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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.55 of 2016

Chandrashekhar Kumar Singh S/o Shri Ganori Singh, Aged About 25 Years R/o Village Bhawandi, Post Ghewra, Police Station Rishiup, District Aurangabad, Bihar.

---- Petitioner

Versus

1. State of Chhattisgarh Through Principal Secretary, Government of Chhattisgarh, Department Of Transport, Mahandi Bhawan, Naya Raipur, Mantralaya, Raipur, (Chhattisgarh).
2. State Of Chhattisgarh, Through Secretary, Government Of Chhattisgarh Department Of Transport, Mahanadi Bhawan, Naya Raipur, Mantralaya, Raipur, (Chhattisgarh).
3. Commissioner, Department of Transport, Mahanadi Bhawan, Naya Raipur, Mantralaya, Raipur, (Chhattisgarh).
4. Taxation officer-cum District Transport Authority, Division Raigarh, District Raigarh, (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Gagan Tiwari, Advocate.
For respondents/State	:	Shri B. Gopa Kumar, Deputy Advocate General.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

20/07/2017

1. The present Writ Petition has been preferred assailing the order dated 30/01/2016 (Annexure P-2) and subsequent demand notice dated 19/02/2016 (Annexure P-1) issued by the Respondents against the Petitioner.
2. The facts in brief is that, the Petitioner is a transporter and operating Inter-State bus services from the State of Bihar to State of Chhattisgarh having valid permission for the said operation. The petitioner has a bus having capacity of 55 seater excluding the driver

and for the said operation between the two states, the petitioner has been regularly paying tax as is required under the provisions of the Chhattisgarh Motoryan Karadhan Adhiniyam 1991 (In short, the Adhiniyam, 1991). However on 30/01/2016 the tax authority and who is also the District Transport Officer, Raigarh, issued a letter to the Petitioner intimating him that there is a under-assessment of tax made by the Petitioner to the extent of Rs.14,240/- per month and the total amount under- assessed is that of Rs.5,41,720/-. The authority has also imposed penalty and interest on the said amount to the tune of Rs.3,47,145/- and Rs.55,00,4/- respectively. It was also ordered that the said amount should be deposited forthwith, failing which seizure proceeding shall be initiated.

3. Immediately after about fortnight time the impugned demand notice has also been issued by the Respondent authorities on 19/02/2016 (Annexure P/1) seeking for deposit of the amount as assessed in Annuxure P/2, dated 30/01/2016. It is these two orders which are under challenge by the Petitioner in this petition.

4. The main contention of the Petitioner is that the Respondent Authorities have erred in as much as in not initiating any proceeding as is mandatorily required under the provisions of sub section 4 of section 8 of the Adhiniyam 1991. According to the Petitioner, it is not a case where the Petitioner has not paid any tax, but it is a case of the Respondents themselves accept that the Petitioner had been depositing the tax but the tax deposited by the Petitioner was not proper or under-assessed and therefore, there is a difference of tax

amount which has to be paid by the Petitioner. According to the Petitioner in the given facts, it was mandatory for the Respondents to have initiated proceeding under section 8 of the Adhiniyam, 1991, and then should have passed the order which in the instant case has not been complied with. He relied upon the decision of this High Court decided on 08/07/2013 in WPT No.61/2012 (M/s Kanker Roadways Vs. State of Chhattisgarh and another) where the facts of that case was somewhat similar to the facts of the present case and therefore prayed for quashing of the two orders.

5. Per Contra learned counsel for the Respondents State opposing the petition submits that it is a case where the Petitioner was fully aware of the taxing provision and he was required to deposit the stipulated tax and having not done so, issuance of orders dated 30/01/2016 (Annexure P2) and 19/02/2016 (Annexure P1) seeking for demand of under-assessed amount is proper, legal and justified and does not warrant any interference. He further submits that it is a taxing provision and therefore there is no occasion for the petitioner to have been called upon asking him to deposit the difference amount and therefore prayed for dismissal of the Writ Petition.

6. Having heard the contentions on either side, at this juncture, it would be relevant to refer section 8 of the Adhiniyam, 1991 itself. For ready reference the same is reproduced herein as under.

> **"8. Filing of declaration and determination of tax payable-**
> (1) Every owner, who is liable to pay the tax under this Act shall file a declaration with the taxation authority together with the proof of the payment of the tax which he appears to be liable to pay in respect of such vehicle in such form and within such time as may be prescribed.
> (2) When any motor vehicle in respect of which tax has been

> paid is altered in such a manner as to cause the vehicle to become a motor vehicle in respect of which higher rate of tax is payable, the owner of such vehicle shall file an additional declaration with the taxation authority together with the certificate of registration and the proof of the payment of difference of tax which the appears to be liable to pay in respect of such vehicle, in such form and within such time as may be prescribed.
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> (3) On receipt of declaration under sub section(1) or the additional declaration under sub section (2) as the case may be, the taxation authority shall, after making such enquiry as it deems fit and after giving to the owner an opportunity of being heard, determine, by an order in writing, the tax payable by the owner and intimate the same to him in such form and within such time as may be prescribed.
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> (4) Where the owner fails to file a declaration required under sub section (1) or (2) the taxation authority may, on the basis of information available with it and after giving to the owner an opportunity of being heard, by an order in writing, determine the amount of tax payable by such owner suo-motu and intimate the same to him in such form and within such time as may be prescribed.
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7. A reading of sub section 4 of section 8 of the Adhiniyam, 1991 clearly brings out the fact that the case in hand squarely falls within the ambit of sub section 4 of section 8 for first initiating a proceeding for determination of the tax payable even in a case where tax is not deposited or any tax has been partly deposited. It is also envisaged in the said provision for grant of opportunity of hearing before determining the tax payable by the Petitioner. The said mandatory provision does not appear to have been followed in the instant case. Moreover, if we look into the reply which has been filed by the State, it would reflect that the State has taken a stand of Annnexure P2, to be a proceeding drawn or initiated under section 8 of the Adhiniyam, 1991. However a plain reading of the content of Annexure P2 clearly reflects that it is neither a proceeding under section 8 nor is it a show cause issued by the Respondents for determining the tax. On the

contrary, it is an order whereby the determination has already been made and order was passed directing the Petitioner to forthwith deposit the under- assessed amount, failing which seizure proceeding shall be initiated. This wording which has been used by the Respondents in letter dated 30/01/2016 (Annexure P-2), by no stretch of imagination can be brought within the ambit of a show cause notice nor does it reflect to be a letter issued to the Petitioner for appearing before the authorities so as to initiate a proceeding for determining the tax payable by the Petitioner.

8. In view of the aforesaid factual matrix of the case, this court has no hesitation in reaching to the conclusion that the provisions of sub section 4 of section 8 of the Adhiniyam, 1991, has not been followed by the Respondents while issuing the impugned orders dated 30/01/2016 (Annexure P-2) and 19/02/2016 (Annexure P-1). The two orders thus, being issued in contravention to the statutory provision, deserve to be and are accordingly set aside/quashed.

9. The Respondents however shall be at liberty to initiate proceedings against the Petitioner, as is envisaged under section 8 of the Adhiniyam, 1991 in order to determine any tax evasion or under assessment made.

10. The Petition stands allowed.

Sd/-
(P. Sam Koshy)
Judge

inder