

31-07-2023

ct no. 13

sl. no. 9

sp

M.A.T. No. 1343 of 2023

With

CAN 1 of 2023

Sanjay Kumar Choudhary

-Versus-

The State of West Bengal & Ors.

Mr. Sakti Pada Jana

...for the appellant

Mr. Amal Kr. Sen, 1d. A.G.P.,

Mr. Jaladhi Das

...for the State of West Bengal

Ms. Aishwarya Rajyashree

...for the State of Jharkhand

1. The appeal is directed against the order dated June 26, 2023 passed by a Single Bench of this Court in WPA 5909 of 2023 (Sanjay Kumar Choudhury Vs. State of West Bengal & Ors.).
2. The facts of the case are that the appellant's vehicle bearing registration No. JH-04D 8651 was intercepted on January 13, 2023 at about 8 p.m. It was found that the vehicle did not have a valid permit. The tax payable under the Act was also not paid. The Officer also found that there was unauthorised alteration of the vehicle by the owner.
3. The vehicle is lying seized with the Motor Vehicles authority.

4. The appellant was issued a computer generated challan dated January 13, 2023 in which the offences have been recorded.
5. Mr. Sakti Pada Jana, learned counsel for the appellant submits that the vehicle was not plying in the first place and was lying stranded within the State of West Bengal at a garage. He further submits that while it is true that the interstate permit issued by the motor vehicles authority at Jharkhand had expired, his client has applied for renewal, which is still pending.
6. The vehicle was not carrying any passengers. It is however admitted that no tax has been paid on the vehicle that is acceptable within the jurisdiction of the West Bengal Motor Vehicles Authority.
7. Mr. Jana submitted that the allegations of plying vehicle with passengers and that tax was issued on the vehicle is untrue and incorrect. The seizure was wrong. The learned Single Bench had committed error according to Mr. Jana by dismissing the writ petition and relegating him to a statutory appeal under Section 9 of the West Bengal Motor Vehicles Tax Act, 1979 corresponding to Section 22 of the West Bengal Motor Vehicles Additional Tax and One Time Tax Act, 1989.

8. Mr. Amal Kr. Sen, learned Additional Government Pleader appearing for the State of West Bengal would place reliance on Sub-Section (2) of Section 4 of the West Bengal Motor Vehicles Additional Tax and One Time Tax Act, 1989 to counter the argument of the appellant that the authorised officer of the State under the Motor Vehicles Act does not have the power to seize a vehicle.
9. This Court notes in no uncertain term that Section 4(2)(c) of the said Act, as also Section 16 of the West Bengal Motor Vehicles Tax Act, 1979 corresponding to Section 19 of the Additional Tax Act, 1989 confers power on the concerned officer of the motor vehicles authority to seize any vehicle plying in derogation of either the Tax Act or Additional Tax Act. Indeed, Section 9 of the Tax Act of 1979 corresponding to Section 22 of the Additional Tax Act dated 1989, confers a power of appeal on an owner of a vehicle to challenge any action of the Motor Vehicles Inspector or Taxing Officer.
10. There are effective alternative remedies available to the appellant as found by the learned Single Bench. This Court also notes an additional reason as to why a writ Court should not interfere in matters of this nature, being

disputed questions of facts. A writ Court cannot adjudicate upon disputed questions of facts.

11. After having considered the observations of this Court, Mr. Sakti Pada Jana, learned counsel for the appellant submits that this client should be given an opportunity to pay all the dues in the impugned challan without prejudice to his rights and contentions to prefer an appeal under Section 9 of the West Bengal Motor Vehicles Tax Act, 1979.
12. Such leave is granted. The appellant may pay all the dues under the impugned challan dated January 13, 2023 to the concerned authority and prefer an appeal under Section 9 of the West Bengal Motor Vehicles Tax Act, 1979 or take any steps as he may be entitled to in law.
13. Mr. Jana, learned counsel for the appellant submits that the challan in question is not one issued by the Taxing Officer and hence, no appeal would rely. Mr. Sen, learned counsel for the State denies the same.
14. This Court is, however, inclined to treat the challan as one issued by the Taxing Officer under the provisions of the Act of 1979 and its corresponding provisions of 1989 Act.

15. With the aforesaid observations, MAT 1343 of 2023 shall stand disposed of without any further orders.
16. In view of the above, CAN 1 of 2023 shall also stand disposed of.
17. There shall be no order as to costs.
18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)