing being changed that have to be changed, i.e. with necessary change". Rules 25 and 26, in other words, have to be read with such changes as have to be introduced to bring it in accord with the provisions of the statute and the rules made thereunder. Though the condition of payment of tax is justified in the case of appeals, being provided in the Act itself, it cannot be read to be an essential corollary in the hearing of a revision petition. It is argued by Mr. Sharma, for the respondent, on the analogy of a Division Bench authority of this Court in *Burmah-Shell*

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Oil Storage Co. v. The Punjab State (1) that the condition with regard to payment of tax can be read in construing rule 28. In the Division Bench authority it was held that the words "at any time" in section 21 of the Punjab General Sales Tax Act can be construed to justify the Revising Authority placing restriction of 90 days in filing the petition for revision. In my opinion, this authority cannot be used as a support for the proposition contended for by the learned counsel for the respondent. The fetter which is now sought to be imposed on section 16 and rule 28 cannot be justified on the simple ground that the pre-requisite of payment of the assessed tax is not provided for in section 16 and the rule-making power cannot travel beyond the specific terms of this section in the Act.

I would accordingly ^o hold that the Commissioner was not justified in declining to give a hearing to the petitioner. I would, therefore, allow these petitions and direct the Commissioner to decide the petitions in accordance with law. There would be no order as to costs of these petitions.

K.S.K.