

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-23324-2014 (O&M)
Date of decision:- 30.06.2015

Dronacharya College of Engineering

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Suresh Kumar Yadav, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner has challenged an order dated 07.09.2014
(Annexure P17) passed by the Transport Commissioner, Haryana,
Chandigarh. After setting out the case of the parties, the following order was
passed without recording any reasons:-

*“Having heard the counsel for the appellant
who appeared before me and after perusing
all the relevant record/judgements, I am of the
view that:-*

*1. Vehicle No. HR55-5820 is entitled for relief
from penalty of road tax for the period the
recovery of tax was stayed by Hon'ble High
Court i.e. from 22.02.2002 to 24.02.2014 in
compliance of the order of Hon'ble High
Court dated 24.02.2014 passed in CWP No.
476 of 2002.*

*2. The refund of road tax as prayed for by the
appellant in view of the decision of the
Hon'ble Punjab & Haryana High Court dated
07.02.2005 in CWP No. 19157 of 2004 cannot
be acceded to as there is no provision for
refund of tax in the Haryana Motor Vehicles
Taxation Act, 2013. Further, as per the first
proviso to Section 3(1) of the Punjab Motor
Vehicles Taxation Act, 1924*

(as applicable to Haryana), any broken period in such quarterly periods shall for the purpose of levying the tax be considered as a full period.

3. As regards the grievance of the appellant that the orders dated 22.04.2014 have been passed by Secretary, RTA, Gurgaon mechanically, it is observed that as a quasi-judicial process, the case was required to be considered by the respondent i.e. Secretary, RTA, Gurgaon keeping in view the merits of the case and not by solely relying/reproducing the instructions issued by this office. Therefore, the case is remanded back to Secretary, RTA, Gurgaon for passing a well reasoned order keeping in view the provisions of the Haryana Motor Vehicles Taxation Act, 2013, the merits of the case as well as the orders of the Hon'ble Punjab & Haryana High Court.

I order accordingly.”

2. The matter has a checkered history. It is sufficient to refer to only some of the facts. The Punjab Motor Vehicles Taxation Act, 1924 (in short the Act) and the Punjab Motor Vehicles Taxation Rules, 1925 (in short the Rules) are relevant to this case. Under Section 4 of the Act, an owner of motor vehicle is liable to pay tax levied under Section 3 of the Act. Section 13 of the Act empowered the State Government to exempt a person or class of persons from liability to pay tax. Rule 8(iii) of the Rules provided an exemption from payment of tax to a person in respect of a motor vehicle used solely for the purpose of carrying pupils to and from the educational institutions. The petitioner claims to be an educational institution being an engineering college. In view of Rule 8(iii), the petitioner claimed that it was not liable to pay road tax in respect of the motor vehicles run by it to carry students to and from its institution. The respondents having refused to accept the contention, the petitioner filed CWP-476-2002. By an order dated 22.02.2002, interim relief was granted in the same terms as in

CWP-3650-1985. In CWP-3650-1985, an interim order dated 29.07.1985 was passed staying the recovery till further orders.

3. The petitioner contends that a Division Bench of this Court in *Principal, Haryana College of Technology and Management, Kaithal Vs State of Haryana and others*, 2005(3) RCR (Civil) 208 held that under the aforesaid provisions, motor vehicles owned by educational institutions are entitled to total exemption from tax provided that the same are used solely for the purposes of carrying pupils to and from the institution or for the purpose directly related to or incidental to the functions of the institution. The Division Bench further held that by adopting the rule of purposive interpretation, the expression 'educational institution' takes within its fold schools, colleges, universities etc. and the word 'pupil' comprehends within itself all categories of students.

4. The petitioner, thereafter, filed CWP-4680-2005 challenging the collection of tax and seeking refund of the tax paid by the petitioner. By an order dated 09.05.2005, the petition was allowed to be withdrawn with liberty to file an appropriate application with the competent authority for refund of the road tax paid for the buses. The Division Bench directed that the competent authority shall take a final decision thereon within three months from the date of receipt of the application. Due to some communication gap, the application had not been made till 21.10.2013 (Annexure P7). One of the reasons for the communication gap was possibly due to the elevation of the erstwhile advocate.

5. By an order dated 22.04.2014, the Regional Transport Authority, Gurgaon rejected the application for refund of road tax, inter alia, on the ground that the buses were for carrying the staff and students and on the ground that colleges are not entitled to the benefit of the exemption. The

Regional Transport Authority, accordingly, directed the Licensing Officer to impose penalty on delayed payment of motor vehicles tax as stated in the order. The Regional Transport Authority, however, granted limited relief of exemption from penalty of road tax during the time the recovery of tax was stayed by this Court regarding vehicle bearing registration No. HR-55-5820 pursuant to the aforesaid interim order.

6. The petitioner challenged this order before the Transport Commissioner who passed the impugned order dated 07.09.2014 the operative part whereof was set out earlier.

7. Paragraph 1 of the impugned order merely grants the petitioner relief from penalty of road tax in respect of vehicle No. HR-55-5820. It does not expressly reject the petitioner's application for relief from penalty in respect of other vehicles. It was contended on behalf of the respondents that the rejection of such relief must be implied. We are unable to accept this contention. The impugned order does not even refer to the other vehicles nor gives any reason for rejection of the said relief which is based on principle of the judgement of this Court. In our view, therefore, upon remand as directed by the impugned order, the Secretary, RTA, Gurgaon shall also deal with the application for relief from penalty in respect of other vehicles as well. The impugned order shall not be considered as a bar to the Secretary, RTA, Gurgaon considering the same.

8. As far as paragraph 2 of the operative part of the impugned order is concerned, it must be remembered that the petitioner had in fact filed CWP-4680-2005 not only challenging the illegal collection of tax, but also seeking refund of the tax already paid. This writ petition was allowed to be withdrawn by the order dated 09.05.2005. The Division Bench directed the respondents to consider the application for refund. If according to the

respondents, the Act does not entitle them to consider the application for refund, this Court would always consider the same in exercise of powers under Section 226 of the Constitution of India. It is, therefore, directed that the Secretary, RTA, Gurgaon upon remand shall consider whether the petitioner was liable to pay the tax at all or not. In the event of his coming to the conclusion that the petitioner was not liable to pay the tax, the petitioner shall be entitled to the refund thereof either by payment or adjustment against any other amounts that may be due to the respondents from the petitioner.

9. The impugned order is, therefore, set aside and modified to the above extent.

It is clarified that it was not contended that the petitioner is entitled to the exemption after the modification of Rule 8(iii) w.e.f. 23.06.2005. The application for refund shall only be in respect of the period prior thereto.

No order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

30.06.2015

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