

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.9109 of 2022

***M/s. Budhraja Mining and
Construction Ltd.***

....

Petitioner

-versus-

***Regional Transport Officer-cum-
Tax Recovery Officer,
Bhubaneswar***

....

Opposite Party

**CORAM:
THE JUSTICE S.PUJAHARI**

**ORDER
29.04.2022**

**Order
No.**

01. 1. This matter is taken up through Hybrid mode.
2. Heard Mr. Avijit Pal, learned counsel for the Petitioner and Mr. Pravakar Behera, learned Standing Counsel for the Transport.
3. This writ petition has been filed by the Petitioner to quash the notice dated 18.01.2022 issued by the Tax Recovery Officer, Regional Transport Officer, Bhubaneswar for recovery of the tax and penalty and recovery of arrears vide Annexures- 1,2 and 3, on the ground that it is not liable to pay the tax and penalty for the period alleged as the order was passed without giving an opportunity of hearing to the Petitioner.

4. It is the case of the Petitioner that the Petitioner-Company is a registered owner of the motor vehicle bearing registration number ORP-6498. Section 14 of the Orissa Motor Vehicles Taxation Act, 1975 (hereinafter referred to as “the Act”) provides for recovery of tax and penalty as due under Section 13 of the Act as arrears of public demand in accordance with the provisions contained in Schedule-II. Section 13(2) of the Act would go to show that no penalty shall be imposed without giving the party concerned a reasonable opportunity of being heard.

5. Mr. Pal, learned counsel for the Petitioner submits that Annexures-1,2 and 3 i.e. notice to show cause for penalty under Section 13 of the Act, so also for recovery of the tax dues as well as certificate for recovery of arrear respectively was issued on the same day by the Tax Recovery Officer. The aforesaid notice being violative of the principle of natural justice and contrary to the statutory provisions, the same is liable to be quashed and the Petitioner is required to be relegated back to the original position.

6. To substantiate his contention that there was violation of principle of natural justice, learned counsel for the Petitioner has placed reliance on the decision of the apex Court in the case of **ORYX Fisheries Pvt. Ltd. vrs. Union of India** reported in **(2010) 13 SCC 427** wherein it has been held that it is well settled that a quasi-judicial authority, while acting in exercise

of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. At the stage of show-cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. At that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in the present case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.

7. So also to substantiate that there was violation of the statutory provisions while initiating the recovery proceeding, reliance has been placed in the case of **Chandra Kishore Jha vrs. Mahaveer Prasad** reported in (1999) 8 SCC 266 wherein placing reliance on the oft quoted decision of the Privy Council in the case of **Nazir Ahmad v. King Emperor** reported in AIR 1936 PC 253, it has been held that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

8. Furthermore, in this regard reliance has also been placed in the case of **Prafulla Kumar Samantray vrs. R.T.O., Rourkela** reported in AIR 2016 Orissa 98, wherein in spite of

the existence of an alternative remedy, the Court interfered in a matter of tax and penalty.

9. Per contra, Mr. Pravakar Behera, learned Standing Counsel for the Transport, submits that such contention of the learned counsel for the Petitioner is fallacious. According to him, absolutely there was no violation of the principle of natural justice in this case. He submits that the tax is always in the scale prescribed and self-determinative one. On the failure of a person for payment of tax in advance, the same is liable to be recovered as per the provision of the OPDR Act that is in a certificate proceeding or as per the provisions contained in Schedule-II. The R.T.O has been vested with the power of the Tax Recovery Officer. When a tax is not paid within time stipulated, a recovery proceeding has to be initiated by signing a certificate indicating the amount and soon after the proceeding is initiated, the defaulter of the tax is required to be given 30 days notice as per Schedule-II. In the said proceeding, the Petitioner is given a reasonable opportunity of hearing as to whether the tax so quantified is liable to be paid or not and after hearing him, the Recovery Officer can modify or alter the certificate signed for recovery of the tax but prior to the same, no opportunity of hearing is required to be given to him as per the provisions of the Act. It is in respect of payment of penalty the Petitioner is required to be given a reasonable opportunity of hearing before realization of the same whether he is liable to pay the penalty or not for the default of any tax. Therefore, the

