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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 23.11.2021

\+ **W.P.(C) 9812/2021**

METRO TRANSIT PRIVATE LIMITED ..... Petitioner

versus

GOVT. OF NCT OF DELHI .....Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Nandita Rathi and Ms. Nidhi Mohan Parashar, Advocates.

For the Respondent: Mr. Anupam Srivastava, ASC, GNCTD with Mr. Vasuh Misra, Advocate.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks setting aside of communication dated 25.06.2021, issued by the Registering Authority/MLO (HQ), whereby the request of the petitioner for refund of penalty paid on the road tax for the period April, 2020 to December, 2020 was rejected.

2. Learned counsel for the petitioner submits that in case road tax is not paid within the stipulated period, there is a levy of penalty, which is to be paid for the delayed period.

3. Learned counsel submits that in view of the pandemic, several representations and requests were made by transporters seeking waiver of levy of penalty on the road tax for the period 01.04.2020 to 31.12.2020 under Section 11 of Delhi Motor Vehicles Taxation Act, 1962.

4. Learned counsel submits that on 24.12.2020, an order was issued, under the directions of the Lieutenant Governor, whereby it was directed that the taxation authority would not levy penalty on delayed payment of road tax for the period 01.04.2020 to 31.12.2020.

5. Learned counsel submits that in view of the said order, petitioner had applied for refund of the penalty paid on the road tax for the said period, which request was declined by the impugned order dated 25.06.2021.

6. Learned counsel submits that since the competent authority i.e. the Lieutenant Governor has exempted payment of penalty on delayed payment of road tax for the period for the period 01.04.2020 to 31.12.2020, petitioner is entitled to refund of the amount already paid towards penalty on the tax payable during the said period.

7. Per contra, Respondents have filed their counter affidavit contending that petitioner is not entitled to any exemption from payment of penalty or refund on the ground that there are three categories of transport operators, which are as under:-

"I. The transport operators who did not ply their buses during the pandemic and availed the exemption under Section 13(2) of the DMVT Act. These transport operators were not levied any road tax by the answering Respondent and therefore by extension were not required to pay any penalty.

II. Transport operators who did not ply their buses and also failed to avail the exemption available under section 13(2) of the DMVT Act. These transport operators did not generate any revenue during the pandemic and thus, to ease the financial burden on them, the order dated 24.12.2020 was passed by the Hon'ble Lt. Governor so that these transport operators would be exempted from paying any penalty if they deposited the road tax after the said order was passed.

III. The transport operators who plied their buses during the pandemic and consequentially were disqualified from availing the benefit of the exemption under Section 13(2) of the DMVT Act. This class was required to pay road tax and delay in payment of the same would justifiably attract a penalty."

8. Learned counsel for the Respondent submits that refund is permissible only to Class-II transport operators. It is contended that petitioner falls in Class-III and as such is not exempted from levy of penalty.

9. It is further contended that the petitioner has an alternative remedy of appeal under Section 16 of the Act and as such cannot maintain a petition under Article 226 of the Constitution.

10. Further, it is contended that petitioner has sought refund even for the period not covered by the said order and as such, the same cannot be granted.

11. It is also contended that the petitioner is raising a challenge to a policy decision, which the Courts while exercising jurisdiction under Article 226 would not normally interfere with.

12. Finally, it is contended that in case an order of refund is directed, the same would cause prejudice to the respondent in view of the present prevailing financial crunch.

13. With regard to the claim of the petitioner for refund for the period beyond the period covered under order of the Lieutenant Governor, learned counsel for the petitioner submits that there seems to be an error at the end of the petitioner and accordingly, petitioner would not press for the same and would restrict the claim to the period specifically covered by the exemption granted by order dated 24.12.2020.

14. For the purposes of resolving the controversy reference needs to be had to the Order dated 24.12.2020, which reads as under:-

> "*In view of several representations & requests received for exemption of Road Tax & penalty in respect of transport vehicles due to prevent Covid-19 situation, a proposal for giving direction to the taxation authority not to levy penalty on the road tax for the period from*

01.04.2020 to 31.12.2020 under Section 11 of the Delhi Motor Vehicles Taxation Act, 1962 was put up for obtaining the approval of the Government of NCT of Delhi. The Hon'ble Lieutenant Governor, Delhi, upon consideration of the proposal of the department has approved that "taxation authority may not levy penalty on payment of Road Tax for the period from 01.04.2020 to 31.12.2020."

