IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5870 of 2015

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Ajit Kumar Mitruka, Son of Sri Kedar Nath Mitruka, Resident of 42 M.G. Road, Khalpara, District- Darjeeling (W.B.)

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Transport Department, Bihar, Patna.
2. Member, Board of Revenue, Government of Bihar, Patna.
3. The Principal Secretary, Department of Transport, Government of Bihar, Visheshwaraiya Bhawan, Bailey Road, Patna.
4. Joint State Transport Commissioner, Transport Department, Visheshwaraiya Bhawan, Bailey Road, Patna.

.... Respondents

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Appearance :

For the Petitioner/s :Mr. Badri Narayan Singh with M/S Randhir Kr.Singh & 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: 20-06-2016

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner seeks quashing of the order dated 28.8.2013 passed by the Member, Board of Revenue in Tax Revision Case No. 21 of 2012 by which the revision application of the petitioner was dismissed and the order of the Principal Secretary-cum-Appellate Authority, Department of Transport, Government of Bihar passed in 01/Tax-Appeal/2011 and further the order dated 4.4.2011 passed by

the Joint State Transport Commissioner, Bihar, which had been affirmed by the Secretary, by which the claim for refund of road tax and additional tax amounting to Rs.2,78,000/- to the petitioner was rejected.

3. The present petitioner is the brother of the original permit holder, namely, Sushil Kumar Mitruka. The name of the petitioner has been inserted in view of transfer of the vehicles in his name. The petitioner is the holder of Permanent Inter State Stage Carriage Permit for the route Siliguri to Patna Via Bakhtiarpur which was issued by the State Transport Authority of the State of West Bengal, which was initially valid till 16.6.2001 and was countersigned by the State Transport Authority of the State of Bihar in terms of Section 88 of the Bihar Motor Vehicles Act, 1988 as well as in terms of the reciprocal transport agreement entered into between the two States. The said permit was renewed on 17.6.2002 till 16.1.2006 by the State Transport Authority of West Bengal with respect to vehicle No. WB-73-9221 and vehicle No. WB-73-9252, having been endorsed in the said permit and the said renewals were also countersigned by the State Transport Authority, Bihar. Due to mechanical unfitness of the said vehicles the petitioner allegedly stopped plying both the vehicles for carrying out necessary repair works and the petitioner temporarily surrendered the counter-signature of the permit on 30.7.2002 to the

State Transport Authority, Bihar along with the tax token of the two vehicles. The vehicles were continuing to remain surrendered for the period from 1.8.2002 to 12.8.2004 although the petitioner had continued to pay the road tax and additional tax to the State of Bihar also and ultimately on 1.2.2005 the petitioner by filing representation had sought refund of tax for the period from 27.3.2003 to 26.6.2004 since the countersignature was released on 13.8.2004 after the order of the Calcutta High Court by the State Transport Authority of Bihar. Several reminders/representations were also filed by the petitioner but at no point of time the petitioner applied for refund in the statutory Form-K as required under Section 18 and Rule 14 of the Bihar Motor Vehicles Taxation Act and Rules respectively. The present petitioner Ajit Kumar Mitruka’s name was inserted on transfer of the permit from his brother Sushil Kumar Mitruka who had approached this Court by filing CWJC No. 11974 of 2009, which was disposed of 1.12.2010 with the liberty to the petitioner to file a fresh representation in respect of his claim before respondent No.4, the Joint Transport Commissioner, Government of Bihar, Patna, who shall consider the claim of the petitioner in accordance with law and take a final decision expeditiously preferably within one month from the date of filing of the representation along with a copy of that order.

4. Thereafter the original permit holder filed a representation

before the Joint Transport Commissioner, which was rejected on various grounds, including the fact that application for refund was not made in Form-K and for the first time it was submitted in Form-K during the course of hearing on 25.3.2011 before him, whereas the application for refund was made on 2.9.2008, which was contrary to the requirement of Section 18 of the Bihar Motor Vehicles Taxation Act read with Rule 14 of the Rules. There are various other grounds including non-filing of different information in relation to the surrender of the vehicles. It is further stated in the order that at no point of time the petitioner had submitted any evidence with regard to non-plying of the vehicles within the State of Bihar, which he was required to do. For the said reasons the representation of the petitioner was rejected. The appeal before the Secretary, Transport Department was dismissed and the further appeal before the Member, Board of Revenue was also dismissed by order dated 28.8.2013.

5. Learned counsel for the petitioner has sought to raise various issues before us, including the fact that the vehicles having been not plied and the petitioner having been compelled by the respondent authorities to pay the tax for the period in question, it was not open to the authorities to refuse the refund.

6. It is further submitted by him that the motor vehicles tax is compensatory tax and if the vehicle is not plying, no tax is leviable

for the period in question.

7. It is further alleged by learned counsel for the petitioner that the petitioner having filed his representation to pay the refund on 1.2.2005 and the subsequent reminders immediately thereafter, which fact is not denied in the counter affidavit, it cannot be said that the application was made beyond the period of one year as prescribed by Section 18 of the Bihar Motor Vehicles Taxation Act and mere failure to submit the same in Form-K cannot be held against the petitioner. It is lastly submitted that if the tax refund is not made then at least the same should be adjusted against future tax of the petitioner.

8. Learned counsel for the State, on the other hand, supports the impugned orders stating that it has been concurrently and clearly held by all the three authorities that the petitioner had failed to comply with the statutory requirement as the petitioner had filed his application for refund after surrendering the necessary papers relating to his vehicles without Form-K, which is not the requirement for the said purpose in accordance with the Act and the Rules. It is submitted that the provision for refund is governed by the Act and the Rules and the provision being mandatory it is not open to the petitioner to act contrary to the said provision in claiming refund.

9. We have heard learned counsels for the parties. In our view, the principal question is as to whether the petitioner may or may

not have been entitled to the refund in view of the fact prevailing which has been dealt with by the authorities and which has been concurrently decided against the petitioner. The main issue which is raised against the petitioner is whether he has applied for refund in terms of Section 18 of the Act or not. Section 18 makes it mandatory that an application has to be made within a period of one year. Section 18(1) proviso makes it clear that no refund shall be made unless the petitioner claiming refund has made an application to the concerned taxing officer within one year in the manner as may be prescribed and under Rule 14 of the Bihar Motor Vehicles Taxation Rules, 1994 it is clearly provided that a claim for refund under Section 18 shall be made to the taxing officer to whom tax was paid in Form “K” showing the ground for which the refund is claimed and further provides that such application shall be accompanied by the papers given therein.

10. It is evident from a consideration of the aforesaid Section 18 and Rule 14 that the claim for refund can only be made in the manner as prescribed and within the period given. Admittedly, no such application for refund was made in Form-K by the petitioner until the date of hearing on 25.3.2011 after the order of this Court on 1.12.2010 passed in CWJC No. 11974 of 2009 filed by the original permit holder. Learned counsel for the petitioner is unable to point out

before us any decision which permits the grant of refund even when the application was not made in accordance with the Taxation Act and the concerned Rules.

11. In the above circumstances, we are of the view that the petitioner has failed to claim the refund by following the procedure prescribed in the Act and his application cannot be treated to be a valid application under the Bihar Motor Vehicles Taxation Act and the Rules for the purpose of grant of refund, as the said representation also admittedly was not accompanied by papers which are required under Rule 14 of the Rules.

11. In the aforesaid view of the matter, we do not find any error in the impugned order dated 28.8.2013 passed by the Member, Board of Revenue. The writ application is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

spal/-

(Sudhir Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2016
Transmission Date	