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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.72 of 2013

M/s. Anand Automobiles, Diviganj Road, Ambikapur, Surguja, through its Proprietor namely Pradeep Gupta, S/o Late Anand Gupta, aged about 54 years, R/o Deviganj Road, Ambikapur, Police Station and Post Ambikapur, Civil and Revenue District Surguja (CG)

-----Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Surface, Transport, Mantralaya, Capital Complex, Mahanadi Bhawan, New Raiur, Police Station Raipur, Head Post Office Raipur, Police and Revenue District Raipur, District Raipur (CG)
2. The Regional Transport Officer/Taxation Authority, Ambikapur, District Surguja (CG)
3. The Registration and Taxation Officer, Ambikapur, District Surguja (CG)

---- Respondents

For Petitioner	:	Mr.Prasoon Agrawal, Advocate
For Respondents	:	Mr.Gary Mukhopadhay, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/04/2018

1. Learned counsel for the petitioner would submit that without making enquiry under Section 3 & 4 of the Chhattisgarh Motoryan Karadhan Adhiniyam, 1991 (hereinafter called as "the Act of 1991"), straightway the impugned notices of demand for recovery of tax were issued by respondent No.2 i.e. Regional Transport Officer/Taxation Authority, Ambikapur to the petitioner vide Annexure P/1 to P/4, which are without jurisdiction and without authority of law as tax has been determined after hearing the petitioner.

2. On the other hand, learned Government Advocate for the respondents/State would submit that the impugned orders are strictly in accordance with law.

3. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

4. Sub-section (3) & (4) of Section 8 of the Act of 1991 provides as under:-

> "(3) On receipt of the 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-moto and intimate the same to him in such form and within such time as may be prescribed."

5. Admittedly, in the present case, no show-cause notice has been issued, no enquiry has been made and no opportunity of hearing has been given to the petitioner and tax has been determined ex-parte, which is in teeth of the provisions contained in Section 8 (3) & (4) of the Act of 1991, which is unsustainable and bad in law.

6. Accordingly, the writ petition stands disposed of with the following directions:-

- Alleged orders (Annexure P/1 to P/4) directing deposit of tax by the Regional Transport Officer/Taxation authority, Ambikapur are hereby quashed.

- Liberty is reserved to the respondent i.e. Regional Transport Officer/Taxation Authority, Ambikapur, to issue show-cause notice and recover tax in accordance with law.

- The Regional Transport Officer is also required to specify the empowering provisions and the provisions under which show-cause notices are issued.

7. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-