

**Court No. - 40**

**Case :-** WRIT TAX No. - 1323 of 2024

**Petitioner :-** Dileep Kumar Upadhyay

**Respondent :-** State Of Up And 3 Others

**Counsel for Petitioner :-** Abhishek Shukla,Akhilendra Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Shekhar B. Saraf,J.**

**Hon'ble Manjive Shukla,J.**

1. Recovery citation dated July 16, 2024 issued against the petitioner, on account of motor vehicle tax, is under challenge in the present petition.

2. The argument raised by the learned counsel for the petitioner is that he had purchased a Tata Magic (commercial vehicle), bearing registration No. UP 96 A 9871. The same was hypothecated with Hinduja Leyland Finance Limited. On account of default in repayment of loan, the vehicle was seized by the financier in the year 2013. It was thereafter sold. Upto the date the petitioner was in possession of the vehicle in question, he had deposited the tax. After possession of the vehicle was taken by the financier, the liability of the tax cannot be put on the petitioner as in that case the financier will be liable to pay the tax. The aforesaid facts have been stated by the petitioner in the objections filed to the recovery citation, however, not considered. In support of the argument reliance has been placed upon judgment of Hon'ble the Supreme Court in **Mahindra and Mahindra Financial Services Ltd. vs. State of U.P. and others, (2022) 5 SCC 525.**

3. Learned counsel for the State submitted that in terms of Rule 18 of the U.P. Motor Vehicles Taxation Rules, 1998 (hereinafter referred to as 'the Rules'), the petitioner was required to inform the Taxation Officer about the fact that the possession of the vehicle in question was taken by the financier so as to enable the authority to fasten the liability on the financier.

As the petitioner had failed to do so, demand was raised against him. However, in case, he points out the details to the Taxation Officer, the issue will be examined in the light of judgment of Hon'ble the Supreme Court in **Mahindra and Mahindra Financial Services' case (supra)**.

4. After hearing the learned counsel for the parties, we find merit in the submission made by learned counsel for the petitioner as he stated that possession of the vehicle in question was taken by the financier in April, 2022 and in view of the judgment of Hon'ble the Supreme Court in **Mahindra and Mahindra Financial Services' case (supra)** the liability for payment of tax thereafter cannot be fastened on the petitioner. Relevant paragraph 14 of the aforesaid judgment is reproduced hereinbelow:

*"14. 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."*

(emphasis supplied)

5. In terms of Rule 18 of the Rules, the petitioner had already filed objection

against the notice on March 14, 2022 mentioning that possession of the vehicle in question was taken by the financier in the year 2013. Subsequently, the vehicle was sold by the financier. The aforesaid objections are required to be considered by the competent authority and from the date of possession of the vehicle was taken by the financier, the liability may be re-worked out in terms of judgment of Hon'ble the Supreme Court in **Mahindra and Mahindra Financial Services' case (supra)**. However, for any period prior to that, if the tax has not been paid, the petitioner shall be liable to pay the same.

6. The writ petition is, accordingly, disposed of and recovery citation against the petitioner is quashed.

**Order Date :- 2.9.2024**

Dev/-

**(Manjive Shukla,J.)      (Shekhar B. Saraf,J.)**