

(2014) 11 OHC CK 0088

In the Orissa High Court

Case No : Writ Petition (Civil) Nos. 19895, 19986, 20436, 20456, 20457, 20471, 20475, 20476, 20477, 20478, 20479, 20480, 20481, 20482, 20483, 20484 and 20485 of 2014

Sujit Ku. Dhir

APPELLANT

Vs

R.T.O.

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Motor Vehicles Taxation Act, 1975 — Section 13, 14, 17, 17(2), 18

Citation : (2014) 2 OLR 1070

Hon'ble Judges : Dr. B.R. Sarangi, J

Bench : Single Bench

Judgement

Dr. B.R. Sarangi, J.—In the above batch of writ petitions, the petitioners have challenged imposition of tax and penalty by the authorities under the Orissa Motor Vehicles Taxation Act, 1975, hereinafter referred to as "the Act" in short, and Orissa Motor Vehicles Taxation Rules, 1976, hereinafter to be referred to as "the Rules" in short. Since common questions of facts and law are involved in these writ petitions, the same heard together and are disposed of by this common judgment.

2. The fact leading to filing of these petitions is that the petitioners were directed to pay tax and in default thereof to pay penalty as contemplated under the provisions of the Act and Rules. Consequentially demand notices were issued to them by the opposite party authorities for realization of the same from them. Though mechanism has been prescribed under the Act and Rules, instead of availing such remedy and complying with the same, the petitioners have straightway approached this Court invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

3. Learned counsel appearing for the petitioners submitted that imposition of tax and penalty by the authorities is arbitrary, unreasonable and as such no time

limit has been prescribed under the provisions of law with regard to initiation of any proceeding inasmuch as it is a lingering process. In the event such procedure is adhered to, it would cause great prejudice to the petitioners because power has been vested on the authority, who is busy in administrative work, and not able to discharge the duty under the provisions of law and could not consider the application in due time with regard to non-payment of tax and penalty, as a result the movement of the vehicles would be stalled. Further by use of word "may", in Section 13 of the Act it gives an unfettered power on the authority for imposition of penalty, which causes great prejudice to the petitioners.

4. Mr. J. Pal, learned standing counsel for the Transport Department, strenuously refuted the contentions raised by the learned counsel for the petitioners and stated that Section 3 of the Act being a charging Section, power has been vested on the authority to levy on every motor vehicle used or kept for use within the State to pay tax at the rate specified in Schedule-I and Schedule-III. Section 4 of the Act requires payment of tax in advance and as such, there is no requirement of assessment such tax, rather it is a self-assessment process for which the owner of the vehicle has to pay tax because rates have already been mentioned in Schedule-I and Schedule-III. In Schedule-I and Schedule-III for every class of vehicle rate have been fixed. In Schedule-I though the rate was fixed differently, due to subsequent amendment by Schedule -III for personal vehicles there is introduction of one time tax. Section 66 of the Motor Vehicles Act, 1966 deals with necessity of permits for motor vehicle and unless the motor vehicle has got permit issued by the competent authority, the vehicle cannot be used. To have permit, tax has to be paid by the owner in compliance with the provisions contained under the Act and Rules framed thereunder in time. If the tax is not paid in time, under Section 13 of the Act, power is there to impose penalty and rate of penalty has been prescribed in the Table of Sub-rule (2) of Rule 9 of the Rules and the manner of recovery has been prescribed under Section 14 of the Act. If anybody is aggrieved by any order of the competent authority he may preferred an appeal under Section 18 of the Act and the procedure has been envisaged under Rule 22 of the Rules and if anybody is aggrieved by the order of the appellate authority, he/she may prefer revision under Section 19 of the Act. Apart from the same if the tax is not paid, power has been vested with the police and other officers to seize the vehicle under Section 17(2) of the Act because non-payment of tax is an offence under Section 20 of the Act. Any order or direction issued under Sub-section (2) of Section 17 of the Act is also an appealable as per Section 18 of the Act. Therefore, since adequate mechanism has been prescribed under the Act and Rules, this Court should not interfere with the demand raised by the authorities.