notice has been issued to him under Annexure-1 by the R.T.O before determination of the penalty and Annexure-II the show cause in the recovery proceeding of the tax. The Petitioner, without availing the opportunity of hearing, has come to this Court on a misconception that both the tax and penalty being realizable together, proceedings are not segregatable and only after giving him an opportunity of hearing regarding payment of tax and penalty, the certificate can be signed. Hence, there being no violation of the procedure prescribed nor any violation of the principle of natural justice, this Court should not interfere with the same and reject the petition filed in this case and allow the Petitioner to ventilate his grievance before the appropriate authority by filing his show cause.

10. Before advertng to the contention of the parties, it would be apposite to mention here that there is no reproach in the aforesaid proposition of law as laid down in the aforesaid cases cited by the learned counsel for the Petitioner. But the learned counsel for the Opposite Party submits that enough safeguard having been provided in the statute to the Petitioner to ventilate his grievance, this writ petition is not maintainable.

11. To appreciate the contentions of the parties, therefore, it would be apposite to have a look into the relevant provisions of the statute in this regard.

12. Sections 3, 3-A, 4 and 4-A of the Act provide as follows :

“3. Levy of tax. - (1) Subject to the other provisions of this Act, there shall be levied on every motor vehicle used or kept for use within the State a tax at the rate specified in [Schedule-I] [Schedule-III];

(2) The State Government may by notification from time to time, increase the rate of tax specified in [Schedule-I] [Schedule-III];

Provided that such increase shall not exceed fifty percent of the rate specified in [Schedule-I] [Schedule-III];.

(3) All references made in this Act to [Schedule-I] [Schedule-III]; shall be construed as references to [Schedule-I] [Schedule-III]; as for the time being amended in exercise of the powers conferred by this section.

3-A. Levy of additional tax. - (1) Subject to the other provisions of this Act, there shall be levied on every public service vehicle and goods carriage used or kept of use within the State, an additional tax at a rate specified in 3 [Schedule-I].

(2) The State Government may, by notification from time to time, increase the rate of additional tax specified in [Schedule-I]

Provided that such increase shall not exceed fifty per cent of the rate specified in [Schedule-I].

(3) The provisions contained in Sub-section (3) of section 3 [***] Sub-section (1) to (3) of Sec. 4, Secs. 6 and Secs. 11 to 20 shall mutatis mutandis apply in relation to the additional tax payable under Sub-sec. (1) as they apply in relation to the tax payable under Sec. 3.]

4. Payment of tax and declaration of liability - (1) The tax shall be paid in advance within such time and such manner as may be prescribed, to the Taxing Officer by the registered owner of person having possession or control of the vehicle.

(2) The period in respect of which tax is to be paid under Sub-sec. (1) may be –

(a) a year at the rate specified in [Schedule-I] hereinafter referred to as the annual rate; or

(b) one or more quarters at one-fourth of the annual rate for each quarter; or

(c) any period less than a quarter expiring on the last date of any quarter at one-twelfth of the annual rate of every month or part of a month comprising such period

Provided that in the case of a vehicle and annual rate of tax in respect of which does not exceed [five hundred rupees] the tax shall be paid either annually or for a period of two quarters at a time :

[Provided further that the State Government may, by notification, allow payment of tax monthly in respect of any motor vehicle or class of motor vehicles and in such case one-twelfth of the annual rate of tax specified in [Schedule-I] is to be paid for each month]; and

(3) Notwithstanding anything contained in this section, the State Government may, by notification, from time to time, direct that a temporary tax token may be issued in respect of a [vehicle] plying temporarily in the State on payment of such tax and subject to such conditions as may be specified in the notification

(4) At the time of making of payment of tax for any period under Sub-section (1)

(a) a valid certificate of registration and a valid certificate of insurance in respect of the motor vehicle complying with the provisions of the Motor Vehicles Act, shall be produced before the Taxing Officer; and

(b) there shall be delivered to the Taxing Officer a declaration in duplicate in the prescribed form with the proscribed particulars specifying the Taxing Officer from whom the tax token, if any, had been last obtained and showing that the tax payable for the vehicle is the amount actually paid.