All the taxation authorities of the Transport Department are therefore advised to ensure due compliance of the above direction of Hon'ble Lt. Governor."

15. Perusal of the said order dated 24.12.2020 shows that the Lieutenant Governor has considered the representations and requests of various transporters and directed that the taxation authority would not levy any penalty on payment of road tax for the period from 01.04.2020 to 31.12.2020.

16. The impugned order dated 25.06.2021, rejecting the request of the Petitioner for refund records as under:-

"This is in connection with your letter dated 19.04.2021 on the above captioned subject, you are hereby informed that your request has been considered by this office and forwarded the same to the Accounts Branch, Transport Department, GNCTD for appropriate approval. The Accounts Branch, Transport Department, GNCTD has informed that exemption of the penalty on road tax cannot be exempted retrospectively as the order for exempting the penalty on road tax was issued on 24.12.2020. Hence, under these facts your request cannot be acceded to.

This issues with prior approval of competent authority."

17. The only reason given in the impugned order dated 25.06.2021, for rejecting the request of the Petitioner for refund, is that the exemption of penalty on road tax cannot be granted retrospectively as the order exempting penalty on road tax order was issued on 24.12.2020.

18. Perusal of the order of the Lieutenant Governor dated 24.12.2020 and the impugned order dated 25.06.2021 show that there is no reference to any categorization or classification as is sought to be created by the counter affidavit.

19. Order dated 24.12.2020 grants an exemption from levy of penalty, without making any distinction, for the period 01.04.2020 till 31.12.2020. Order dated 25.06.2021 declines the request for refund only on the ground that the order dated 24.12.2020 cannot be applied retrospectively.

20. This contention of the Respondent cannot be sustained. Firstly, because there is no classification emerging either from the order dated 24.12.2020 or 25.06.2021. Order dated 24.12.2020 merely refers to a period i.e. 01.04.2020 till 31.12.2020 and does not refer to any class of transporters. Said order shall apply in all force to all classes of transporters and exempts them from levy of penalty for the delay in payment of tax for the period specified therein.

21. Secondly, since the order is passed on 24.12.2020 and covers the period 01.04.2020 till 31.12.2020, it automatically has a retrospective application.

22. If order dated 24.12.2020 were to be applied only prospectively, then the exemption would be available only in respect of penalty, which would become payable for delay in payment of tax which falls due after 24.12.2020. This would negate the very purpose of the order.

23. The Lieutenant Governor by order dated 24.12.2020 has exempted levy of penalty for the delay in payment of tax for the period from 01.04.2020 to 31.12.2020. It does not stand to reason that the Lieutenant Governor would cover a period of none months but grant benefit only for a period of seven days. Clearly, the order of the Lieutenant Governor would apply to levy of penalty for the delay in payment of tax for the period from 01.04.2020 to 31.12.2020.

24. Thirdly, if one were to refer to Section 13 (3) of the Delhi Motor Vehicle Taxation Act, 1962, it would show that the Government has the power to *exempt either totally or partially any class of motor vehicles other than those falling under sub-section (1) or any motor vehicles belonging to any class of persons from the payment of the tax.*

25. In the instant case, though no exemption has been given from

payment of tax but exemption has been given from payment of penalty, but which is relevant is that, the order does not restrict the exemption to any class of motor vehicles or any motor vehicles belonging to any class of persons.

26. The classification sought to be brought in by the Counter Affidavit by contending that there are three distinct classes of vehicles i.e. (i) those who did not ply their vehicles and claimed exemption under 13(2) of DMVT Act; (ii) those who did not ply and also did not claim exemption under 13(2) and (iii) who plied their vehicles but did not pay the tax on time, is clearly not borne out from the said order. Said Order does not state that it is restricted only to the second category of operators.

