
(2003) 07 JH CK 0038

In the Jharkhand High Court

Case No : C.W.J.C. No's. 2492, 2493, 2496, 2497 and 2777 of 2000

R.K. Automobile, Auto World, Union Motors, Raj Kumar Dua APPELLANT
and Gopal Moonka @ Gopal Chandra Moonka

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 23, 6
Bihar Motor Vehicles Taxation Rules, 1930 — Rule 4
Motor Vehicles Act, 1988 — Section 2(27), 2(28)

Citation : (2004) 2 ACC 527 : (2004) 2 JCR 369

Hon'ble Judges : P.K. Balasubramanyan, C.J; R.K. Merathia, J

Bench : Division Bench

Advocate : S.B. Garodia and S.L. Agarwal, for the Appellant; S.C. I., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners in these cases are dealers in two wheelers within the State of Jharkhand. They challenge the notices issued to them under the Bihar Motor Vehicles Taxation Act for recovery of the sales tax allegedly due from them along with penalty. In this writ petitions, the challenge of the petitioners is confined to the attempt to the recovery of the penalty in view of the fact that their liability to tax had become crystallised by an earlier judgment, though it is stated that the validity of the relevant provision is pending adjudication in the Supreme Court at the instance of another dealer, who is not a party to these writ petitions.

2. Section 6 of the Bihar Motor Vehicles Taxation Act, 1994 (hereinafter called "the Taxation Act") provides that tax at the annual rate specified in Schedule III in lieu of the rates specified in Schedule I shall be paid by a manufacturer of, or a dealer in motor vehicles, in respect of the motor vehicles in his possession, in course of his business as such manufacturer or dealer under the authorisation of the trade certificate granted under the Central Motor Vehicles Rule, 1989.

According to the Commercial Taxes Department, the petitioners, who are admittedly dealers, selling two wheelers like motor bikes and scooters, are also liable to tax u/s 6 of the Taxation Act from the day the Act came into force and since taxes due under the Act have not been paid by them, they are also liable to penalty u/s 23 of the Taxation Act. An attempt was made earlier to challenge the validity Section 23 of the Taxation Act, but a Full Bench of this Court upheld the constitutional validity of that section. It is said that one of the parties to one of the writ petitions leading to that decision, has filed an appeal in the Supreme Court and the appeal is pending and the Supreme Court has stayed the imposition of the penalty as regards that dealer. Section 2(c) of the Taxation Act adopts the definition of Motor Vehicle in the Motor Vehicles Act, 1988, for the purpose of the Taxation Act. A motor vehicle is defined by Section 2(28) of the Motor Vehicles Act as meaning any mechanically propelled vehicle adopted for use upon roads, whether the power of propulsion is transmitted thereto from an external or internal source, but it does not include a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres. The petitioner conceded that the two wheelers traded in by them, satisfies the definition of a motor vehicles u/s 2(28) of the Motor Vehicles Act, but they pointed out that Sub-section (27) of Section 2 of the Motor Vehicles Act separately defines a motor cycle and since the vehicles dealt with by them satisfy the definition of "motor cycle", they cannot be deemed to be motor vehicles as defined in Section 2(28) of the Act. But it has to be noted that Section 2(c) of the Taxation Act adopts the definition of motor vehicles in the Motor Vehicles Act and Section 6 of the Taxation Act imposes a liability to tax on a dealer in motor vehicles. Though motor cycles may be a species of motor vehicles, obviously, it would come within the definition of the motor vehicles as contained in the Motor Vehicles Act and as adopted by the Taxation Act. Therefore, the claim that two wheelers in which the petitioners are carrying on their business cannot be treated as motor vehicles liable to tax u/s 6 of the Taxation Act cannot be accepted.

3. In *M/s Tata Engineering and Locomotive Co. Ltd. Vs. The State of Bihar and Another*, , the Ranchi Bench of the Patna High Court, in addition to upholding the validity of the Taxation Act, also held that Section 6 In clear terms levies tax on dealers in respect of the motor vehicles in course of their business and that the plea that a two wheeler does not come within the definition of Motor Vehicle in Section 2(28) of the Motor Vehicles Act as adopted by the Taxation Act, was unable and that the definition does take a two wheeler and three wheeler vehicles. The Division Bench further held that tax u/s 6 read with Schedule III of the Taxation Act was payable on two wheelers and three wheelers. There was no argument before us that the said decision does not lay down the correct law or that it requires reconsideration.

