IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APELLATE SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 24898 of 2022

Md. Asrar Ansari
Vs.
The State of West Bengal & Ors.

For the Petitioner:	Mr. S.N. Mukherjee, Adv. Sk. Samim Akhter, Adv. Mr. Niraj Gupta, Adv. Afroja Nusrat, Adv.,
For the State:	Mr. Amal Kr. Sen, Adv. Mr. Tapas Kr. Dey, Adv.,
Hearing Concluded on:	05.07.2023
Date:	19.07.2023

SUVRA GHOSH, J. :-

1. The petitioner has assailed the assessment of tax and additional tax made by the respondent authorities in terms of an order issued by the Transport Department, Government of West Bengal on 19th January, 2018 and has prayed for release of his vehicle bearing registration no. JH05CJ-4148.

2. At the outset, the respondents have challenged the maintainability of the writ petition on the ground that such order assessing tax and additional tax is amenable to appeal under section 9 of the West Bengal Motor Vehicles

Tax Act, 1979 and the West Bengal Additional Tax and One-Time Tax on Motor Vehicles Act, 1989.

3. Learned counsel for the respondents has submitted that the petitioner's vehicle was intercepted on 3rd November, 2022 on Kona Expressway near Belapole More, Howrah by a Motor Vehicles Inspector of Howrah RTO and it was found that the petitioner had defaulted in payment of tax and additional tax of the State of West Bengal. Resultantly the vehicle was held to be without permit on the said date. A challan to the tune of Rs. 11501/- was issued by the Motor Vehicles Inspector to the petitioner on the same day following which tax and additional tax for a period of 17 weeks was calculated to the tune of Rs, 2,71,887/- including the amount of the earlier challan. Learned counsel submits that the petitioner is at liberty to get his vehicle released upon payment of tax and additional tax assessed by the authority. In the alternative, if the petitioner is aggrieved by the said assessment, his remedy lies before the appellate forum and not in the present writ petition.

4. Learned counsel has placed reliance on the authorities in CCT, Orissa and Others v/s. Indian Explosives Limited reported in (2008) 3 Supreme Court Cases 688, State of Madhya Pradesh and Another v/s. Kedia Great Galeon Limited and Another reported in (2017) 13 Supreme Court Cases 836, a judgment of an Hon'ble Division Bench of this Court in A.P.O.T. No. 82 of 2022 with W.P.O. No. 1926 of 2022 and a judgment of a coordinate Bench of this Court in W.P.O. No. 1926 of 2022 in support of his contention.

5. Refuting the contention of the respondents, learned counsel for the petitioner has submitted that this Court has ample jurisdiction to deal with the prayers of the petitioner in the writ petition and availability of efficacious alternative remedy is not an absolute bar in dealing with the issue in a writ petition. The order dated 19th January, 2018 relied upon by the respondents is not applicable to vehicles registered outside the State of West Bengal as in the present case and the order itself is dehors the statute and therefore has no legal sanctity. Learned counsel has relied upon the authorities in M/s. Godrej Sara Lee Ltd. v/s. The Excise And Taxation Officer-Cum-Assessing Authority And Others in Civil Appeal No. 5393 of 2010 of the Hon'ble Supreme Court of India, P. Balakotaiah v/s. Union of India and Others reported in AIR 1958 Supreme Court 232, A.V. Fernandez v/s. State of Kerala reported in AIR 1957 Supreme Court 657, M/s. Radha Krishan Industries v/s. State of Himachal Pradesh and Others reported in (2021) 6 SCC 771 and Dilip Kumar Ghosh and Others v/s. Chairman and Others reported in (2005) 7 Supreme Court Cases 567 in support of his contention.

6. The petitioner is the registered owner of a sleeper deluxe A.C. bus bearing registration no. JH05CJ-4148 and was granted permit by the State Transport Authority, Jharkhand in inter-state route Daltanganj to Kolkata as per reciprocal transport agreement dated 29th March, 2004 which is valid till 31st March, 2027. Admittedly the petitioner did not possess valid tax receipt at the time of interception and seizure of the vehicle and tax and additional tax to the tune of Rs. 11,100/- for the period 11th October, 2022 to 10th January, 2023 was paid by the petitioner on 9th November, 2022.

The petitioner is aggrieved by the assessment of tax and additional tax by the authority on the basis of the order dated 19th January, 2018 for the reason that the said order is not applicable to the vehicle of the petitioner since the vehicle is registered in Jharkhand whereas the order pertains to sleeper coaches registered in West Bengal. Also, the order is in violation of the Act of 1979 and 1989.

7. At the outset, the question of maintainability of the writ petition in view of availability of efficacious alternative remedy is required to be dealt with.

8. The Hon'ble Supreme Court, in the authority in CCT Orissa and Others (supra) and this Court, in the authorities relied upon by the respondents have held in no uncertain terms that in the event of availability of alternative remedy, the matter needs to be relegated to the appropriate forum and can be dealt with by the Writ Court only upon exhaustion of the alternative remedy.

9. Learned counsel for the petitioner has placed reliance upon the authorities in M/s. Radha Krishan Industries (supra) and M/s. Godrej Sara Lee Limited (supra) to demonstrate that availability of alternative remedy does not operate as an absolute bar to the maintainability of a writ petition.

10. The authority in M/s. Radha Krishan Industries (supra) deals with challenge to an order of provisional attachment which is not a final order and no efficacious alternative remedy is available against such order. The judgment records the following principles of law:-

(i) "The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternative remedy arise where (a) the writ petition has been filed for the enforcement of a fundament right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternative remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of

statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

11. Both the authorities have referred to the decision reported in (1998) 8 Supreme Court Cases 1 (Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and Others) wherein the Hon'ble Court has carved out exceptions where a Writ Court would be justified in entertaining a writ petition despite the petitioner not having availed of the alternative remedy provided by the statute. The exceptions are as follows:-

(i) "Where a writ petition seeks enforcement of any of the fundamental rights;

(ii) Where there is violation of principles of natural justice;

(iii) Where the order or the proceedings are wholly without jurisdiction; or

(iv) Where the vires of an Act is challenged."

12. In the authority in M/s. Godrej Sara Lee Limited (supra), the very jurisdiction of the revisional authority being the Deputy Excise and Taxation Commissioner was under challenge.

13. In the present case, the tax and additional tax imposed upon the petitioner by the respondents is assailed. The jurisdiction of the authority in imposing such tax is not under challenge. The facts of the present case are not governed by the exceptions carved out in Whirlpool Corporation (supra). Arbitrary action of the authority has neither been pleaded, nor proved. The tax and additional tax have been assessed on the anvil of a circular issued by the Transport Department, Government of West Bengal, on 19th January, 2018, which, according to the petitioner, is not applicable to the petitioner's vehicle.

14. Since the respondents allege that tax was imposed upon the petitioner for violation of the West Bengal Motor Vehicles Tax Act, 1979 and West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989, the remedy of the petitioner lies under section 9 of the Act of 1979 and section 22 of the Act of 1989. Also, the issues involve complicated questions of fact which cannot be dealt with by this Court in exercising jurisdiction under Article 226 of the Constitution of India.

15. In view of the above, without going into the merits of the case, the writ petition is disposed of with liberty to the petitioner to approach the Appellate Forum for redressal of his grievance.

16. In the event the petitioner files statutory appeal within 15 days from date, the Appellate Forum shall deal with the appeal on merits without dismissing the same on the ground of limitation.

17. There shall however be no order as to costs.

18. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to be admitted.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)