27. Fourthly, the order does not exempt payment of penalty for the period 01.04.2020 till 31.12.2020 but exempts payment of penalty on the delay in payment of the tax payable for the period 01.04.2020 till 31.12.2020. The order relates to the tax payable during the said period and not the penalty payable during the said period. This order prohibits the taxation authority from levying any penalty for the delay in payment of tax which was payable during the said period.

28. Further, in case the argument of the learned counsel for the respondent were to be accepted, it would actually amount to giving premium to a dishonest transporter for the reason that a person who

has paid the penalty on the delayed payment of the tax until 24.12.2020 would stand to lose as he would not be entitle to the benefit of the exemption, but the transporter who did not pay the penalty amount from 01.04.2020 till 24.12.2020 would be entitled to the benefit and would be exempted from payment of any penalty. This certainly cannot be the objective of the order of the Lieutenant Governor.

29. It is a settled position of law that a petition under Article 226 is to be disposed of based on the record of the authority. The impugned decision has to be tested on the basis of reasons contained therein and not on the basis of supplementary reasons stated in the Counter Affidavit. Since the order dated 24.12.2020 and the impugned order dated 25.06.2021 do not make any distinction in its application, Respondents cannot be permitted to add the distinction by way of their counter affidavit.

30. Reference may be had to the Judgment of the Constitution Bench of the Supreme Court of India in *Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405*, where in the Supreme Court held as under:

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an*

order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

> *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

Orders are not like old wine becoming better as they grow older."

31. Clearly, the order of the Lieutenant Governor dated 24.12.2020 covers the case of the petitioner and accordingly, petitioner would be exempted from the levy of penalty on the road tax payable for the period 01.04.2020 to 31.12.2020. Since petitioner is exempted from levy of any penalty on the delay in the tax payable during the said period, the penalty amount collected from the petitioner would become amount wrongly collection by the authority and accordingly liable to be refunded.

32. With regard to the objection raised by the learned counsel for

respondent of availability of the alternative remedy of an appeal, the settled position of law may be noticed as has been held by the Supreme Court of India in *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar, (2004) 7 SCC 166 that "*****the existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226 [A.N. Venkateswaran v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506] . But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed.*******"*

33. In the present facts and circumstances, where the order of the Lieutenant Governor is very clear in granting the exemption, I am of the view that this is a fit case where this Court should exercise discretion under Article 226 of the Constitution of India. Accordingly, I find no merit in the argument of learned counsel for respondent on that count as well.

34. Further, with regard to the contention of learned counsel for respondent that this being a fiscal matter, this Court should not exercise discretion under Article 226, it may be noticed that the stand of the respondent is contrary to the order of the Lieutenant Governor because the case of the petitioner is clearly covered by the order of the Lieutenant Governor.

35. There is no challenge by the petitioner to a fiscal decision taken by the competent authority i.e. the Lieutenant Governor. Rather, petitioner seeks benefit of the order of the competent authority.

36. Reference may also to the judgment of coordinate Bench of this Court in *New State Academy Secondary School Vs. Lieutenant Governor, NCT of Delhi*, 2004 (112) DLT 648 wherein, in similar circumstances, directions for refund were issued by this Court.

37. Lastly, with regard to the argument of learned counsel for respondent that refund may have adverse financial implications in the present situation, it is fairly conceded by learned for the petitioner that instead of refund, an adjustment be granted to the petitioned in future payment of road tax for the fleet of its transport buses.

38. In view of the above, petition is allowed. The impugned order dated 25.06.2021 is set aside. Respondents are directed to quantify the amount of penalty paid by the petitioner on the delay in payment of the road tax payable for the period from 01.04.2020 to 31.12.2020 and refund the quantified amount to the petitioner or in the alternative grant adjustment to the petitioner in the road tax to be payable by the petitioner in future on the fleet of its transport buses.

39. Respondent shall compute the refundable amount within a period of four weeks from today and intimate the Petitioner of their intention to either refund the same or grant adjustment in future

payments of tax by the Petitioner. In case of refund the same shall be granted within six weeks from today.

40. Petition is allowed of in the above terms.

SANJEEV SACHDEVA, J.

NOVEMBER 23, 2021/NA