

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12407 of 2015

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Awanish Kumar, son of Late Vindeshwari Sah, resident of Prabhat Colony,
Purnea, District- Purnea

.... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Department of Transport, Bihar, Patna
2. The District Transport Officer, Purnea

.... Respondents

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Appearance :

For the Petitioner/s : Mr. R.K.Agerawal, Advocate with M/S
Tuhin Shankar, Shive Kumar & Gopal
Kumar, Advocates

For the Respondent/s : Mr. Ajit Pratap Singh, S.C. 15

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

4 04-12-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks quashing of the demand notice dated
22.6.2015 by which the respondents have asked the petitioner to
pay an amount of Rs.36,38,211/- as one time tax payment
including the penalty.

The facts of the case, in brief, are that the petitioner being
a Transporter purchased 49 Indica EV-2 LX cabs for commercial
running of the same. The said vehicles were purchased on
30.3.2013 and were registered at the District Transport Office,



Purnea on 13.4.2013. On the said date the petitioner came forward to deposit Rs.19,600/- as the quarterly tax but the petitioner was asked to deposit Rs.11,47,825/- as one time tax payment for the said 49 vehicles on 13.4.2013. The petitioner was taken aback at the said demand and thereafter continued to approach the DTO, Purnea for working out some solution. The matter, however, could not be resolved and finally by the impugned notice dated 22.6.2015 the petitioner has been asked to pay Rs.36,38,211/- as one time tax payment including 200% penalty over the same.

The stand of the respondents is that the Bihar Motor Vehicles Taxation Act was amended by the Bihar Finance Act, 2013 and the amendments were brought into force from 1.4.2013 as a result of which one time tax for 15 years at the rate of 5% of the cost excluding VAT was to be levied at the time of registration for taxi/maxi/cab/motor cab and, accordingly, the demand for one time tax was made on 13.4.2013 and the petitioner having failed to pay the said amount he would be liable to payment of penalty under Rule 4(2) of the Bihar Motor Vehicles Taxation Rules, 1994.

Learned counsel for the petitioner submits that the aforesaid Rules have no application to the payment of one time tax which is the tax payable at the time of registration, whereas the



Bihar Motor Vehicles Taxation Rules, 1994 were enacted with respect to the scheme of payment of taxes on quarterly basis and on failure to pay the taxes, amount of penalty has been prescribed under Rule 4.

Learned counsel for the State, on the other hand, submits that the due date of payment in the case of one time tax would be the date of registration and on failure to do so 200% penalty shall be imposed.

In this regard learned counsel for the petitioner has relied upon a similar view of the Department which is expressed in a circular letter dated 9.10.2013 issued by the Principal Secretary, Transport Department, Bihar by which it is stated that it was found that when the vehicle owners went for registration in the Transport Office for payment of one time tax they were asked to pay 200% penalty on delayed payment, whereas there was no provision of delayed payment of such advance tax in the Act or the Rules and under Rule 4 of the Bihar Motor Vehicles Taxation Rules, 1994 the provision for levy of penalty was with regard to arrears of tax. To this, learned counsel for the State submits that the circular letter dated 9.10.2013 was kept in abeyance by the subsequent letter dated 22.10.2013 of the Transport Department until advice comes from the Finance Department.

From a perusal of the provisions of the Bihar Motor Vehicles Taxation Rules it is found that Rule 3 thereof relates to computation of quarterly periods. Thereafter Rule 4 talks of due date of payment and penalty for non-payment of taxes in time.

Rule 4 is quoted below :

“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 date of payment.	Penalty to be charged at the rate of 50 per cent of the taxes due.
(iv)	If paid after 60 days but within 90 days of due date of tax payment date.	Penalty to be charged equal to the taxes due.
(v)	If paid beyond 90	Penalty to be charged will be

days after the due twice the taxes due.
date.

(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.”

From a perusal of the Scheme of the Bihar Motor Vehicles Taxation Rules, 1994, this Court is of the view that the letter dated 9.10.2013 of the Principal Secretary, Transport Department, Government of Bihar had correctly understood the Scheme of the Bihar Motor Vehicles Taxation Act and Rules. It is evident that the then prevailing Act and the Rules were made for collection of taxes on the basis of quarterly periods. The system for payment of quarterly tax was framed in the Act and the Rules at the relevant time in so far as these motor vehicles were concerned and therefore it was for such vehicles that the concept of imposition of penalty existed in the Rules for delayed payment. The very scheme of payment of one time tax at the time of registration involves collection of the entire tax for a period of 15 years at one go at the very initial stage and thus there could be no such rule like Rule 4 with respect to due date of payment and penalty for non-payment of taxes in time.

The case of the petitioner falls in the transition period, as



he had purchased the vehicles when the old provisions were prevailing on 30th March, 2013, whereas from 1st April, 2013 the new amendments in the Act were brought into force and when the petitioner applied for registration one time tax payment was demanded on 13.4.2013. The petitioner not being aware and having not made financial arrangement, having purchased the vehicles after taking loan from the State Bank of India, did not find himself in a position to pay the huge amount of tax.

The same could not have been used as an occasion by the authorities of the Motor Vehicles Department for imposition of 200% penalty unless any such provision could be found in the Act or the Rules subsequently framed. It is clear that the amendment in the Bihar Motor Vehicles Taxation Act and the Rules prevailing at the relevant time make no provision for imposition of penalty for delayed payment of one time tax. Hence, we are of the view that the payment of penalty by the impugned notice dated 22.6.2015 is wholly unjustified. It is, therefore, quashed.

The writ application is, accordingly, allowed and it is directed that the liability of the petitioner is only to the extent of payment of one time tax.

It is informed by learned counsel for the petitioner that during the pendency of the writ application, as per the liberty

granted by this Court, the petitioner has deposited the amount of one time tax already. Thus, subject to verification by the respondents, no further tax liability is due upon him.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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