5. Considering the above contentions raised by the learned counsel for the parties, the following questions arise for consideration:

"I. Whether the mechanism available under the statute is sufficient for just and

proper adjudication of the case under the Act and Rules framed thereunder? and

II. Whether the writ petitions are maintainable in view of availability of alternative remedy under the statute?"

6. The State legislature enacted the Act to consolidate and amend the law relating to Taxation on Motor Vehicles "the Orissa Motor Vehicles Taxation Act, 1975". To give effect to the provisions of the Act, Rules have been framed called " Orissa Motor Vehicles Taxation Rules, 1976". Section 3 of the Act deals with levy of tax which reads 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 and Schedule-III.

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

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

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

7. Levy of additional tax can be imposed in view of the provision contained under Section 3A of the Act, which has been inserted vide Section 3 of the Orissa Act No. 2 of 1986 and given effect to from 18.10.1985. Section 4 deals with payment of tax and declaration of liability. Under Section 4A of the Act has been inserted by way of amendment vide Orissa Act No. 8 of 1989 w.e.f. 01.06.1989 empowering levy and payment of onetime tax. Admittedly, Section 3 is a charging Section under which power has been vested for levy of tax on every motor vehicle used or kept for use within the State at the rate specified under Schedule-I and Schedule-III. Under sub-Section-2 of Section 3, the State Government may by notification from time to time increase the rate of tax in Schedule-I and Schedule-III with a rider that such increase shall not exceed 50% of the rate specified. Section 4 makes an obligatory on the part of the use of the vehicle or kept for use of the vehicle to pay tax and declaration of liability. Therefore, the tax in question has to be paid in advance within such time and in such manner as may be prescribed to the taxing officer by the registered owner or person having possession or control of the vehicle. Sub-section (2) of Section 4 prescribed the period in respect of which tax is to be paid under Sub-section (1) of Section. On consideration of the entire provisions contained in Section 4, it appears that there may not be requirement of issuance of demand notice, rather it is a self-assessment process for which the registered owner or a person having possession or control over the vehicle is to deposit the tax to the taxing authority. As per Schedule-I, time and amount have been fixed for different categories of vehicles used by the registered owner. Section 4A which has been

inserted by way of amendment, levy and payment of onetime tax by using a non obstante clause, i.e., notwithstanding anything contained in Sections 3 and 4 of the Act, but subject to other provisions of the said Section, 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, onetime tax at the rate equal to the standard rate as specified in Schedule-III or five per centum of the cost of the vehicle whichever is higher is to be paid. Therefore, as per the provisions contained in Sections 4 and 4A, a registered owner is to pay tax in accordance with the said provision. If the tax due in respect of any motor vehicle has not been paid as specified in Sections 4 and 4A, 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 under Section 13 of the Act. Sub-section (2) of Section 13 reads as follows:

"13(2). The penalty imposed under Sub-sec. (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."

8. In view of sub-section (2) of Section 13 mentioned above, no penalty shall be imposed without giving the party concerned a reasonable opportunity of being heard.

9. Sections 18 and 19 of the Act deals with appeal and revision, which read as follows:

"18. Appeal-(1) Any person aggrieved by any order or direction of the Taxing Officer or by seizure made under Sub-sec. (2) of Sec. 17 may, within prescribed time and in the prescribed manner, prefer an appeal to such authority on payment of such fees, if any, as may be prescribed.

(2) Every appeal shall be heard and disposed of in the prescribed manner;

(3) Every decision on such appeal shall, subject to the provisions of Sec. 19, be final and shall not be called in question in any Court of law."

10. In view of the aforesaid provisions contained in the Act, any person aggrieved by any order of the Taxing Officer or by seizure made under Sub-sec. (2) of Section 17, may prefer appeal to such authority on payment of such fees as may be prescribed and if anybody is aggrieved by the order passed by the appellate authority under Section 18, may prefer revision under Section 19. Section 17 vests power on the police officer and other officers to seize the vehicle under sub-section (2), which reads as follows:

"17. Powers of Police Officer and other officers--(1) Any Taxing Officer any police officer in uniform not below the rank of Sub-Inspector, or any officer of the State Motor Vehicle Department not below the rank of Junior Inspector of Motor

Vehicles or any other Officer specially authorized by the Transport Commissioner in this behalf may

(a) enter at any time between sunrise and sunset any premises where he has reason to believe that a motor vehicle is kept; or

(b) require the driver of any motor vehicle in any public place to stop such vehicle and cause it to remain stationary so long as may reasonably be necessary, for the purpose of satisfying himself that the amount of tax including the penalty, if any, levied under Sec. 13 in respect of such vehicle has been paid and the tax has been obtained.

(2) While proceeding under Sub-sec. (1) the officer may, if the tax or the penalty, if any, or both tax and penalty has not been paid in accordance with the provisions for this Act, seize the motor vehicle and detain it till the tax or the penalty, or both, as the case may be, is paid and on such seizure the officer shall take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle; and the registered owner, the person having possession or control of the vehicle and the driver thereof shall be bound to comply with all orders and directions as the said officer may in respect of the movement of such vehicle, issue for giving effect to such seizure.

Provided that no such seizure shall be made and no such vehicle shall be retained in custody except in such manner, under such circumstances and subject to such conditions as the State Government, having regard to the reasonable convenience and facility of transport of the passengers and goods, if any, may prescribe."

11. The proviso to sub-section (2) of Section 17 states that no seizure shall be made and no such vehicle shall be retained in custody except in such manner, under such circumstances and subject to such conditions as the State Government having regard to the reasonable convenience and facility of transport of the passengers and goods, if any, may prescribe. The provisions as contemplated under sub-section (2) of Section 17 can also be invoked to seize the motor vehicle for non-payment of arrear due which has been held by this Court in *Pabitra Ranjan Dash v. Collector-cum-Chairman, Regional Transport Authority, Cuttack* and another, 1992(II) OLR 310.

12. Non-payment of tax is construed to be an offence under Section 20 of the Act. The quantum of imposition of tax has been prescribed in Schedule-I and Schedule-III of the Act. The quantum of penalty has also been prescribed under Rule 19 of the Rules. Under Sub-rule (2) of Rule 19, a table has been given showing the period and the amount of penalty, which reads as follows:

13. Imposition of penalty should be in conformity with the provisions contained in Section 13 of the Act read with Rule 9 of the Rules. Though appeal has been prescribed under Section 18, certain procedure has been envisaged under Rule 22 of the Rules. Simultaneously, while the provision of revision has been

prescribed under Section 19, the procedure of such revision has been laid down in Rule 23 of the Rules. Therefore, the entire Act and the Rules provide a detailed mechanism for levy of tax and imposition of penalty, realization thereof and if any person is aggrieved by any order, there is a forum for appeal. Rules and procedure have also been envisaged under the Rules inasmuch as Sub-section (2) of Rule 13 clearly envisages that no penalty can be imposed without affording a reasonable opportunity of hearing. Therefore, any imposition of penalty by the authority has to be made in compliance with the provisions contained in sub-section (2) of Section 13. When such forums are available under the taxing statute, the extraordinary jurisdiction of this Court should not be invoked.

14. A taxing statute has to be strictly construed. In *Tenant v. Smith*, (1892) AC 150, it is held that "the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words." The same view has also been taken by Lord Simonds in *St. Aubyn v. A.G.* (1951) All ER 473. Similar view has also been taken by the apex Court in *Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others*, , and *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, .

15. In *Cape Brandy Syndicate v. IRC*, (1921) 1 KB 64, Rowlatt, J. expressed the principle in the following words:

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Similar view has also been expressed by the apex Court in a plethora of judgments such as, *Calcutta Jute Manufacturing Co. and another Vs. Commercial Tax Officer and others*, , *Orissa State Warehousing Corporation Vs. Commissioner of Income Tax*, , *The Federation of Andhra Pradesh Chambers of Commerce and Industry and Others Vs. State of Andhra Pradesh and Others Etc. Etc.*, , *Commissioner of Central Excise, Meerut Vs. M/s Kisan Sahkari Chinni Mills Ltd.*, and *Union of India and Another Vs. Azadi Bachao Andolan and Another*, .

16. In view of the provisions of law, it is well settled that since the taxing statute requires strict construction, if mechanism has been prescribed under the taxing statute, the same should be strictly adhered to. Therefore, if the mechanism is available under the statute for just and proper adjudication of the case under the Act and the Rules, and the taxing statute requires strict construction and also application thereof, this Court should not entertain these writ petitions on the ground of speedy and efficacious remedy available to the petitioners.

17. The provisions contained in the Act and Rules, indicate that a self contained Act provides appellate and revisional forums, for which due alternative remedy is available under the statute. Therefore, no writ petition should have been entertained by this Court.

18. A Constitution Bench of the apex Court in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, have already decided the point involved in these writ petitions, which has been followed and reiterated in subsequent judgments such as, *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others*, , *Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others*, and *Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others*, . Apart from the same, time and again the apex Court has held that a party must exhaust the statutory remedies before resorting to writ jurisdiction and the same has been decided in *C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another*, and in *H.B. Gandhi v. M/s. Gopinath & Sons*, 1992 (Suppl.) 2 SCC 312.

19. So far as entertaining these writ petitions is concerned, it should be within a limited compass, to mean, the writ court can entertain the petition provided the order is alleged to be without jurisdiction or has been passed in flagrant violation of the principles of natural justice, or the provisions of the Act/Rules are under challenge. This view has been taken by a Constitution Bench of the apex Court in *K.S. Venkataraman and Co. Vs. State of Madras*, . The apex Court in *Sheela Devi Vs. Jaspal Singh*, has categorically held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

20. In view of the above, it appears that there is availability of alternative remedy under the law, alternative remedy may be statutory, non-statutory or constitutional where a right is created by a statute. The statute itself may provide for a remedy for violation of such rights. Where a statute creates a right or liability and also prescribes a remedy or procedure for enforcement of that right or liability, resort must be had to that remedy before invoking the extraordinary and prerogative writ jurisdiction of the High Court under Article 226. Hence, where statutory remedy is available, petition under Article 226 is not generally entertained since Article 226 is not intended to circumvent statutory procedures. Such principle of law has been settled by the apex Court in *Danda Rajeshwari Vs. Bodavula Hanumayamma and others*, and *Shivgonda Anna Patil and Others Vs. State of Maharashtra and Others*, .

21. Keeping the aforesaid law laid down by the apex Court mentioned supra in view where a party has a statutory remedy available under the relevant statute, he cannot bypass the said remedy and file a writ petition under Article 226. It was held that if such a procedure is adhered to, it may enable the litigant to defeat the provisions of the statute. The normal rule is that a writ petition should not be entertained when statutory remedy is available under the concerned legislation unless exceptional cases are made out in view of the ratio decided by the apex Court in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , *Scooters India and Others Vs. Vijai E.V. Eldred*, , *Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another*, , *Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs.*

and Others, U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, , U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, and Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, .

22. Considering the above principles, the law laid down by the apex Court and looking into the provisions contained in Act and Rules framed thereunder, this Court is of the view that while adequate remedy is available under the statute, the petitioners having approached this Court invoking the extraordinary jurisdiction without availing the same, entertaining these writ petitions would otherwise amount to permitting the petitioners to bypass the remedy available under the statute, which is not in conformity with law. Accordingly, the petitioners should not be encouraged to avail the extraordinary jurisdiction of this Court bypassing the statutory remedy available under the Act and Rules.

23. In the aforesaid facts and circumstances, and in view of the law discussed above, the writ petitions are disposed of observing that the petitioners may ventilate their grievance by approaching the appellate/revisional forum(s) as per Sections 18 and 19 of the Act.

24. Before parting with the case, this Court observes that penalty cannot be imposed at the whims and caprices of the authorities and rather while imposing the same, the requirement of sub-section (2) of Section 13 has to be adhered to by giving the party concerned, a reasonable opportunity of hearing and recovery of tax and penalty be made in consonance with the provisions contained in Section 14.