IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7536 of 2012

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Srinibash Agrawalla S/O Late Ruli Chand Agrawalla R/O 42, M.G. (Mahatama Gandhi) Road, Khalpaa, Post Office- Silliguri Bazar, District- Dargiling, W.B.

.... Petitioner

Versus

1. The State Of Bihar through Principal Secretary Transport, Nirman Bhawan, Baily Road, Patna
2. Member, Board of Rvenue, Old Secretariat, Bailey Road, Patna
3. The Joint Transport Commissioner, Bihar, Patna
4. Secretary, Transport, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner : M/s. B.N.Singh, Randhir Kumar Singh, Sanjay Kumar Pandey and Ashok Kumar Verma, Advocates

For the State : Mr. Sandeep Kumar, G.A.8 and Mrs. Archana Sinha @ Archana Shahi, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 05-02-2015

Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 13.02.2012 passed by the Member, Board of Revenue upholding the orders of the Secretary, Transport dated 25.3.2011/2.5.2011 and the order dated 25.10.2010 passed by the Joint Transport Commissioner, Patna by which the appeal being Case No. 20/2011 filed by the petitioner under the Bihar Motor Vehicles Taxation Act, 1994 has been dismissed.

By the impugned order dated 25.10.2010 of the Joint Transport Commissioner which has been upheld by the Secretary, Transport and the Member, Board of Revenue, the petitioner was directed to pay taxes along with penalty of Rs. 3,55,473/- against Bus No. BR-06D-0606 for the period 22.9.2002 to 26.6.2004 and an amount of Rs. 3,58,483/- with respect to Bus No. BR-06C-6606 for the period 22.9.2002 to 21.6.2004.

The stand of the petitioner is that the petitioner had at all times been paying the motor vehicles tax at the notified dates until the year 2002 when the State Government came out with a notification enhancing the rate by about four times which led to 49 days strike by the private transport operators of the State whereafter an agreement was reached between the State of Bihar and Motor Transport Federation of Bihar on 1.10.2002 in which the State Government had agreed, inter alia, that a fresh rate would be notified which would be much less than the notification enhancing the rates. In the meantime, the vehicle owners were to deposit voluntarily the motor vehicles tax at quarterly or monthly rates, within ten days from the expiry in case the payment is to be made on monthly basis. It is not in dispute that the petitioner continued to deposit the taxes as per the estimate made by him. The State Government also finally took out a fresh notification dated 17.7.2003 which was applied with retrospective effect from 16.2.2002, the date of the earlier notification. In the meantime, the petitioner had paid by demand drafts various amounts for the period from 22.9.2002 on a month to month basis starting from 7.10.2002: till the period 22.9.2002 to 21.7.2003 paid a total amount of Tax of Rs. 98,674/- whereas as per the new rates notified on 17.7.2003 the total amount payable for the said period would have been Rs. 98,338/- and thus he paid Rs. 336/- in excess; thereafter for the period from 22.7.2003 till 21.4.2004 the petitioner had continued to deposit taxes on a monthly basis and for each month there was some shortfall of Rs. 164/- or Rs.167/- on the taxes notified ultimately, leading to shortfall of Rs. 1155/- for the entire period from 22.9.2003 to 21.4.2004. Thus, the stand of the petitioner is that if at all the penalty was to be imposed even at the excessively high and unreasonable rate of 200% under Rule 4 of the Bihar Motor Vehicle Taxation Rules, 1994, the same would have come to a smaller amount of Rs. 2310/- and not the huge amount of more than Rs. 7 lacs imposed by the aforesaid impugned orders.

It is the stand of the petitioner that as per Rule 4 of the Rules, the penalty is to be charged @ 25% to 200% on the tax due and not on the entire amount of tax liability for the said period and the taxes due would only be the shortfall in the taxes so paid.

It is further submitted by learned counsel that if any amount has been paid in excess specially in the conditions prevailing in the present matter, then the same ought to have been adjusted for the subsequent period and similarly if there had been subsequent smaller shortfall in the payment of the taxes when the next payment was made that shortfall ought to have been first adjusted from the said payment and then remaining amount ought to have been considered for the purpose of shortfall for levy of penalty.

The stand of the State, on the other hand, is that under Section 12 of the Motor Vehicles Act read with Rule 4 unless the entire amount of quarterly or monthly instalments of tax is paid it would not amount to any payment of the tax due and thus in the present matter 200% penalty would have to be levied on the entire amount of tax payable for the said monthly or quarterly period in view of the long delay in payment of such amount of taxes.

Section 12 of the Bihar Motor Vehicles Taxation Act and Rule 4 of the Bihar Motor Vehicles Taxation Rules, 1994 are in the following terms:-

> "Section 12. Refusal of acceptance of tax.- Subject to other provisions of this Act, the taxing officer shall not accept the tax or penalty, if any, in respect of a motor vehicle for the current period unless the arrears of taxes and penalties due in respect of the vehicle

have been fully paid or settled."

