(2008) 09 JH CK 0059

In the Jharkhand High Court

Sagar Mal Agrawal APPELLANT

Vs

State of Jharkhand and Another RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:
Bihar Motor Vehicles Taxation Act, 1994 — Section 5

Citation : (2008) 4 JCR 496

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This application has been filed for issuance of a writ in the nature of certiorari for quashing the order as contained in memo No. 1797 dated 7.9.007 (Annexure 6) whereby respondent No. 2, District Transport Officer, Jamshedpur has raised the demand of Rs. 1,51,674/- as dues against the road tax of the vehicle of the petitioner for the period from 29.2.1998 to 27.8.2007.

2. It is the case of the petitioner that the petitioner is having a Bus, bearing No. BR-01P-4517 which is having seating capacity for 37 persons including the driver. The registering authority having inspected the said vehicle issued certificate of registration in favour of the petitioner under Central Motor Vehicles Act and, thereupon, the vehicle was being plied in the inter State route Seraikela to Rairangpur under permit No. P.St.P.03 of 1990 which permit is valid upto 10.5.2010. granted by State Transport Authority, Jharkhand and that petitioner had been regularly paying annual road tax/additional tax on quarterly basis for the vehicle having seating capacity of 37 including the driver in terms of Section 5 of the Bihar Motor Vehicles Taxation Act, 1994 and that the tax token was issued for the period upto 27.8.2007 but when the petitioner approached respondent No. 2 for depositing quarterly tax for the period from 28.8.2007 to 27.11.2007, the respondent No. 2 refused to accept the tax but in spite of that, petitioner deposited tax of Rs. 4005/- in order to avoid penalty. Subsequently, respondent No. 2 issued memo No. 1797 dated 7.9.2007 raising demand of Rs.

1,51,674/- against road tax/additional Motor Vehicle Tax showing outstanding dues against the vehicle for a period from 29.2.1998 to 27,8.2007. On getting demand notice, petitioner became perplexed and hence approached the respondent No. 2, who verbally told that tax has been demanded for the vehicle for 53 seating capacity instead of 37 seating capacity which also includes 200 per cent fine on the arrears.

3. Being aggrieved with that order, the petitioner has preferred this writ application.

4. Counter affidavit has been filed on behalf of the respondents wherein it has boon stilled that as per Rule 126 of the Bihar Motor Vehicles Rules 1992 seating capacity of public service vehicle is to be fixed as per their wheel base and tax be realized accordingly and as the petitioner''s wheel base is of 205", it will have capacity of 53 seats but the petitioner had been paying tax and additional tax over 37 seats whereas wheel base was 205" and therefore, demand notice was issued raising demand of Rs. 1,51,674/- as road tax/additional tax.

5. Thus, the question falls for consideration as to whether the respondent is entitled to levy additional tax for more than seating capacity, i.e., more than 37 seats when transport vehicle of the petitioner is having seating capacity of 37 persons.

The relevant provision dealing with levy of tax is Section 5 of the Bihar Motor Vehicle Taxation Act stipulating therein that every owner of a registered vehicle is required to pay additional Motor-Vehicle Tax on such vehicle as the rate specified in Schedule II. The said provision is being reproduced hereinbelow:

5. Levy of Tax- (1) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule-I.

(2) Subject to other provisions of this Act, on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay additional Motor Vehicle Tax on such vehicle at the rate specified in Schedule-II.

(3) The State Government may by notification from time to time, increase the rate of tax specified in the Schedules.

Provided that no such increase shall, during any year exceed fifty per cent of the rate of taxes prescribed in the Schedules.

Further Schedule II prescribes annual rate of additional Motor Vehicle Tax on different vehicles such as, goods carriages, motor cabs and Transport vehicles of different seating capacity. Therefore, it would be pertinent to reproduce relevant item of Schedule II which is as follows:

Schedule II [Sub-section (2) of Section 5] Additional Motor Vehicles Tax on Transport Vehicles

-- Serial No. Class of vehicles Annual rate of Additional Motor Vehicles Tax -- 1. .... 2. .... 3. Transport vehicles excluding goods carriages and motor cabs.

(a) with seating capacity more Rs. 240/-for than 6 but not exceeding every seat. persons exclusive of the driver

(b) with seating capacity more Rs. 320/-per than 15 persons but not seat exceeding 32 persons exclusive of driver and conductor.

(c) with seating capacity Rs. 416/-per exceeding 32 persons seat exclusive of driver and conductor. --

Thus, as per serial No. 3(c) of the aforesaid schedule annual rate of tax on motor vehicles/transport vehicles with seating capacity exceeding 32 persons exclusive of driver and conductor would be Rs. 416/- per seat whereas respondent as per the counter affidavit is levying additional tax on 53 seats as the wheel base of the petitioner''s vehicle is 205", on the basis of letter issued by the Transport Commissioner as contained in memo No. 4374 dated 30.9.2000 (Annexure A) which is quite inconsonance with the provision, as shown above, with respect to levy of tax on transport vehicles and as such, the respondent is not entitled to levy additional tax in terms of the aforesaid letter (Annexure A) as the said letter will never have overriding effect upon the statutory provision and as such, additional tax is to be realized as per serial 3(c) of Schedule II.

6. It would be worth while to note here that as per the counter affidavit, Annexure A has been issued in compliance of the provision as enshrined in Rules 82 and 129 of the Central Motor Vehicles Rules, 1989 but that provision never empowers the transport authority to levy additional tax more than what is prescribed in Schedule II of the Bihar Motor Vehicles Taxation Act as the Bihar Motor Vehicles Taxation Act and other Acts are self contained Codes and operate in different fields, and hence, an officer empowered to do a particular Act in accordance with the provisions of one Act could not have power conferred upon him under the other Act.

7. Thus, notice (Annexure 6) raising demand against the vehicle of the petitioner to the extent of Rs. 1,51,674/- being quite illegal, unconstitutional is hereby set aside. Accordingly, the respondents are directed to levy additional tax in terms of relevant Clause of Schedule II of Motor Vehicle Taxation Act.

Accordingly, this writ application is allowed.

