IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:
The Hon'ble Justice Hiranmay Bhattacharyya

WPA 14888 of 2021

Goutam Kumar Sarangi

Vs.

The State of West Bengal & Ors.

For the Petitioner	:	Mr. Arabinda Chatterjee, Sr. Adv. Ms. Kakali Dutta
For the State	:	Mr. Amal Kr. Sen, Ld. A.G.P. Mr. Lal Mohan Basu
Heard on	:	12.05.2022
Judgment on	:	12.05.2022

The Court :

This writ petition has been filed praying for issuance of a writ in the nature of mandamus to set aside the order passed on the hearing which was took place on July 28, 2021 before the Secretary, State Transport Authority, West Bengal and was communicated to the petitioner under a covering letter dated August 11, 2021.

By the said order, the prayer of the writ petitioner for exemption of motor vehicle tax and additional tax was rejected on the ground that the vehicle in question was registered outside the State of West Bengal.

The writ petitioner claims to be the owner of a vehicle bearing registration No. OR22B5037 which is a non-AC Sleeper Coach and the same was registered with the registering authority at Balasore in the State of Odisha. The State Transport Authority of the State of Odisha issued inter-state stage carriage permit in respect of said vehicle for the period from 14.04.2018 to 13.04.2023. The petitioner claims to have paid the tax and additional tax for period from 7th February, 2019 to 6th May, 2020. In the meantime, due to Covid-19 Pandemic and declaration of lock down, the petitioner claims that he could not ply his vehicle. The petitioner claims to have started plying the vehicle on and from October 1, 2020. The petitioner submitted representation dated December 17, 2020 before the Secretary, State Transport Authority, West Bengal praying for adjustment of motor vehicles tax as well as additional road tax in respect of the said vehicle. The petitioner approached this Hon'ble Court by filing a writ petition being WPA No. 5379 of 2021 as the respondent authorities were sitting tight over his representation. The said writ petition was disposed of by a Coordinate Bench of this Court by an order dated March 16, 2021 by directing the respondent no. 3 of the said writ petition to consider the representation dated 17.12.2020 which was marked as annexure P-6 to the said writ petition after giving an opportunity of hearing to the petitioner and to pass a reasoned decision thereof within the time stipulated in the said order. Pursuant to the said direction the Secretary, State Transport Authority heard the petitioner on July 28, 2021 and rejected the prayer for exemption. Being aggrieved the writ petitioner has approached this Court.

Mr. Chatterjee, learned senior counsel appearing for the petitioner submits that the petitioner is entitled to exemption from payment of tax in terms of Section 4(2)(b) read with Section 4(3) of the West Bengal Motor Vehicles Tax Act, 1979 (for short 'the 1979 Act') and also refund or remission of additional tax in terms of Section 21(2) of the West Bengal Additional Tax and One Time Tax of Motor Vehicles Act, 1989 (for short 'the 1989 Act'). He further refers to a notification being No. 2246-WT/3M-14/2020 (Pt.I) dated 10th August, 2020 which allows exemption as one time relief in view of the prolonged lock down due to Covid-19 Pandemic. Mr. Chatterjee submits that the precondition for claiming exemption under the said notification is satisfied in the instant case as the petitioner has cleared tax and additional tax up to May 6, 2020. He further submits that the authorities could not have applied the notification No. 613-WT/3M-14/2020(Part I) dated February 23, 2021 to the case of the petitioner which imposes restriction for claiming exemption in respect of the stage carriages and contract carriages registered outside the State of West Bengal. Thus Mr. Chatterjee submits that the order passed by the Secretary cannot be sustained in the eye of law as the right to claim such exemption which accrued in favour of the writ petitioner by virtue of the notification dated August 10, 2020 could not have been taken away by subsequent notification.

Mr. Sen, learned Additional Government Pleader submits that the notification dated August 10, 2020 was subsequently modified by a notification no. 998-WT/3M-14/2020(Pt-I) dated March 22, 2021 whereby the notification dated August 10, 2020 is to be read as *"the above noted exemptions are allowed only for the vehicles registered in West Bengal and covered by permits issued by STA/RTAs of this state as a 'one time relief' in this crisis period and not to be cited as a precedence"*

However, Mr. Sen, in his usual fairness, submits that the Secretary while passing the order dated July 28, 2021 did not consider the provisions of the 1979 Act as well as the 1989 Act which he ought to have. He also submitted that the matter may be sent for reconsideration by the respondent authority. On the issue as to whether the petitioner is entitled to claim benefit of the notification dated August 10, 2020, Mr. Sen submits that since the said notification stood modified by the subsequent notification dated March 22, 2021, the exemption notification which was prevailing as on the date of consideration of the prayer of the exemption is to be followed and not the earlier notification which stood modified in the meantime.

Heard the learned advocates for the parties and perused the materials on record.

It appears from the receipt issued by the Public Vehicle Department, Kolkata, West Bengal that the petitioner paid motor vehicle tax as well as additional tax for the period from 7th February 2020 to 6th May, 2020 on 3rd February, 2020. It is also not in dispute that the category of the vehicle of the petitioner falls otherwise within the category of vehicles entitled to exemption as per the notification dated 10th August, 2020. Thus the condition for claiming exemption of tax and additional tax for a period from 1st April, 2020 to 30th September, 2020 is satisfied in the instant case.

