IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9062 of 2016

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Pramod Singh, son of Late Gita Singh, resident of Mohalla- Kajichak Barh, P.O./ P.S.- Barh, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Transport Commissioner, Transport Dept., Bihar, Patna.
2. The South Bihar Regional Transport Authority, Patna through it's Secretary.
3. The District Transport Officer, Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Advocate.

For the Respondent/s : Mr. Prabhat Kumar Verma, AAG-3
Dr. Anand Kumar, AC to AAG-3.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 01-09-2016

Affidavit by way of rejoinder is taken on record.

2. The grievance of the petitioner, in the present case, is that the tax payable in respect of his Mini Bus (22 seater), bearing Registration No. BEI-8102, is not being accepted since 1st April, 2015, thus, the petitioner invoked the jurisdiction of this Court for a direction to the respondents to accept the tax for using the said vehicle.

3. The Bihar Motor Vehicles Tax Act, 1994 imposes tax

on the use of commercial vehicles in the State. Admittedly, the mini bus of the petitioner is not a personalized vehicle. Since, the petitioner is using a non-personalized transport vehicle; the petitioner is required to deposit tax for one or the more quarterly periods at the annual rate of the tax payable for the quarter.

4. If the tax is not deposited, Section 23 contemplates levy of penalty, as prescribed by the State Government. Such penalty has been prescribed in the Bihar Motor Vehicles Taxation Act, 1994 (hereinafter referred to as the 'Act') and the Bihar Motor Vehicles Taxation Rules, 1994 (hereinafter referred to as the 'Rules). The relevant extracts from the Act and the Rules read as under:

> Section. 7. Payment of tax.-(1) On personalized vehicles, or vehicle of Omni bus category with seating capacity of six to twelve for private use one time tax for the whole life of the vehicle shall be levied at the time of registration at the rates specified in Schedule I:
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> Provided that the personalized vehicle registered prior to February 1, 1992 for which One-time tax has not been paid, shall have to pay One-time tax at the rates prescribed in Schedule I within 30 days of the expiry of the existing tax token otherwise an interest at the rate of two per cent per month shall be charged on the amount of tax due together with the arrears and penalty, if any calculated up to 30^{th} November, 1993 at the rate of annual tax leviable prior to 1^{st} February, 1992.
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> xxx xxx xxx
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> (3) In case of vehicle other than personalized vehicles the tax may be paid for one or more quarterly periods at the

annual rate of the tax payable for the quarter.

12. Refusal of acceptance of tax.- Subject to other provisions of this Act, the taxing officer shall not accept the tax or penalty, if any, in respect of a motor vehicle for the current period unless the arrears of taxes and penalties due in respect of the vehicle have been fully paid or settled.

Provided that in case the amount of outstanding amount of arrears of tax and/or penalty exceeds Rs. 50,000 [and Rs. 10000 (Ten thousand) for three wheelers and Rs. 25000(twenty five thousand) for Light Motor Vehicles] an authority not below the rank of State Transport Commissioner or an officer authorized by him may order to accept such outstanding amount with current tax in monthly instalments, preferably within two months from the filing of application, which shall not in any case be more than six instalments and in such case a provisional tax-token may be issued by the taxing officer.

23. Liability to pay penalty for non-payment of tax in time.- If the tax payable in respect of a vehicle other than personalized vehicle has not been paid during prescribed period, the person liable to pay such tax shall pay, together with arrears of tax, a penalty at the rate prescribed by the State Government.

Provided that the State Government may by notification make an exemption, reduction or other modification in regard to the penalty payable in respect of any motor vehicle or class of motor vehicles.

Rule 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 alternation 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:

TABLE

	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 days after the due date	Penalty to be charged will be twice the taxes due.

(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.”

5. The provisions of the Act were amended by Bihar Motor Vehicles Taxation (Amendment) Act, 2002 (Bihar Act 6 of 2003) with effect from 16th July 2002. The petitioner and some other transporters did not deposit the increased tax by virtue of such amendment. One of the transporters filed CWJC No. 11566 of 2008 (Umesh Prasad vs. the State of Bihar & Ors.) before this Court. The petition was withdrawn with liberty to submit representation, but in the meantime, the petitioner was permitted to pay road tax @ 267/- per seat per quarter without any penalty for the period between 16.07.2002 to 17.04.2006.

6. The argument of the learned counsel for the petitioner is that the petitioner has deposited tax regularly up to 31.03.2015, which has been accepted. Therefore, in the light of the order passed in the case of Umesh Prasad (supra), the respondents cannot levy and charge any penalty. It has also been contended that the respondents demanded a sum of Rs. 17,560/-, as arrears of tax, which amount was deposited, therefore, the respondents are estopped in law to demand any other amount of penalty.

7. In the counter affidavit, the stand of the State is that the petitioner has not paid full tax and penalty from 01.10.2002 to 01.07.2016. The difference, which is still payable, is Rs. 1,13,364/-. A chart in this respect has been appended with the counter affidavit.

8. We have heard learned counsel for the parties and find no merit in the present writ petition. The reliance of the petitioner, on the order dated 11.08.2008 passed in the case of Umesh Prasad (supra), is of no help to the petitioner as it was an order passed in the writ petition filed by Umesh Prasad, i.e., after the writ petition was withdrawn and liberty was given to submit representation. It is not a decision of the Court, which would be applicable to all similarly situated transporters.

9. Similarly, deposit of Rs. 17,560/- is not preceded by any communication by the respondents calling upon the petitioner to deposit the said amount towards settlement of arrears of tax and/or penalty. Therefore, the deposit of Rs. 17,560/- will not absolve the petitioner of his liability to pay statutory penalty in terms of Section 23 of the Act read with Rule 4 of the Rules. As per the counter affidavit, the petitioner has not deposited the amount of quarterly tax on due dates. Therefore, as per the statutory provisions, there is a statutory liability to pay penalty in view of Section 12 of the Act read with Rule 4 of the Rules, as reproduced above.

10. Section 12 of the Act further contemplates that taxing officer shall not accept the tax or penalty, if any, in respect of a motor vehicle for the current period unless the arrears of taxes and penalties, due in respect of the vehicle, have been fully paid or settled.

11. Learned counsel for the petitioner submits that since the respondents have been accepting tax up to 31.03.2015, therefore, the respondents cannot refuse to accept tax on the strength of Section 12 of the Act, as the petitioner would not be deemed to be in arrears up to 31.03.2015.

12. We do not find any merit in the said argument. Section 12 of the Act is an enabling provision which enables the taxing officer not to accept tax or penalty unless the arrears of tax and penalty due have been fully paid. The reading of the section does not lead to an inference that if the tax and penalty have not been paid, such tax and penalty will stand waived off. That is not an interpretation which can be derived from reading of Section 12 of the Act.

13. Though learned counsel for the petitioner pointed out that certain payments have not been accounted for, but we do not find that for non-accounting of any payment, the petitioner is not entitled to deposit of tax and is entitled to the token for use of the vehicle in lieu thereof. If there is any discrepancy, it is open to the petitioner to produce the proof of payment which we have no doubt that the authorities will take into consideration.

14. In view thereof, we do not find any merit in the writ petition. The Petitioner is at liberty to deposit the tax and/or to submit representation to account for the payments already made. If any such

representation is made, the competent authority shall decide the same in accordance with law expeditiously.

15. The writ petition is dismissed with liberty aforesaid.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	11.09.2016
Transmission Date	