**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 12804 of 2017
DATE OF DECISION : 06.04.2018**

Ardeep Kumar Batta

.... PETITIONER

Versus

State of Haryana and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sandeep Goyal, Advocate,
for the petitioner.

Ms. Mamta Singh Talwar, DAG, Haryana.

* * *

AVNEESH JHINGAN, J.

This petition has been filed for quashing a Challan dated 27.05.2017 (Annexure P-7) and for release of the vehicle impounded by the respondents.

2. The respondents are the State of Haryana; Transport Commissioner, Haryana; and the Challaning Officer of the State Transport Authority, Charkhi Dadri.

3. The petitioner is the owner of a tourist bus bearing registration No. RJ01-PA/1673. He provides transport services for carriage of passengers. The bus was checked on 27.05.2017 at Rohad (Haryana). Finding that the bus was plying in the State of Haryana without payment of motor vehicle tax, respondent No.3 issued the challan and impounded the vehicle.

4. The grievance raised in the present petition is that the penalty

has been imposed in the Challan itself without providing any opportunity of hearing.

5. Before proceeding further, we may quote Sections 2 (1) (a), (c), (j) (k), 3, 4, 9, 10, 13, 15, 18 and 22 of the Haryana Motor Vehicles Taxation Act, 2016 (for short, `the Act') in so far as they are relevant :-

> **2.** (1) In this Act, unless the context otherwise requires, -
>
> (a) "appellate authority" means an authority constituted by the State Government, by notification in the Official Gazette, for the purposes of this Act;
>
> (c) "licensing officer" means an officer appointed by the State Government for the purposes of this Act;
>
> (j) "tax" means the tax leviable under this Act;
>
> (k) "tax collection point" means a facility set up at the border of the State or at any other place in the State for receiving payment of tax made under this Act.
>
> **3.** (1) Subject to other provisions of this Act, there shall be levied and collected a tax on all motor vehicles used or kept for use in the State, at such rates and penalties, as may be specified by the State Government, by notification, from time to time :
>
> **4.** (3) No motor vehicle shall be used or kept for use in the State unless the tax levied under section 3 has been paid in respect of such vehicle.
>
> **9.** The licensing officer may direct a notice to be served upon the owner requiring him to fill up and sign a declaration, to be endorsed with such

notice, stating that owner is liable to the payment of tax and to pay the tax to which he appears by such declaration to be liable, to the person named therein before the expiry of fourteen days from the date of service of such notice.

10. (1) Where the tax due in respect of any motor vehicle has not been paid by the owner, within the specified time, then in addition to payment of the tax due, he shall also be liable to pay penalty, at such rate, as may be specified in the notification issued under section 3 :

Provided that the total amount of penalty shall not exceed twice the amount of tax due where a one-time tax is payable and five times the amount of tax due for a year where the tax is payable on any other basis.

(2) Where the owner of a motor vehicle fails to pay the tax due under section 3 or the penalty under sub-section (1), he shall in addition to the amount of tax and penalty, be liable to pay simple interest on the amount of tax due and penalty, at the rate of one and half percent per month, from the date immediately following the last date for the submission of declaration as provided in section 4 or from the date specified in the order passed by the licensing officer imposing the penalty, or, if no period is specified in the order then from the 15th day from the date of the order, as the case may be, to the time till the default continues.

13. (1) Any officer specified by the State Government may require the driver of a motor vehicle in any public place to stop that motor vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the tax has been duly paid in respect of such motor vehicle.

(2) The officer referred to in sub-section (1) may use such force or cause to use such force and take such steps or cause to take steps, to stop the motor vehicle, as may be necessary and may search the motor vehicle for the purpose of satisfying himself.

(3) Any officer referred to in sub-section (1) may for the purpose of this Act, enter at any time between sunrise and sunset, in any premises, where he has reason to believe that a motor vehicle is kept in contravention of the provisions of this Act.

15. Without prejudice to the provisions of sections 10 and 14, where any tax, penalty, interest or fine in respect of any motor vehicle has not been paid, the officer under section 13 may seize and detain such motor vehicle and for this purpose take or cause to be taken such steps, as he may consider necessary, for the temporary safe custody of the vehicle, until the tax, penalty or interest is paid.

18. (1) Any person aggrieved by an order relating to the assessment, imposition or recovery of the tax or penalty may, within a period of thirty days from the date of such order, file an appeal to the appellate authority.

(2) Save as provided in sub-section (3), an order passed by the appellate authority shall be final and conclusive.

