IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7026 of 2012

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Srinibash Agrawalla, son of Late Ruli Chand Agrawalla, resident of 42, M.G. Mahatma Gandhi Road, Khalpara, Post Office-Silliguri Bazar, District-Dargiling

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Transport, Nirman Bhawan, Baily Road, Patna
2. Member Board of Revenue, Secretariat, Patna
3. The Joint Transport Commissioner, Paribahan Bhawan, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Randhir Kumar Singh with Mr. Sanjay Kumar Pandey, Advocates

For the Respondent/s : Mr. Anil Kumar Sinha, G.A. 9 with Mr. Pawan Kumar, AC to G.A. 9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 06-05-2016

Heard learned counsel for the petitioner and learned Government Advocate No.9 for the State.

2. The writ application has been filed for quashing the order dated 24.1.2012 passed by the Member, Board of Revenue in so far as it relates to transport vehicle No. WB-73-1515 by which he has upheld the order dated 25.3.2011/7.4.2011 of the Secretary, Transport Department, Government of Bihar and for quashing the consequential demand notice dated 8.5.2009.

3. The facts of the case are not being noticed in detail in

view of the order we propose to pass in the matter. The petitioner is a registered owner of the Stage Carriage Bus bearing registration No. WB-73-1515 of the State of West Bengal. The vehicle was covered by Inter State Transport Permit issued by the competent authority in the State of West Bengal which was countersigned by the State Transport Authority of the State of Bihar on 1.12.1999. The stand of the petitioner is that the said Bus having gone out of order the petitioner surrendered all the documents in relation to the said vehicle before the Registering Authority, Siliguri, West Bengal stating that due to bad condition of the said vehicle and other conditions being not good the vehicle is lying in the garage. Along with his said application the petitioner had surrendered R.C. Book, Tax Token, Insurance Permit and additional permit in respect of the said vehicle. Before the Secretary, Transport Department, Government of Bihar also the petitioner filed his application by surrendering countersignature slip in original, tax token in original and Xerox copy of surrender certificate of Bengal Authority dated 26.11.1999 on 1.12.1999. The petitioner, however, kept on depositing tax for some time with respect to the said vehicle. Thereafter notice was issued to the petitioner to pay tax of the said vehicle along with another vehicle which also plied on Inter State route. The petitioner resisted the claim and ultimately he had to file an appeal before the Secretary, Transport Department, Government of

Bihar, which was dismissed. The further revision before the Member, Board of Revenue was also dismissed by the impugned order aforesaid dated 24.1.2012. Aggrieved by the said order, the petitioner has come up before this Court.

4. Before us learned counsel for the petitioner has raised two pleas; the first is that the registering authority being in the State of West Bengal there was no question of the petitioner being required to submit original registration certificate, tax token and permit before the authorities of the State of Bihar and the same has rightly been surrendered before the authorities of the State of West Bengal. It is further submitted that the original documents duly issued by the West Bengal Authority and countersignature slip of West Bengal authority were surrendered before the authority of the State of Bihar. It is thus submitted that rigors of Section 17 of the Bihar Motor Vehicle Taxation Act could not have been applied to the vehicle of the petitioner as it was merely plying in the State on Inter State permit granted from Siliguri to Madhepura and was not registered in the State of Bihar.

5. The other plea raised by learned counsel for the petitioner is that benefit of remission of tax for further period in question could not have been denied merely on the ground that intimation was not given by petitioner in Form-J as required by Rule 13 of the Bihar

Motor Vehicle Taxation Rules as the same is required only for the vehicles registered within the State of Bihar and not for the vehicles registered in outside State and running in the State only on Inter State permit countersigned by the authorities of the State of Bihar.

6. So far as the first issue is concerned, it is evident that neither before the appellate authority nor before the revisional authority any such stand was taken by the petitioner although the factum of surrender of the original registration certificate and other documents before the West Bengal authority was duly intimated by the petitioner when the surrender was made before the State Transport Authority, Bihar. In view of the fact that the said issue was not raised before the appellate and revisional authority, we do not think it proper to hear the petitioner on the said issue straightaway while considering the writ petition filed by the petitioner.

7. So far as the other issue regarding the surrender being intimated in Form-J, the same also has not been considered by the Board of Revenue in its order in the light of the issues being raised by the petitioner including the surrender of original certificate before the original registering authority of the other State.

8. In the aforesaid circumstances, we are of the view that the matter requires to be reconsidered by the Board of Revenue in the light of legal issues raised before us.

9. The impugned order dated 24.1.2012 is, accordingly, set aside so far as the Bus bearing registration No. WB-73-1515 is concerned and the matter is remanded to the Board of Revenue to re-hear the petitioner on the fresh points raised and pass orders in accordance with law.

10. The writ application is, accordingly, allowed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

spal/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.6.2016
Transmission Date	