IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5732 of 2015

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Amrendra Kumar Jha, son of Upendra Jha, resident of Village - Akhtiyarpur, Police Station - Sarairanjan, District - Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Department of Transport, Government of Bihar, Patna
2. Board of Revenue, Old Secretariat Patna, Bihar
3. The State Transport Commissioner/Secretary, Department of Transport, Vishwesuraiya Bhawan, Government of Bihar, Patna
4. The Joint Commissioner, Department of Transport, Vishwesuraiya Bhawan, Government of Bihar, Patna
5. The District Transport Officer, Samastipur, District- Samastipur
6. The Chairman cum Member, Board of Revenue, Old Secretariat Patna, Bihar

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan, Advocate

For the Respondent/s : Mr. Ritesh Kumar, S.C.-33

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 20-08-2015 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner seeks quashing of the order dated 10.11.2014 passed in Transport Revision Case No. 23 of 2013 by the Chairman-cum-Member, Board of Revenue by which the revision application was dismissed and the appellate order dated 1.2.2013 passed in Tax Appeal No. 9 of 2009 was affirmed and further seeks to quash the said appellate order passed by the

Principal Secretary, Transport-cum-Appellate Authority by which he has affirmed the order dated 29.4.2008 passed by respondent No.4 and seeks quashing of the said order also as well as a Reference made by the District Transport Officer, Samastipur dated 28.2.2007 for passing exemption order.

The petitioner's vehicle being Maxi bearing registration No. BR33-8836 met with an accident on 25.7.2002 causing serious damage to the vehicle for which Taljhari P.S.Case No. 110 of 2002 dated 25.7.2002 was registered. The petitioner by virtue of order dated 23.8.2002 passed by the Chief Judicial Magistrate, Dumka took the vehicle from the police custody and brought it to Samastipur for repair in garage. On 21.10.2002 the petitioner surrendered his vehicle in Form 'J' along with an undertaking as required by Section 17 of the Bihar Motor Vehicles Taxation Act, 1994. Thereafter for a substantial period no further undertaking was filed and much later on 20.7.2005 and again on 30.6.2006 further undertakings under Section 17 of the Act were filed. The petitioner by his letter dated 19.2.2007 informed the District Transport Officer, Samastipur regarding completion of repairing for plying the vehicle on road and also claimed exemption of tax and additional tax for the period during which the vehicle had not plied on road being under repair. Respondent No.5 referred the matter of exemption of tax and additional tax for the period from 3.10.2002 to 21.1.2007 to the Joint Commissioner, Transport, Patna for necessary orders, who by his letter dated 29.4.2008 rejected the claim for exemption of the petitioner. Thereafter the petitioner approached this Court and was relegated to the statutory remedy of appeal before the Secretary, Transport by order dated 2.3.2009, which appeal was dismissed on 28.9.2011. The revision application filed by the petitioner at the first stage was remanded to the Secretary, Transport for hearing on merit and was again rejected by order dated 1.2.2013. Thereafter the further revision application filed by the petitioner was dismissed by the impugned order dated 10.11.2014. The impugned order of the Chairman-cum-Member, Board of Revenue has held that the petitioner having not filed the affidavit every six months during the period when he claimed that the vehicle was under repair, under Section 17 of the Act, hence the vehicle will be deemed to be used during the said period without payment of tax.

Learned counsel for the petitioner submits that the provision of Section 17 of the Act was ultimately complied with by the petitioner at the initial stage when he surrendered the vehicle on 21.10.2002 and thereafter the filing of further undertaking from time to time under Section 17(1) of the Act is only directory and not mandatory and in view of favourable report of the Transport authorities themselves, the exemption ought to have been granted.