Now question arises as to whether the petitioner can claim exemption on the basis of the notification dated August 10, 2020. The object behind issuance of such notification is that private operators of stage carriages who faced financial stress due to increase in financial price and limited number of ridership to ensure social distancing norms were allow exemption as onetime relief in the crisis period. The right to claim benefit of such exemption accrued in favour of the petitioner with effect from the date of issuance of the said notification that is on and from August 10, 2020. The said notification does not also stipulate any application to be made for claiming exemption. However, the petitioner claimed adjustment of motor vehicles tax as well as additional road tax on two-fold grounds by filing a representation dated 17.12.2020. Firstly, that such exemption has been provided for under the 1979 Act and the 1989 Act and secondly in terms of the exemption notification dated August 10, 2020 issued by the Government of West Bengal.

The notification dated February 23, 2021 was for the purpose of one time exemption of tax and additional tax for the period from 1st January, 2021 to June 30, 2021, whereas the claim of the petitioner for exemption is upto September, 2020.

The notification dated February 23, 2021 does not also refer to the earlier notification dated August 10, 2020. It is an independent exemption notification extending the benefit of exemption from 1st January, 2021 to 30th June, 2021 to Passenger Transport Vehicles having Stage Carriage and Contract Carriage permits registered in the State of West Bengal. Thus, the said notification dated February 23, 2021, in the considered view of this Court, cannot be applied to the case of the petitioner.

Now the question comes as to whether the right of the petitioner to claim exemption by virtue of the notification dated August 10, 2020 can be taken away by issuance of a subsequent notification on March 22, 2021. The said notification dated March 22, 2021 cannot operate retrospectively to take away the vested right of the petitioner. Thus the right which stood vested upon the petitioner and was claimed by making a representation in such regard to the respondent authority could not have been denied by taking aid of the subsequent notification dated March 22, 2021.

This matter can be also looked into from a different angle. The petitioner claimed exemption in terms of the notification dated August 10, 2020 by making representation which was received by the authority as far back as on December 22, 2020. The respondent authority sat tight over the matter, which compelled the writ petitioner to approach this Court. This Court by an order dated March 16, 2021 directed the respondent No. 3 to consider the said representation of the petitioner.

By the said representation, the petitioner claimed his right under the notification dated August 10, 2021. No reasonable explanation is forthcoming from the respondents as to why no decision was taken on such representation for such a long time. Even at the time of hearing of the writ petition being WPA 5379 of 2021 on March 16, 2021, the respondent authority did not contend that the said notification dated August 10, 2021 is not applicable to the case of petitioner. As on the date when the said writ petition was disposed of, the subsequent notification dated March 22, 2021 did not see the light of the day. Thus a legally vested right accrued in favour of the petitioner for consideration of his prayer for exemption in terms of the notification dated August 10, 2020. Thus the consideration as per the direction passed by this Hon'ble Court ought to have been on the basis of the Notification dated August 10, 2020 that was prevailing as on the date of passing of the order on the earlier writ petition that is on March 16, 2021. Thus on the said ground also the subsequent notification dated March 22, 2021 could not have been applied to the case of the petitioner.

This Court is of the considered view that the reasons for which the prayer of the writ petitioner was rejected by the respondent authority cannot be sustained in the eye of law and the same is liable to set aside.

However, since the authorities have to take a decision as to the amount of tax and additional tax which the petitioner may be entitled to refund or claim adjustment thereof, this Court feels that the concerned respondent authority should be directed to take a fresh decision on the representation of the petitioner. While considering the prayer for adjustment the said respondent shall also consider the claim of the petitioner for adjustment in terms of the provisions laid down under the 1979 Act and 1989 Act.

At this stage, Mr. Sen, learned Additional Government Pleader, upon definite instruction from the Transport Department, submits that this particular issue with regard to exemption and refund of tax and additional tax is being delegated to the Additional Secretary Transport Department, Government of West Bengal.

For the reasons as aforesaid the impugned order passed on the hearing conducted on July 28, 2021 and communicated under a covering letter dated August 11, 2021 is set aside and quashed.

WPA No.14888 of 2021 stands allowed.

This Court, therefore, directs the Additional Secretary, Transport Department, Government of West Bengal who is in the charge of Motor Vehicle Taxes to consider the representation of the petitioner dated 17.12.2020 which is appearing at page 45 (annexure P6 of this writ petition) in the light of the observations made herein before and after taking into consideration the relevant provisions of the 1979 Act and the 1989 Act and to dispose of the same by passing a reasoned order upon giving an opportunity of hearing to the petitioner or his authorized representatives and to communicate the same to the petitioner. It is expected that entire exercise shall be completed by the added respondent within 4 weeks from the date of communication of this order.

Since, the Additional Secretary is not a party to this writ petition and Mr. Sen Submits that such authority is the competent authority to take a decision in this regard, such authority is added as a party respondent to this writ petition. Since Mr. Sen represents such authority, no fresh notice be served upon the added respondent.

Leave is granted to the learned advocate on record of the petitioner to amend the cause title of the instant writ petition preferably by tomorrow, i.e. on 13.05.2022.

There shall be no order as to costs.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

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