4-A. Levy and payment of one-time tax- (1)

Notwithstanding anything contained in Sections 3 and 4 of this Act, but subject to the other provisions of this section, there shall be levied and paid in respect of every vehicle of the descriptions specified in items 1 and 2 and every Motor Vehicle (being a motor car, Omnibus and Motor Cab) covered by items 6 of Schedule-I which is used personally or kept for personal use, one time tax at the rate equal to a standard rate as specified in Schedule-III or five per centum of the cost of the vehicle whichever is higher.

Provided that in the case of a vehicle which is on road in State of Odisha whether purchased or acquired inside or outside the State of Odisha, one time tax shall be at the rate as specified in Schedule-III.

Provided further that the vehicles in respect of which one time tax has already been realized shall not be liable to pay tax.}

(2) The levy and payment of one-time tax shall be for the life-time of the vehicle in respect of which such tax is paid.

(3) The levy and payment of one-time tax shall be compulsory in respect of vehicles registered on or after the appointed date and optional in respect of the vehicles registered prior to that date.

(4) Where, after payment of one-time tax, a vehicle is removed to any other state on transfer of ownership or change of address, or its registration is cancelled for any reason other than that mention in Sub-sec. (5) of Sec.55 of the Motor Vehicles Act 59 of 1988 the owner of the vehicle shall be entitled to a refund which shall be the balance of the one-time tax paid by him under Sub-sec. (1) as may remain after deducting from such tax one-tenth thereof for each completed year or part thereof commencing on the date from which the one-time tax was paid till the date on which the vehicle is so removed or its registration is so cancelled or the vehicle is so altered, as the case may be.

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(6) The provisions of Secs. 10 and 16 relating to temporary discontinuance of the use of vehicle and rebate on payment of tax, respectively, shall not apply to a vehicle in respect of which one-time tax is leviable under this section.”

13. Section 13 of the Act provides as follows:

“13. Penalty for failure to pay. - [(1) If the tax due in respect of any motor vehicle has not been paid as specified in [Sections 4 and 4-A], the registered owner or the person having possession or control thereof shall, in addition to payment of tax due, be liable to pay penalty which may extend to [twice the tax due] in respect of that vehicle to be levied by such officer by order in writing and in such manner as may be prescribed.

(1-A) Notwithstanding anything contained in Sub-section (1), if the tax due in respect of any vehicle plying under a National permit scheme or a Zonal permit scheme is not paid as specified in the said scheme or otherwise, the registered owner or the person having the possession or control thereof shall, in addition to payment of tax due, be liable to pay the penalty specified in the said scheme or otherwise in respect of that vehicle in such manner as may be prescribed.

(2) The penalty imposed under Sub-section (1) shall be without prejudice to the liability, if any, that may be incurred under any of the other provisions of this Act or the rules made thereunder but no such penalty shall be imposed without giving the party concerned a reasonable opportunity of being heard.”

14. Section 14 of the Act speaks thus:

“14. Recovery of tax and penalty. - (1) Any tax due and not paid as provided for by or under this Act and any sum directed to be recovered by way of penalty under section 13 may be recovered as arrears of public demand [or in accordance with the provisions contained in Schedule-II].

[1-A. Any tax levied under this Act shall be deemed to be a first charge on the vehicle to which it relates.]

(2) The motor vehicle in respect of which the tax is due or in respect of which any sum has been directed to be recovered as penalty under Sec.13 or its accessories may be distrained and sold in pursuance of this section whether or not such vehicle or accessories is or are in the possession or control of the person liable to pay the tax or penalty.

