2025:HHC:14607

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1948/2024
Decided on: 15.05.2025

Arif Khan .....Petitioner

Versus

State of H.P. & ors. ....Respondents

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?[1] *Yes*

For the Petitioner: Mr. Rajiv Rai, Advocate.
.
For the Respondents: Mr. Anup Rattan, A.G. with Mr. I.N.Mehta, Sr. Addl. A.G. Mr. Ramakant Sharma, Mr. Navlesh Verma, Ms. Sharmila Patial, Mr. Sushant Kaprate, Addl. A.Gs. and Mr. Raj Negi, Dy.A.G. for respondents/State.

Justice Tarlok Singh Chauhan, Judge (oral)

The instant petition has been filed for grant of following substantive reliefs:

(i) that the Hon'ble Court may kindly be pleased to issue a writ of mandamus whereby, the respondents may kindly be directed to exempt the petitioner from making payment

[1]Whether reporters of the local papers may be allowed to see the judgment? Yes.

against all kind of taxes including Motor Vehicle Tax, Special Road Tax, Goods Tax, Token Tax, etc. in respect of vehicles purchased by the petitioner in the auction proceedings held on 27.6.2023 and is registered in the State of Himachal Pradesh.

(ii) that the Hon'ble Court may kindly further be pleased to issue the direction to the respondents to transfer the registration certificate of the vehicles purchased by the petitioner in the auction proceedings held on 27.6.2023 and is registered in the State of Himachal Pradesh."

2 The facts necessary for adjudication of the instant petition are that the Department of Excise and Taxation during the course of search and seizure with regard to tax invasion had seized certain vehicles belonging to M/s Indian Techno Mac Company Ltd. and the same had been in its custody till November, 2023.

3 It was pursuant to the order passed by this Court on 3.4.2023 in Company Petition No. 13/2014, titled as Moly Corp. Minerals vs. M/s Indian Technomac Co. that respondent No.8 i.e. Joint Commissioner, State Taxes and Excise conducted an auction on 27.6.2023 of certain assets belonging to the Indian Technomac Company, which included certain vehicles.

4 The petitioner amongst others participated in the auction proceedings and was declared as successful bidder in respect of certain vehicles that had been put to auction through auction-cum-tender notice on the basis of "**as is where is**", "**as is what is**" and "**whatever there is**". Out of enormous vehicles purchased by the petitioner in auction proceedings, 10 vehicles were found to be registered in the State of Himachal Pradesh.

5 This Court confirmed the sale in favour of the petitioner, who was handed over the possession of the vehicles pursuant to possession certificate dated 27.10.2023 and sale certificate dated 2.11.2023.

6 The petitioner thereafter applied for transfer of the registration in his name but was informed that the tax in respect of the vehicles purchased by him was pending for the period w.e.f. 1.4.2015 to 31.12.2023 and unless the taxes are cleared by the petitioner, the registration certificates of those vehicles could not be transferred in the name of the petitioner, hence the instant petition.

7 It is vehemently argued by Mr. Rajiv Rai, Advocate, that the State under Section 14 of the Himachal Pradesh Motor

Vehicles Taxation Act, 1972 (for short, "the Act") was competent to grant exemption where a registered owner or person having possession or control of motor vehicle has given previous intimation in writing to the taxation authority that the motor vehicle would not be used in any public place. He would further argue that in the instant case, vehicles in issue had been in possession, control and custody of the Department of Excise and Taxation and it was therefore duty cast upon them to have intimated the authorities accordingly.

8 We have heard the learned counsel for the parties and have also gone through the material placed on record.

9 It appears that the petitioner has misconstrued the provisions of the Act and cannot, therefore, be held entitled to exemption from payment of tax on motor vehicles purchased by him. This would be evident from perusal of Section 9 of the Act, which reads as under:-

> *LIABILITY TO PAY ARREARS OF TAX OF PERSON SUCCEEDING TO OWNERSHIP, POSSESSION OR CONTROL OF MOTOR VEHICLES:*
>
> *(1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for payment thereof and such person before having paid the tax has*

transferred the ownership of such vehicle or has ceased to be in possession or

control of such the person to whom the ownership of this vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax to the taxation authority.