(3) The Transport Commissioner on his own motion or on receipt of an application from

the owner, may call for the record of any proceedings which are pending before, or have been disposed of by the licensing officer or the appellate authority for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto, as he may think fit.

(4) No order shall be passed under sub-section (3) which adversely affects any owner unless such owner has been given a reasonable opportunity of being heard.

22. (1) Any offence committed under this Act may either before or after the institution of the prosecution, be compounded by such officer and for such amount, as the State Government may, by notification, specify in this behalf.

(2) Where an offence has been compounded under sub-section (1), no further proceedings shall be taken against the offender in respect of such offence.

6. The relevant portion of a notification dated 28th March, 2017, is reproduced below :-

Serial Number	***Categories of motor vehicle***	***Rate of tax***
1	2	3
3.	(B) Vehicles of other States when entering and plying in Haryana	
	(iv) Any other vehicle registered in any other State but not covered under category (i), (ii) and (iii) above including camper van/caravan, luxury ACT buses like Volvo, Merecedez etc.	₹ 3000 per single journey.

Note -

(g) In case a vehicle registered in other State and is found plying in Haryana without paying the due tax or for a different purpose than the

> purpose for which it is granted a permit, penalty of ₹ 20,000/- shall be charged in the case of a light motor vehicle and ₹ 50,000/- in the case of other motor vehicles.

7. Section 2 (c) defines a “licensing officer” to mean any officer appointed by the State Government. Vide a notification dated 31.03.2017, Secretaries, Regional Transport Authorities were appointed as licensing officers in respect of transport vehicles and for motor vehicles registered in other States and entering the State of Haryana. There are tax collection point facilities set up at the border of the State and other places for receiving tax under the Act. Section 3 of the Act, the charging section, provides for the levy and collection of tax on all motor vehicles used or kept for use in the State. The rates and penalties are to be specified by the State Government by notification, from time to time. The relevant notification at the time of checking the petitioner's bus was dated 28.03.2017. As per clause 3 (B) (iv) of the said notification ₹ 3,000/- tax was to be charged per single journey in respect of vehicles registered in other States and not covered in clauses 3 (B) (i), (ii) and (iii). The petitioner's vehicle is covered under clause 3 (B) (iv). Note (g) appended to the notification provides that if a vehicle of another State is found plying in the State of Haryana without payment of tax, a penalty of ₹ 50,000/- shall be charged from motor vehicles other than light motor vehicles.

As per Section 4 of the Act, the owner of the vehicle has to submit a declaration before the Licensing Officer (LO) and deposit the tax. If tax is for a particular period then a licence is issued which is valid for the entire State. In case of one time tax, the entry is to be made in the

Registration Certificate. It is further provided that no vehicle shall be used or kept in the State of Haryana without payment of tax under Section 3. In case of failure to fill the declaration or to deposit tax, the LO under Section 9 must serve a notice on the owner of the vehicle. Section 10 provides that where the tax is not paid, penalty, as specified in a notification issued under section 3 would be payable.

Section 13 of the Act confers power on the specified officers to stop a motor vehicle for the purpose of satisfying himself that the tax has duly been paid. Vide another notification also dated 31.03.2017, Transport Commissioner; Additional/Joint Transport Commissioner; all Secretaries, Regional Transport Authorities; all Motor Vehicle Officers (Enforcement); all Assistant Secretaries; all Transport Inspectors; and all Transport Sub-Inspectors posted at check posts have been conferred powers under Section 13 of the Act.

Section 15 requires the officer specified by the State Government under section 13 to seize and detain a vehicle in respect of which tax has not been paid and to detain the same until the tax, penalty and interest is paid.

8. The petitioner's bus is registered in the State of Rajasthan. It was plying in Haryana when it was seized. The officer seized and detained the bus as he was of the view that tax in respect thereof had not been paid. We refrain from making any observation on the merits of this case in this regard.

9. Mr. Sandeep Goyal, the learned counsel appearing on behalf of the petitioner submitted that the seizure of the bus was bad in law as the

petitioner was not afforded an opportunity of being heard.

10. The scheme of the Act does not require the officer to first call upon the owner of the vehicle to pay the tax, penalty and interest and after granting the owner an opportunity of being heard to seize and detain the vehicle. From the very nature of the activity, such a scheme would be unworkable. It will be virtually impossible for the Government to recover the tax, penalty and interest in respect of a vehicle once it leaves its jurisdiction. Even if we think it theoretically possible for the Government to recover the tax it would be at a disproportionately high and unviable cost as to time, money and effort. It is obviously for this reason that the legislative scheme requires the officer appointed under section 13 to seize and then to detain the vehicle under section 15 until the payment of tax, penalty or interest. The officer specified under section 13 only computes what he thinks the tax, penalty or interest to be payable for the purpose of exercising his power or performing his duty under section 15. This computation is not a final determination of the penalty actually payable. As we will demonstrate shortly, the final determination of the penalty is by the Licensing Officer under section 10. The specified officer's assessment is, therefore, only tentative and subject to the order of the Licensing Officer.

