IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) NO.61 OF 2009

Sri Bidhu Bhusan Deb,
son of late Binode Bihari Deb,
resident of Vill. Padmapur,
P.S. Dharmanagar, District : North Tripura

………………… Petitioner

– Vs –

1. The State of Tripura,
   represented by the Commissioner & Secretary,
   Transport Department,
   Govt. of Tripura, Agartala

2. The Deputy Transport Commissioner, Tripura,
   Paribahan Bhawan, Agartala, West Tripura

3. The Certificate Officer (SDM),
   Dharmanagar, District : North Tripura

…..………….Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner **:** Mr. D.K. Biswas, Advocate

For the respondents **:** Mr. T.D. Majumder, G.A.

Date of hearing & order **:** 24.02.2015

Whether fit for reporting **:**

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.K. Biswas, learned counsel appearing for the petitioner as well as Mr. T.D. Majumder, learned Govt. Advocate appearing for the state.

2. By means of this writ petition, the notice dated 03.07.2008 issued for realising a sum of ₹2,12,595 as arrear of Motor Vehicles tax, Annexure-1 to the writ petition, has been challenged.

3. The petitioner was admittedly the owners of the vehicles, being No.TRL-935, No.TRL-3000, No.TRL-1029 and No.ATM-294, but the Motor Vehicles tax was not paid and thus the said proceeding for recovery was initiated at the instance of the Transport Department, Govt. of Tripura.

4. Having received the said notice, the petitioner, who was at that time aged about 77 years and not keeping well, made a representation on 16.09.2008, wherefrom it can be gathered that all the four vehicles were manufactured long back. As stated, for realising arrear of the Motor Vehicles tax, the said notice dated 03.07.2008 was purportedly issued. By the representation as stated, the petitioner has contended that those vehicles were assigned to M/s B.B.D. & Co., a partnership firm, which stood dissolved at some point of time, but the vehicles remained in the name of the petitioner as the registered owner. The petitioner has asserted in the representation that after the dissolution of the firm, all the four vehicles remained inoperative and in an unworkable shape. At last, all the vehicles were sold in 1991, not as the vehicle but, as scraps. As a result, since 1991 he did not remain as the owners of the said vehicle. He further stated that, so far he remembers he sent information also to the registering authority

after such sale was complete. In that circumstance, according to the petitioner, the notice from the Certificate Officer has surprised him as never before a notice reached him asking for arrear road tax.

But, the petitioner nowhere has stated whether after purchase of the vehicle he had paid any such tax to the competent authority or not.

5. In response to the said representation, the Deputy Transport Commissioner, Govt. of Tripura, Agartala, by communication dated 04.10.2008 (Annexure-3 to the writ petition), has meaningfully stated that since such communication was not made in the statutory form, ordinarily such communication is not taken into cognizance for making necessary alteration or amendments in the register of the Motor Vehicles. He has not also denied categorically about the communication as claimed to have been made by the petitioner.

6. According to Mr. Biswas, learned counsel appearing for the petitioners, in view of the provision of Section 13 of the Tripura Motor Vehicles Tax Act, 1972, no penalty can be imposed as the vehicles were never on the road and their operation was suspended. That apart, in the year 1991, various parts of the vehicles were sold as the scraps.

7. From the other side, Mr. T.D. Majumder, learned Govt. Advocate, has submitted that in absence of any declaration made in the statutory form that the operation of the vehicles are suspended,

the competent taxing authority is not supposed to take any cognizance of such thing. Even no communication in the proper form was made to the competent authority after the so called sale of the scraps. He has further submitted that in terms of the Tripura Motor Vehicles Tax Act (6^{th} amendment Act, 2003), for non-payment of tax, the penalty has been enhanced from 10% to 200% on the due yearly tax. For default in payment of the tax as stated, the petitioner was liable to pay that amount that has been sought to be recovered by the certificate proceeding. However, in the affidavit, it has been asserted that the petitioner has taken the shelter of falsehood regarding intimation to the transport authority about the disposal of the vehicle. Mr. Majumder, learned Govt. Advocate, has submitted that the onus lies with the petitioner to prove that such communication or the declaration was made. Unless within 15 (fifteen) days, the report is made to the registering authority, the petitioner cannot be held to be absolved from responsibility of paying the tax as stated.

8. After considering the rival contentions, this court is of the opinion that the stand taken by the respondents that the petitioner did not make any communication as regards the sale of the scraps cannot be accepted, inasmuch as by the averment in this regard in the counter-affidavit, the respondents are not permitted to make improvement over the communication made by the Deputy Transport Commissioner, Tripura, Agartala, dated 04.10.2008. May be, technically Mr. Majumder's submission holds some substance,

but merely for not making declaration in the form, the registering authority cannot maintain that no communication has been made. However it is not in dispute that the petitioner as the registered owner had not made such communications in the prescribed form.

9. Having held so, this court is of the considered opinion that the claim of the road tax (Motor Vehicles Tax) from 1991, for purpose of accounting the date is taken as 01.04.1991, cannot be sustained by this court. However, the competent authority shall be at liberty to realise the outstanding road tax (Motor Vehicles Tax) for the period till 31.03.1991, but for not taking any action expeditiously for non-payment of the road tax (Motor Vehicles Tax), the respondent shall not be permitted to realise any penalty from the petitioner.

10. Thus, the writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.

JUDGE

ROY