(3) Notwithstanding anything contained in this Act or the rules made thereunder, no person shall be liable to tax or penalty accruing for any period on account of any motor vehicle, the tax or penalty due in respect of which has already been paid by some other person.”

15. The relevant provisions of Schedule II of Section 3 of the Act read thus:

“3. Issue or service of notice and effect thereof - (1) When a certificate has been signed by the Tax Recovery Officer under Rule 2, he shall issue a notice to the defaulter in Form 2 along with a copy of the certificate directing him to pay the amount within a period not exceeding thirty days from the date of service of the notice.

(2) After the service of notice of any certificate under Sub-rule (1) upon a defaulter-

(a) any private transfer or delivery of any of his immovable property or any interest in such property shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequent to the service of the said notice shall be postponed :

Provided that the Tax Recovery Officer may, at any time for reasons to be recorded in writing, direct an attachment of the whole or any part of the immovable property belonging to the defaulter.

(3) The defaulter may, within the period of time specified in the notice issued under Sub-rule (1), present to the Tax Recovery Officer a petition denying his liability only on the ground that-

- (a) the demanded amounts have been fully or partly paid ;or
- (b) the person on whom such notice has been served is not the defaulter; or
- (c) the amount by law is not recoverable from him.”

16. As it appears in this case the Petitioner is the registered owner of the aforesaid vehicle. As per sub-rule (1) of rule 3 the Petitioner was given a notice of show cause with regard to his liability to pay the tax which has been signed by the Tax Recovery Officer on the same day. So also on the same day notice under Section 13(2) of the Act was issued by the Tax Recovery Officer to the Petitioner for penalty for default of the payment of the tax for the period mentioned therein.

17. Therefore, the Petitioner was given an opportunity to show cause in the recovery proceeding with regard to his liability to pay the tax. After hearing him, the Tax Recovery Officer has the authority to modify or alter the amount in the certificate as demanded and exonerate him of his liability in appropriate cases. There is also no provision in the Act that the tax which is self assessment proceeding and payable in advance cannot be determined without a show cause notice given before initiation of the recovery proceeding. The aforesaid view of the Court is fortified by a decision rendered by this Court in the case of **Sujit Kumar Dhir and others vrs. Regional Transport Office, Keonjhar and others**, reported in **2014 (II) OLR 1070**.

18. Therefore, in this case when the recovery proceeding has already been initiated and the Petitioner has been given a chance of show cause wherein the recovery officer having the authority after hearing the Petitioner to modify or alter the same, it cannot be said that the show cause notice was an empty formality as there was violation of the principle of natural justice. Therefore, the decision cited by the learned counsel for the Petitioner in the case of **ORYX Fisheries Private Limited** (supra) is of no assistance to the facts of the present case. Furthermore there being no statutory violation of the provision, for the said reason, the reliance placed by the Petitioner in the case of **Chandra Kishore Jha** (supra) is also no assistance to the Petitioner. Again the ratio laid down in the case of **Sujit Kumar Dhir** (supra) also militate against the case of the Petitioner.

19. Therefore, the challenge to the aforesaid show cause notice in the pending proceeding under Section 13(2) of the Act and in the recovery proceeding of the tax on the ground of violation of the principle of natural justice as well as violative statutory provision in this regard is without any substance. Hence, while repealing the contention of the learned counsel for the Opposite Party that as the statutory remedy is available, the Petitioner could not have filed this petition as such the same is liable to be dismissed inasmuch as the same is not a bar to entertain the writ petition is well-settled, this Court finds no merit in the writ petition filed by the Petitioner in this case.

20. Accordingly, the writ petition stands dismissed.

21. However, if the Petitioner has not filed any show cause pursuant to the aforesaid notice, he shall be given a chance to file show cause by 20th June, 2022 to have his say in the said proceeding and thereafter there will be no impediment on the part of the authority concerned to proceed against the Petitioner in accordance with law.

22. Urgent certified copy of this order be granted on proper application.

23. Free copy of this order be given to Mr. Behera, learned Standing Counsel for the Transport.

(S. Pujahari)
Judge

PKS