(2) Nothing contained in this section shall be deemed to affect the liability to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle.

10 The case of exemption of the motor vehicle taxes and special road taxes under Section 14 of the Act can be considered only when a registered owner or the person having possession or control of the motor vehicle has given previous intimation in writing to the taxation authority that the motor vehicle would not be used in any public place for a period as envisaged under Section 14(2) of the Act.

11 It shall be apt to quote Section 14 of the Act, which reads as under:-

14. Exemptions.-

(1) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(2) When the registered owner or the person having possession or control of a motor vehicle specified in Schedule- I or Schedule- III has given previous intimation in writing to the taxation authority that the motor vehicle

would not be used in any public place, for a particular period, being not less than one month but not more than three months and deposits the certificate of registration of such motor vehicle along with route permit with the taxation authority concerned and obtained an acknowledgement thereof, he shall be exempted from the payment of tax for that period and the taxation authority shall also inform in writing the Superintendent of Police, Regional Manager, Himachal Road Transport Corporation concerned and the Director of Transport, to ensure that such vehicle is not used in any public place during the specified period.

(3) Where the State Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, and subject to such conditions as it may specify in the notification, exempt either totally or partially any class of motor vehicles or any motor vehicles belonging to any person or class of persons [or any motor vehicle playing on any route or part thereof] from the payment of the tax.

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(5) A rebate of 5 per cent shall be allowed to a person who is liable to pay tax under section 4 if he pays the tax for the entire year in one installment.

(6) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(7) Notwithstanding anything contained in sub-section (1) of section 3 and sub-section (1) of section 3-A, no tax shall be levied, charged and paid on any transport vehicle specified in column (2) of Schedule-III during the period of

detention and seizure of such transport vehicle for non-payment of tax under this Act.

12 Adverting to the facts of the instant case, neither previous owner/department having possession of the motor vehicles nor the petitioner submitted any previous intimation before the competent authority seeking exemption and thus was not entitled to benefit of Section 14(3) of the Act, which reads as under:-

> *"Where the State Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, and subject to such conditions as it may specified in the notification, exempt either totally or partially any class of motor vehicle or any motor vehicle belonging to any person or class of persons or any motor vehicle plying on any route or part thereof from the payment of tax."*

13 In addition to the aforesaid, this Court vide its order dated 1.4.2023 had directed the respondents to produce on record copy of brochure of auction-cum-tender, pursuant to which the petitioner has purchased vehicles in question so as to find out as to whether there was any condition regarding payment of taxes etc.

14 A perusal of condition No.19 of the auction notice would go to indicate that it was for the successful bidder/purchaser to pay GST, TDS, levies, duties taxes and cesses including registration charges, stamp duty, etc. as were applicable, over and above the approved bid amount.

15 It shall be apt to reproduce clause 19 of the tender, which reads as under:-

> *Successful bidder/purchaser shall pay GST, TDS, levies, duties, taxes and cesses including registration charges, stamp duty, etc. as were applicable, over and above the approved bid amount.*

16 Learned counsel for the petitioner then has pleaded equity stating that for no rhyme or reason and for no fault on the part of the petitioner, he has been burdened with a liability to pay taxes running into lacs of rupees.

17 It is more than settled that there is no equity in taxation law and further more equity would only come into play in case there is no law operating in the field. Here, there is already law operating in the field and therefore, equity has to yield before law. For, it is well settled that whenever conflict is between the law and equity, law would prevail.

18 In view of aforesaid discussions and for the reasons stated hereinabove, we find no merit in the instant petition and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

15.5.2025
(pankaj)