11. As Mr. Sandeep Goyal, the learned counsel for the petitioner rightly submitted, the owner of a vehicle, which is seized and detained, cannot be without a remedy. The Act does not leave him without one. Under section 10(2), it is the Licensing Officer who has the authority to impose the penalty. It follows, therefore, that a dispute regarding penalty on account of the specified officer's action under section 15 must be decided by the

Licensing Officer. The release of the vehicle or the refund of any amount paid under protest would depend upon the order of the Licensing Officer. Against this order, an appeal lies under section 18.

12. It is for the owner of the vehicle thereafter to appear before the Licensing Officer and to seek the release of the vehicle either on an interim basis or otherwise. He could, for instance, pay the amounts demanded under protest and take delivery of the vehicle or at his option he may have the proceedings in respect of the seizure and detention decided expeditiously and take such steps as may be necessary thereafter.

13. The petitioner was in fact by the impugned challan informed of this opportunity before the Secretary, Regional Transport Authority, who is a Licensing Officer. The impugned challan directed the petitioner to appear before the Secretary, Regional Transport Authority, for compounding the challan. The petitioner chose not to appear before the officer. He has only himself, therefore, to blame for the delay.

14. Even if the authorities do not inform the vehicle owner of his right to have the issue of penalty adjudicated upon by the Licensing Officer, he would be entitled to apply to the Licensing Officer himself.

15. The contention that the impugned action was contrary to the rules of natural justice is, therefore, rejected.

16. Mr. Goyal, relying upon section 10, contended that no time has been specified for the payment of tax and, therefore, the petitioner cannot be made liable to pay penalty or interest.

17. The submission overlooks the notification under section 3. Serial No. 3 (B) of the notification expressly stipulates the rates of tax

payable in respect of “Vehicles of other States <u>when entering and plying in Haryana</u>”. (emphasis supplied). Thus, the tax is payable by the vehicle when entering Haryana itself. Serial No. 3 (B) (iv) required the petitioner's vehicle to pay ₹ 3,000/- per single journey. The notification does not permit the owner of a vehicle registered in another State to ply the vehicle in Haryana without paying tax “when entering ..... Haryana”. The submission that the time for payment of tax is not stipulated, as required by section 10, is therefore rejected.

18. Lastly, it was contended by Mr. Goyal that the impugned challan is entirely mis-conceived. The contention is based on the following two sentences in the challan :-

> “You are directed to appear before the Secretary, RTA Jhajjar at Bahadurgarh on dated 29.05.11 *(sic 29.05.17)* for compounding of Challan.
> The offence is compounded for Rs. 53000 (in words) ________________ on the request of the owner or incharge of the vehicle.”

Relying upon section 22, Mr. Goyal submitted that there could be no question of compounding the offence till the institution of prosecution against the petitioner.

19. We will assume and it may well be, that these sentences related to section 22. In other words, the respondents in fact drew the attention of the petitioner to the fact that he could compound the offence and thereby avert a prosecution even before the institution thereof. That, however, would make no difference in view of what we have already held viz. that the scheme of the Act and in particular sections 10, 13 and 15 thereof require the officer appointed under section 13 to seize and detain the vehicle till the

payment of tax, penalty and interest. The officer did so. He, thereafter, by the challan directed the petitioner to appear for compounding the offence. The tax, penalty and interest is stipulated in the notification. He was required to do no more. It is for the owner of the vehicle, i.e. the petitioner in the present case, to make an application for the release of the vehicle. The owner at this stage would be entitled to a decision from the officer. The rules of natural justice must at this stage be followed. In this manner, the rights and interest of the owner of the vehicle and the revenue would be protected.

20. The petition is, therefore, dismissed with liberty to the petitioner to appear before the Licensing Officer i.e. the State Transport Authority and to seek the release of the vehicle. The application, if made, shall be determined in accordance with law and as expeditiously as possible. The petitioner shall be entitled to pay the amount demanded under protest to seek the early release of the vehicle and thereafter seek the refund of the amount deposited. The arguments of the parties on merits are kept open.

(S.J. VAZIFDAR)
CHIEF JUSTICE

April 06, 2018
ndj/parkash

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes