IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11525 of 2008

Om Automobiles, Berhampur	....	***Petitioner***
	-versus-	
State of Odisha and others	....	***Opposite Parties***

Appeared in this case:

For Petitioner	:	Mr. A. Pal, Advocate
For Opposite Parties	:	Mr. Pravakar Behera, Standing Counsel for Transport Department

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIAK

JUDGMENT
11.04.2022

Dr. S. Muralidhar, CJ.

1. The Petitioner, which is a partnership firm, carrying on the business of trading, export, import of vehicle and sale of automobiles and automobile spare parts, has filed this petition challenging a Vehicle Checking Report (VCR) dated 5th August, 2008 issued by the Traffic Inspector, Orissa Motor Vehicle Division, Ganjam, Chhatrapur and an order dated 6th August, 2008 passed by the Registering Authority-cum-Regional Transport Officer (RTO), Ganjam, Chhatrapur directing that the vehicles sold by the Petitioner Firm shall not be registered. The

Petitioner also seeks a direction to the RTO (Opposite Party No.3) to renew the Trade Certificate (TC) of the Petitioner for a further period of one year.

2. The background facts are that the Petitioner firm had a dealership agreement with M/s. Honda Motor Cycle and Scooter India Pvt. Ltd. initially for a period of three years. This was further extended up to 16th February, 2010. For the purposes of dealership, the Petitioner had taken premises on rent for a period of 15 years from 5th April, 2003 onwards. The Petitioner is stated to have invested nearly Rs.70 Lakhs for the Honda dealership at Berhampur as well as the workshop for the Honda Scooter and Motor Cycle at Berhampur. The Petitioner was registered under the Orissa Sales Tax Act and subsequently, the Orissa Value Added Tax Act. The Petitioner applied for a TC under Rule 35 of the CMV Rules, 1989 and was granted the said certificate on 7th April, 2005 in Form-17. The certificate was to be renewed every year.

3. It is stated that on 5th August, 2008, the Traffic Inspector in the office of the RTO, Ganjam, Chhatrapur came to the premises of the Petitioner, verified the godown and found 38 vehicles (Honda Scooters and Motor Cycles). He demanded to see the TC issued to the Petitioner. On examination, it was found that the said TC had lost its validity. There upon Opposite Party No.4 issued a VCR in Form-54 and imposed a penalty under Section 192 of the Motor

Vehicles Act, 1988 (MV Act) read with Section 3 of the Orissa Motor Vehicles Taxation Act (OMVT Act).

4. On 8th August 2008, the Petitioner applied for renewal of the TC in Form-16 in respect of 80 vehicles. However, Opposite Party No.3 refused to accept the renewal application on ground of non-payment of the penalty amount imposed under the VCR. The renewal application was sent by post by the Petitioner on 9th August, 2008. However, in the meanwhile, on 6th August 2008, Opposite Party No.3 passed the impugned order stating that the vehicles sold by the Petitioner should not be registered by the registering authority.

5. This petition was first listed for hearing on 19th August, 2008 by which time the Petitioner had paid the entire demanded amount under the MV Tax for Rs.89,265/- on 13th August, 2008 under protest. Further, the Petitioner deposited 50% of the penalty amount i.e. Rs.47,500/- on 13th August, 2008. These receipts were enclosed with a further affidavit filed by the Petitioner on 26th August, 2008.

6. When the matter was heard on 19th August 2008, an interim order was passed that "whatever amount has been paid pursuant to the Demand Notice under Annexure-8 that will be subject to result of the writ petition." Subsequently, on 23rd September 2008, while noting that the counter affidavit had been filed by Opposite

Party No.3, it was directed that in case the Petitioner had already paid the full amount of tax and 50% of the penalty, then it would not be compelled to deposit the remaining amount of penalty without the leave of the Court.

7. At the outset, the Court would like to observe that as far as the motor vehicle tax is concerned, that being a statutory demand, the Court is not inclined to interfere with it. In any event, the Petitioner has paid the full amount.

8. However, as regards the penalty amount, there appears to be merit in the contention of the Petitioner that there was no nexus between the Petitioner not possessing a valid TC and being found in possession of the vehicles that were yet to be registered. The Petitioner in any event had applied for renewal of the TC. It is nobody's case that there was any deliberate attempt on the part of the Petitioner to operate without a valid TC.

9. As regards the vehicles found in the godown of the Petitioner, without registration, Opposite Party No.4 lost sight of the fact that these were new vehicles meant to be sold by the Petitioner as a dealer in those vehicles. The registration would obviously take place at the time of purchase of the vehicles by customers. There is therefore no basis for simply levying a huge amount of penalty on the Petitioner or even directing that no vehicles of the Petitioner would be registered in future.

10. Consequently, the impugned demand of Rs.95,000/- levied on the Petitioner under Section 192 of the MV Act read with Section 3 of the OMVT Act is not interfered with but the penalty is set aside. The amount paid by the Petitioner constituting 50% of the penalty shall be refunded to the Petitioner by the Opposite Parties within a period of four weeks. If within the said time period the payment as directed is not made, the amount will be paid together with simple interest @ 6% per annum for the period of delay.

11. Further, the order dated 6th August, 2008 directing that vehicles sold by the Petitioner would not be registered is also hereby set aside.

12. The writ petition is disposed of in the above terms.

(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda