

In Re: Dilip Kumar Singh

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SooperKanoon Citation : sooperkanoon.com/857057

Court : Kolkata

Decided On : Jan-30-1991

Reported in : AIR1991Cal254

Judge : Susanta Chatterji, J.

Acts : [West Bengal Motor Vehicles Tax Act, 1979](#) - Sections 3, 4, 9, 11 and 16, 16(3) and (4)

Appeal No. : W.P. No. Nil

Appellant : In Re: Dilip Kumar Singh

Advocate for Def. : Pranab Kumar Dutta, Adv. for State

Advocate for Pet/Ap. : Moloy Kumar Basu and ;Arabinda Sen, Adv.

Judgement :

ORDER

1. Having heard Mr. Moloy Kumar Basu with Mr. Arabinda Sen for the writ petitioner and Mr. Pranab Kumar Dutt for the State respondents and considering the materials on record, a short point of law has arisen in this case inasmuch as the petitioner has challenged the order dated 1-1-91 and the order as communicated under Memo dated 17-12-90, copies whereof are Annexures 'E' and 'F' to the writ petition upon declaration that the provisions laid down in S. 16(4) of the [West Bengal Motor Vehicles Tax Act, 1979](#), as ultra vires. A notice has

since been served upon the learned Advocate General to appear.

2. Upon perusal of the materials on record this Court finds that the Vehicles bearing registration No. WBR 2400 (Bus) has been seized on 26-9-90 for non-payment of tax and additional tax under S. 3 of the West Bengal Motor Vehicle Tax Act, 1979, and under S. 4 of the West Bengal Motor Vehicle Additional Tax Act, 1989, and along with relating offences without permit, without registration certificate and certificate of fitness etc. The vehicle was liable to pay tax five times of the actual due tax and it was claimed that in terms of S. 16(4) of the said Act, the petitioner should pay the total dues of Rs. 47,495/-. It transpires that the petitioner has paid Rs. 18,997.95 paise in terms of the order of the Taxing Officer at Barrackpore and he has made payment according to S. 11 of the said Act. The Order dated 17-12-90 made by the Taxing Officer, Malda, was challenged before the Appellate Authority under S. 9 of the Act and the District Magistrate/Appellate Authority dismissed the appeal finding that under S. 16(4) of the Act, there is no discretion in the matter and the order of the Taxing Officer, Malda, was affirmed. Being aggrieved the petitioner has come in this Court.

3. Looking at S. 11 of the Act, it transpires that if the tax payable under S. 3 has not been paid during the prescribed period, the person liable to pay such tax shall--

(a) in the case of a transport vehicle pay penalty--

(i) of one quarter of the tax if payment is made, within 30 days after the expiry of the prescribed period;

(ii) of one-half of the tax if payment is made after 30 days but within sixty days after the expiry of the prescribed period;

(iii) equal to the amount of tax if payment is made after 60 (sixty) days;

(b) in case of other vehicles, pay penalty;

(i) of one quarter of the annual tax if payment is made within 30 (thirty) days after expiry of the prescribed period;

(ii) one-half of the annual tax if payment is made after 30 days but within 60 days after the expiry of the prescribed period;

(iii) equal to the amount of annual tax if payment is made after sixty days.

4. Mr. Basu appearing for the petitioner highlighted that in view of payment made by the petitioner in accordance with S. 11 of the Act, there is no question of attraction of S. 16(4) of the Act and, in fact, the question as to the vires of the Section need not be gone into at the stage regard being had to the facts of the case. Mr. Dutta, however, has strongly relied upon S. 16(4) of the Act which runs follows:--

'On the expiry of the period of thirty days the vehicle seized and detained may be sold unless the person liable to pay tax has within a further period of fifteen days paid to the Taxing Officer having jurisdiction five times the annual tax due in respect of such class of vehicles'.

5. Section 16 primarily relates to search and seizure. S. 16(3) provides inter alia that notwithstanding anything contained elsewhere in this Act, any officer referred to in sub-section (1) may seize and detain in such manner as may be prescribed, any motor Vehicle in respect of which tax is due until the person liable to pay tax--

(a) has satisfied the Taxing Officer having jurisdiction within 30 (thirty) days of the detention that the tax has actually been paid;

(b) has within 30 days of such detention paid to the Taxing Officer having jurisdiction the tax due together with the penalty to be paid for non-payment of tax within the prescribed time.

6. He has laid emphasis upon sub-sections (3) and (4) of S. 16 inasmuch as the payment made by the petitioner is beyond time and the mischief cannot be avoided and the interference of the writ court is not necessary.

7. With anxiety this Court has gone through the materials on record and considered the provisions of law as envisaged under S. 11 and S. 16 of the Act as indicated above. Admittedly, the petitioner has not paid the tax within the

prescribed time for which the vehicle was seized. It appears further that the matter was referred to the Taxing Officer and pursuant thereto the Taxing Officer at Barrackpore has found the liability to pay penalty for non-payment of tax in time, but the tax along with penalty as provided under S. 13 has been paid by the petitioner. The question arises as to whether in spite of payment made by the petitioner in terms of the order of the Taxing Officer under S. 11 of the Act, the petitioner would be liable to make further payment in terms of S. 16(4) of the Act. This Court does not find that there could be any application of S. 16(4) of the Act in a case where the Taxing Officer decides the liability of the petitioner to pay the arrear tax and the penalty for non-payment of tax in time. Once the petitioner has been asked to pay the tax along with penalty for nonpayment in due time, there should not be any double penalty as directed under S. 16(4) of the Act inasmuch as S. 16(4) and S. 11 are not contrary to each other and the question of vires is not gone into.

8. This Court finds that regard being had on the materials on record the impugned order is not justified to demand further penalty of five times as incorporated therein.

9. Considering this aspect, this Court does not find any bar or impediment to allow the petition to this extent that the impugned orders are set aside so far as the demand for payment of five times of tax. The petition is thus disposed of There will be no order as to costs.

10. Allegations contained in the writ petition should not be deemed to be admitted as no affidavit was filed nor any opportunity was given.

11. Let Xerox copies of the order be handed over to the learned Advocates on their application and on their undertaking to apply for and obtain certified copies of the same.

12. Order accordingly.