

(2002) 06 JH CK 0028
In the Jharkhand High Court
Case No : Writ Petition (C) No. 972 of 2002

Suresh Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Bihar Motor Vehicles Taxation Act, 1994 — Section 17, 5
Bihar Motor Vehicles Taxation Rules, 1994 — Rule 13, 15

Citation : AIR 2002 Jhar 156 : (2003) 1 ACC 6

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Tapen Sen, J

Bench : Division Bench

Advocate : Rajeev Ranjan, for the Appellant; AAG, for the Respondent

Final Decision : Allowed

Judgement

1. Section 5 of the Bihar Motor Vehicles Taxation Act, 1994, makes every owner of a registered motor vehicle liable to pay tax on such vehicle at the rate as specified in the Schedule to the Act. Section 17 of the Act read with Sections 18 and 19 stipulates that if prior intimation of temporary discontinuance of use of the vehicle is given to the Taxing Officer in accordance with the procedure prescribed in the rules, the registered owner can be granted benefit of exemption from payment of tax or refund of tax for the period during which the vehicle was not in use. The petitioner is the owner of the vehicle bearing registration No. BEN 6555 and claims exemption from payment of tax for the period 15.3.2000 to 15.9.2000 on the ground that during this period the vehicle was not in use the same having been forcibly taken away by MCC terrorists.

2. u/s 31 of the Bihar Motor Vehicles Taxation Act, 1994 the State Government has been given power to make rules for the purpose of carrying into effect the provisions of the Act. Sub-section (2) of Section 31 of the Act, in particular stipulates that the State Government shall have the power to make rules for prescribing the form of undertaking to be delivered u/s 17 and the particulars to be stated therein etc. etc. Accordingly, the Bihar Motor Vehicles Taxation Rules,

1994 were framed in exercise of the power conferred on the State Government by the aforesaid Act. Whereas Rule 13 requires the registered owner to convey the intimation for temporary discontinuance of the use of the vehicle in form "J", Rule 15 prescribes procedures for enquiry in respect of temporary discontinuance of the vehicle. For ready reference, we reproduce herein-below Rule 15, which reads thus :--

"15. Procedure for enquiry in respect of temporary discontinuance of vehicles.-- Following procedure shall be adopted by the Taxing Officer for enquiry in cases of temporary discontinuance from use of vehicles enumerated in Section 19.

(a) Immediately on receipt of undertaking specified in Section 17 along with enclosures the Taxing Officer shall initiate a Tax Record.

(b) The Taxing Officer, either himself or Motor Vehicle Inspector or through in any officer of enforcement branch not below the rank of Sub-Inspector shall carry out physical verification of the parking place of the vehicle at least once a month in a random manner. He shall record the memo of inspection on the order sheet of the concerned case record indicating the present position of the vehicle.

(c) If the vehicle was always found on the parking place specified in the undertaking during the period of its temporary discontinuance from use, the Taxing Officer, if the amount of Taxes for the concerned period does not exceed Rs. 4000/- shall be competent to dispose of the case, otherwise shall forward the case record with his clear opinion to the State Transport Commissioner or to the Officer authorised by the State Government in this behalf for decision.

(d) If the vehicle is not found on its parking place during inspection made by taxing officer or by the other officer mentioned in (c) above, the claim for exemption of taxes shall stand dismissed without prejudice to any other legal action which may be taken against the owner for filing false undertaking.

(e) On intimation by the owner that the vehicle is ready for plying on road again the taxing officer shall release the papers of the vehicle to the owner."

3. Section 17 itself lays down that the registered owner shall furnish an undertaking duly signed and verified in the prescribed form, specifying the period during which the vehicle was incapable of being used and the place where the vehicle was to be kept during this period. The expression occurring in Sub-section (1) of Section 17, "the place where motor vehicle used to be kept" has to be read in conjunction with Rules 13 and 15 of 1994 Rules, because in Form "J" which is based on Rule 13, there is a column, which requires the registered owner to specify the place where the vehicle was parked during the period of non-use and Rule 15 clearly enjoins upon the Taxing Officer the duty to carry out physical verification of the parking place at least once in a month in a random manner. The consequence of the vehicle not being found at the place of parking as mentioned in Form "J" has also been spelt out in Rule 15. It is an undisputed case before us as set up by the petitioner and not controverted by the

respondents that Form "J" in terms of Rule 13 (supra) was duly submitted and in column 5 thereof, the place of parking was mentioned as "Bachra Kali Mandir" and the period since when the vehicle was incapable of being used was shown as starting from 16.3.2000. It, therefore, clearly emerges that it was the duty of the Taxing Officer to have satisfied himself with respect to the factum of the parking of the vehicle at the aforesaid place and it was open to the Taxing Officer. If, on physical verification, he found that the vehicle was not parked at that place, to refuse to grant exemption from payment of tax. Unfortunately, this did not happen. This requirement was not complied with by the Taxing Officer.

4. Earlier also, the petitioner's request for exemption was turned down and accordingly, he, challenging that order, moved this Court by filing CWJC No. 19 of 2001 and this Court, vide order dated 8.6.2001, directed the respondents to reconsider the issue in its perspective and pass an appropriate order. The operative part of that judgment reads thus :--

"After hearing the learned counsel for the parties, we dispose of this petition and by setting aside the order dated 4.4.2001 passed by the respondent No. 4, direct him to reconsider the issue in the light of the observations made hereinabove and to decide and find out as to whether, as a matter of fact, the petitioner did surrender the papers of the vehicle for the aforesaid period to the respondent No. 3 and if so; what was the effect of such surrender of papers with respect to the petitioner's claim for exemption from payment of road tax during this period. The respondent No. 4 shall decide the aforesaid question and pass appropriate consequential orders on reconsideration after hearing the party."

5. In the aforesaid background, when we read the impugned order dated 29.9.2001, we find that the competent authority did not taken to account the aforesaid assertion/information of the petitioner with respect to the parking of the vehicle during the period in question. Actually, looming to the text of the impugned order, the competent authority also appears to have totally misdirected itself by, on the one hand making observations that the District Transport Officer did not get the fact of the parking of the vehicle verified and, on the other hand, rejecting the request of the petitioner for grant of exemption from payment of tax.

6. Rule 15 (supra) casts an obligation upon the taxing officer to verify the factum of parking of the vehicle at a particular place during the relevant period for which exemption from payment of tax was claimed. It did not do so in the earlier order leading this Court to setting aside that order and issuing a direction as mentioned above. Despite remand, in the impugned order, once again, the taxing officer/competent authority has made the same mistake and has not dealt with the factual aspect relating to the parking of the vehicle. From combined reading of Rules 13 and 15, evidently, it was up to the Taxing Officer/competent authority, who, on verification had either to grant exemption or not to grant exemption. It did not do either. The period for which the tax was claimed was 15.3.2000 to 15.9.2000. The petitioner claimed that during this period, the

vehicle remained idle at the aforesaid place because it had been forcibly taken away from him by the terrorists belonging to the M.C.C. The clock cannot be put back. Undoubtedly, the vehicle is presently not at the aforesaid parking place. The stage therefore of verifying the aforesaid fact is now over. For the inaction on the part of the respondents, they cannot deny the benefit of exemption from payment of tax to the petitioner despite the petitioner having fulfilled all the requirements of law as far as his part was concerned.

7. For the aforesaid reasons, therefore, the impugned order is set aside and quashed. By declaring that the petitioner's claim for exemption could not be controverted and thus, the petitioner is held entitled to such exemption, we allow this writ application and by issuing a writ of mandamus direct the respondents not to charge tax from the petitioner from 15.3.2000 to 15.9.2000 in respect to the Vehicle No. BEN 6555. No order as to costs.