IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10734 of 2015

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Kamla Devi Singh, wife of Shri Rampyar Awadhesh Singh, resident of Old Barrack, T 51, Room no.5, Chembur Colony, Chembur, P.O.Chembur, P.S. Basant Park, Mumbai- 400074 through her authorized signatory amit Kumar Singh, Son of Shri Rampyar Awadhesh Singh, resident of Old Barrack, T 51, Room no.5, Chembur Colony, Chembur, P.O. Chembur, P.s. Basant Park, Mumbai-400074.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Assistant Commissioner of Commercial Taxes, Integrate Check Post, Kaimur (Bhabhua).

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy
Mrs. Manju Jha
For the Respondent/s : Mr. Raj Nandan Prasad, SC-9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

5 05-11-2015 Heard learned counsel for the petitioner and learned Standing Counsel No. 9 for the State.

The writ application has been filed originally for the release of transport vehicle no. MH 04 CP 1014 and for further direction to the respondent no. 2 the Assistant Commissioner of Commercial Taxes, Integrated Check Post, Karamnasha, Kaimur (Bhabhua) to recover the amount of penalty imposed by him under Section 56(4)(b) read with Section 60(4)(b) by auction sale of the vehicle in question as provided in

Section 56(4)(b) of the Bihar Value Added Tax Act, 2005 and for other reliefs.

During the pendency of the writ application the auction sale has been made and the amount of penalty has been recovered by the Department and the vehicle has also been released.

However, an issue was raised by learned counsel for the petitioner that the penalty has been imposed upon the JCB machine treating it as an item pertaining to the residuary category under the Bihar VAT Act and thus levying the tax liability upon it at the rate of 13.5% whereas the same falls under item 91 of Schedule-III of the Act for which a lower rate of tax has been prescribed @ 5% and thus the penalty amount would be correspondingly less and to that extent the impugned order is required to be set aside/modified.

Item No. 91 reads as "Plant and Machineries of all description".

Learned counsel for the petitioner submits that the issue is no longer res integra as the same has already been decided by this Court in the judgment dated 9.1.2014 passed in CWJC No. 5801 of 2011 (M/s. Speedcrafts Ltd. Vs. The State of Bihar & Ors.). In the said case the question arose as to whether the value added tax to be levied upon the various road transport equipments manufactured by the said company would be under item 91 of Schedule III or as a residuary item. The contention on behalf of the State was that the said item would fall under the category of motor vehicles which is not specified under the Bihar VAT Act and would fall under the residuary category. The contention of the petitioner, on the other hand, was that such construction equipments would fall under the category of plant and machineries under Item 91 of Schedule-III of the Act. Upon a consideration of a large number of authorities, this Court came to the conclusion that the equipments in question were undisputedly used for construction of roads and without the same no business engaged in construction of road would function and even the Road Roller is a construction equipment in so far as it has no use other than pressing the soil, grit and tar on the road surface and without the Road Roller no road can be completed. Considering the well settled law of construction of statutes and the principle of common parlance, it was held by the Court that the road construction equipments are necessarily "Plant and Machineries" within the meaning of entry 91 of Schedule III of the Bihar Value Added Tax Act, 2005.

In the present matter the seized good which was being transported by the vehicle of the petitioner was JCB manufactured by Bombay JCB Earthmovers. The said machine is used for various purposes including construction of road, filling and leveling of earth, etc.

Learned counsel for the State is unable to show as to how a different construction can be placed upon the said JCB machine so as to take it out of the purview of the entry 91 (Plant and Machineries) of Schedule-III of the Act.

In the aforesaid view of the matter, the order dated 3.5.2013 is modified to the extent that the tax for the purpose of calculating the penalty on the same shall be levied @ 5% instead of 13.5%.

The appropriation of the penalty from the amount realized by way of auction of JCB machine would be to the extent of the penalty amount so recalculated.

The writ application is, accordingly, disposed of with the above observations and directions.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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