Rule. 4.- Due date of payment and penalty for non-payment of taxes in time.- (1) For vehicles other than personalized vehicles the due date of payment of tax shall be the date of expiry of the period for which the tax had been last paid. In cases where no such tax had previously been paid, the date of acquisition of the vehicle or the date when such tax is imposed by law shall be due date for tax payment. For payment of differential taxes under the provision of Section 8, the due date shall be within Seven days from the date of alteration in the vehicle or the change in its use.

(2) Where the tax for any period in respect of a vehicle has not been paid as required under the provisions of sub-rule (1) and continues to remain unpaid thereafter, the taxing officer may impose penalty in respect of such vehicles at the rate specified in the table below:-

	Period	Amount of penalty
(i)	If paid within fifteen days from the due date of payment.	Nil. This will be treated as a grace period.
(ii)	If paid after fifteen days but within 30 days of the due date of payment	Penalty to be charged at the rate of 25 per cent of the tax.
(iii)	If paid after 30 days but within 60 days of the due	Penalty to be charged at the rate of 50 per cent of

	date of payment.	the taxes due.
(iv)	If paid after 60 days but within 90 days of due date of tax payment.	Penalty to be charged equal to the taxes due.
(v)	If paid beyond 90 days after the due date	Penalty to be charged will be twice the taxes due.

(3) Where the composite fee in respect of vehicles plying under National Permit Scheme has not been paid within the due date as required under the provisions of the said Scheme, the Taxing Officer shall impose penalty at the rate provided in the said Scheme, in respect of such vehicle."

In view of the aforesaid provisions of the Act and the Rules while it is true that tax of subsequent period cannot be accepted unless the tax for the period has been paid but in the present matter at least for the period from 16.7.2002 to 17.7.2003 the entire situation was unclear and not even the authorities of the Motor Vehicles Department were in a position to say as to what would be the taxes as per the notification as was finally done on 17.7.2003 with retrospective effect from 16.7.2002; even the agreement between the State authorities and the Private Transport Federation provided for provisional payment by the motor vehicles owners on quarterly or monthly basis. In the said circumstances, at least for the period from 16.7.2002 to 17.7.2003 reliance upon the provisions of Section 12 read with Rule 4 in the impugned orders appears to be wholly unjustified. The said provision was not even operable in view of the polarized situation that was prevailing until the notification dated 17.7.2003 was applied with retrospective effect from 16.7.2002. Thus, at least for the said period, the only liability of the motor vehicle owners would be on account of any shortfall of tax paid in the amount deposited by the motor vehicle owners.

Even for the subsequent period after the notification dated 17.7.2003 it is difficult to accept the interpretation put upon the provisions of Section 12 and Rule 4 of the Motor Vehicles Taxation Act and the Rules by the respondent-authorities. Section 12 only prohibits a taxing officer from accepting tax or penalty for the current period unless the arrears of tax and penalty due with respect to the vehicle have been fully paid or settled. In the present matter, the petitioner had continued to deposit the amounts of tax by demand drafts and there was no refusal of acceptance of tax by the taxing officer in terms of the provisions of Section 12 of the Act. Hence, it is not open to the respondent-authorities to approbate and reprobate at the same time: if they had continued to accept the tax even after the notification dated 17.7.2003 then they cannot be permitted to say that there had been no deposit of tax by the petitioner. The taxes having been accepted, the liability of the petitioner would only arise with respect to any shortfall in the payment of taxes after giving benefit to the petitioner for any excess taxes paid for the previous period.

Having accepted the taxes tendered by the petitioner, the authorities can thereafter only invoke the provisions of Rule 4 of the Rules with respect to shortfall in the taxes which is what the rule also speaks of that the amount of penalty shall be only the percentage of the taxes due. The taxes due cannot be interpreted to mean the entire amount of tax to be paid for that quarterly or monthly period, rather the shortfall in the payment of those taxes because the taxes which had previously been accepted by the respondent- authorities even if such acceptance is contrary to Section 12 of the Act, would reduce the tax liability and tax due would be the difference between the tax payable and the tax actually paid.

Thus, the liability of the petitioner would only be to pay penalty for the shortfall in the payment of taxes for each of the periods.

In the light of the aforesaid observations and findings, the writ application is allowed. The impugned orders dated

13.2.2012, 25.3.2011/2.5.2011 and 25.10.2010 are all set aside to the extent of levy of penalty and the respondents are directed to recalculate the tax and penalty payable in terms of the present order for each of the period for which the taxes were due giving the petitioner benefit of any excess payment made during the earlier period.

It is made clear that learned counsel for the petitioner has not pressed the challenge to other parts of the impugned orders.

Let the respondent-authorities recalculate the tax and penalty and supply the details of payment to the petitioner within a period of two weeks from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Anjana Mishra, J)

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