4. In *Telco v. State of Jharkhand* 2003 (1) JLJR 601, the validity of the Taxation Act was challenged, but the challenge was repelled by the Full Bench. Almost all these petitioners had earlier filed writ petitions challenging the demand of tax in

CWJC No. 219 of 1996 and the connected cases. The Division Bench upheld the demand for tax issued against the petitioners, but gave the petitioners an opportunity to show cause against the proposed imposition of penalty by treating the demand notice impugned in these writ petitions as notices to show cause. A time limit was fixed. Some of the dealers apparently did not file objections within the time. Whatever it be, the liability to penalty was upheld by the authority which called upon them to pay the tax and the penalty and threatening coercive action on their failure to do so. It is at that juncture that the petitioners have again approached this Court with these writ petitions.

5. Though an attempt was made by learned counsel appearing for the petitioners to contend that no tax was leviable u/s 6 of the Taxation Act on dealers of two wheelers, the said argument cannot be accepted on the clear language of Section 6 of the Taxation Act read with the definition of Motor Vehicles in Section 2(28) of the Motor Vehicles Act as adopted by the Taxation Act. Moreover, as we have noticed, that question stands concluded against these petitioners by the judgment marked as Annexure 1 and the two reported judgments referred to above. In this situation, what was argued by the learned counsel was that since the petitioners were earlier challenging the very liability and constitutional validity of the section imposing the liability and had not paid the tax and in that situation, this was a fit case for waiving the penalty under the Taxation Act.

6. Rule 4 of the Bihar Motor Vehicles Taxation Rules, indicates that due date of payment of tax under the Taxation Act and the penalty for non-payment of tax in time. If a dealer in motor vehicles who is liable to tax u/s 6 of the Taxation Act fails to pay tax within 90 days after its due date, penalty twice the tax due had to be charged in terms of the table annexed to Rule 4 of the Taxation Rules. The validity of Rule 4 of the Taxation Rules was upheld by the Court in Lal Mohan Singh and Anr. v. State of Bihar 1996 (1) BLJR 972. There was also no attempt to challenge the said rule before us. In this situation, what we have to consider is the scope of Section 23 of the Taxation Act read with Rule 4 of the Taxation Rules. Section 23 of the Taxation Act provides that if the tax payable in respect of a vehicle has not been paid during the prescribed period, the person liable to pay such tax shall pay together with arrears of tax a penalty at the rate prescribed by the State Government. Section 23 of the Taxation Act read with Rule 4 of the Taxation Rule does not give any discretion as such to the authority concerned. Delayed payment of tax automatically attracts penalty u/s 23 of the Act, and Rule 4 of the Taxation Rules specifies the rate of penalty depending on the extent of the delay in making the payment. In Taxing Office v. Ajit Singh , dealing with the corresponding provision in the Bihar and Orissa Motor Vehicles Taxation Act, 1930 imposing penalty for default in payment of tax, the Supreme Court took the view that the penalty payable was the prescribed penalty and nothing more or nothing less. In our view, the position under the Taxation Act of 1994 read with the Taxation Rules made thereunder, is the same. The liability to pay tax within the time is imposed by the Statute and the Statute itself prescribes the penalty for the delayed payment depending on the extent of the

delay. In our view, there is no discretion in the taxing authority in the matter of collecting penalty as prescribed by Section 23 of the Taxation Act read with Rule 4 of the Taxation Rules. A discretion like the one available u/s 28 of the Taxation Act imposing penalty for use of a vehicle without paying tax is not available u/s 23 of the Taxation Act. We are fortified in our view by the view taken in the decision of the Supreme Court referred to above.

7. It is, no doubt, true that while rendering Annexure 1 judgment, this Court gave an opportunity to the petitioners to make representations against the imposition of penalty but that by itself does not enable the petitioners to claim that they are not liable to penalty for non-payment of tax in time or for the authority concerned to give reduction in the matter of penalty when the statute itself imposes it at prescribed rates. Therefore, nothing turns on the argument that on an earlier occasion, this Court gave an opportunity to the petitioners to make representations against the imposition of penalty on the basis that there was a discretion in that behalf in the concerned authority. On the scheme of the Taxation Act as understood in *Ajit Singh's Case*, we are satisfied that the demand for penalty in terms of the Schedule, which is part of Rule 4 of the Taxation Rules, is fully justified and it calls for no interference by this Court.

8. In the above view, we find no merit in these writ petitions. They are dismissed, but in the circumstances, without any order as to costs.