Sections 17 and 19 of the Bihar Motor Vehicles Taxation Act, 1994 are in the following terms :

> "**S.17**. Prior intimation of a temporary discontinuance of use of a vehicle- (1) Whenever any motor vehicle becomes incapable of use due to disability caused by mechanical breakdown or litigation or natural calamities or compelling personal reasons or due to other causes prescribed by State Government for any period more than a month, the owner shall, on or before the date of expiry of the term for which the tax has been paid, furnish to the taxing officer an undertaking duly signed and verified in the prescribed form and specifying the period aforesaid and the place where the motor vehicle is to be kept along with the current registration certificate, fitness certificate, and tax token, and such other particulars as may be prescribed and shall from time to time by furnishing, further undertaking give prior intimation to the concerned taxing officer of the extension, if any, of the said period and the changes, if any of the place where the motor vehicle shall be kept. The owner shall also surrender the permit of the vehicle to the Transport Authority which has granted permit to it with intimation to the taxing officer;
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> Provided that no such undertaking shall relate to a period exceeding six months at a time.
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> (2) If at any time during the period covered by an undertaking as aforesaid the motor vehicle is found being used or is kept at place in contravention of any such undertaking such vehicle shall for the purpose of this Act, be deemed to have been used through the said period without payment of tax.
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> (3) In the absence of any undertaking delivered under sub-section (1) every motor vehicle liable to pay tax under this Act shall be deemed to have been used or kept for use within the State.

S.19. Exemption and write off taxes.- If an undertaking has been delivered under sub-section (1) of Section 17 in respect of a Motor Vehicle and the period specified in the said undertaking comprises of any period for which tax has not been paid, the owner of a vehicle shall file an application along with necessary papers before the taxing officer on or before the date the tax was last paid, and the taxing officer shall conduct due enquiry as prescribed and if the undertaking has not been found false till the expiry of period for which exemption of payment for tax is claimed, he shall after being satisfied dispose of the claim in the prescribed manner :

Provided that the taxing officer shall be competent to write off the arrears of the tax up to a maximum amount which may be prescribed by the State Government in case the arrears exceed the prescribed amount he may refer the matter along with necessary records, to the State Transport Commissioner or to any officer authorized by the State Government."

It is evident from a perusal of the said provisions that an exemption can only be claimed on four grounds, in case the vehicle is incapable of use due to disability caused by mechanical breakdown or litigation or natural calamities or compelling personal reasons or due to other causes prescribed by State Government for any period more than a month. In the present matter it is not in dispute that the vehicle of the petitioner had become incapable of use on account of accident. However, mere incapability of use is not a ground for granting exemption of tax and for grant of the said benefit there is further requirement of furnishing to the taxing officer the necessary prescribed form and undertaking specifying the period as also the place where the vehicle is to be kept along with current registration certificate, fitness certificate, tax token and such other particulars as per the Form and upon furnishing further undertaking giving proper information to the taxing officer for the extension of the said period. Under the proviso to sub-Section (1) of Section 17 any such undertaking can only be for a period not exceeding six months at a time. It is further provided by sub-Section (3) of Section 17 that in the absence of any undertaking delivered under sub-Section (1) every motor vehicle liable to pay tax shall be deemed to have been used or kept for use within the State.

In view of the provisions of Section 17 it is evident that the submission of learned counsel for the petitioner that only on the first occasion submission of undertaking is mandatory and thereafter its submission from time to time, which may not be for the period of six months, is directory, does not appear to be correct. The deeming fiction introduced by sub-Section (3) of Section 17 makes it clear that failure to deliver undertaking within six months period provided by the Act would result in the positive conclusion that the vehicle has been used or kept for use within the State without paying tax. Under Section 19 of the Act also it is clear that exemption and write off of taxes for the said period can be given if the undertaking has been delivered under sub-Section (1) of Section 17 of the Act and if the undertaking has not been found false, till the expiry of period for which exemption of payment of tax is claimed.

Thus, in the light of the aforesaid provisions it is evident that except the undertaking given for the first time by the petitioner when he surrendered the vehicle on 21.10.2002 no other undertaking was filed by the petitioner in terms of the mandatory provisions of Section 17 of the Act and hence the clear conclusion would be that the petitioner would be entitled for exemption only for the first period of six months and not for the period thereafter.

The writ application is, accordingly, partly allowed and the impugned orders are modified to the extent that the petitioner shall be entitled to exemption of tax for the first period of six months when he surrendered the vehicle on 21.10.2002 but not for any other period thereafter.

Learned counsel for the petitioner submits that a huge amount of tax has become payable by the petitioner during which period the petitioner, as a matter of fact, has not plied the vehicle and he may be at least be given the benefit of instalment for payment of taxes for the past period.

Let the petitioner apply before the concerned authorities who shall consider and grant reasonable instalments to the petitioner considering the facts of the present case, which order must be passed within four weeks from the date of filing of the application for the same along with a copy of this order.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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