IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6067 of 2018

==

1. The Union Of India through the General Manager, Eastern Railway, Kolkata.
2. The Chief works Manager, Eastern Railway, Jamalpur Having its Chief and Controlling office at and from 3, Koylaghat Street, Kolkata- 700001 (West Bengal).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Joint Commissioner, Department of Commercial Taxes (Appeal), Government of Bihar, Bhagalpur Division, Bhagalpur.
3. The Deputy Commissioner, Department of Commercial Taxes, Government of Bihar, Munger Circle, Munger.
4. Reserve Bank of India through the General Manager, Kolkata.

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Advocate and
Mr. Mritunjay Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar- SC11

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 03-04-2018

Having heard learned counsel for the parties, we find that the authorities of the Union of India representing the Eastern Railway, Calcutta have filed this Writ petition challenging an interlocutory order (Annexure-8) dated 20.03.2018 passed by the Appellate Authority, namely, the Joint Commissioner, Commercial Taxes (Appeal), Bhagalpur in the matter of rejecting the stay application filed by the railway administration.

While assessing the liability of the railway administration for payment of entry tax under the Entry Tax Act, tax liability for payment of entry tax for various periods from 2013-2014 to 2017-2018, amounting to Rs.9,42,82,333/-, has been imposed upon the petitioner and for the Assessment Year in question, i.e., 2016-2017, a penalty equivalent to the amount of tax has been imposed.

Challenging imposition of tax, appeal is pending before the Appellate Authority and an application for say was filed which has been rejected by the impugned order.

Even though Sri Vikash Kumar, learned counsel for the State, points out that in view of the judgment rendered by this Court in CWJC No.8169/2015 and various other cases and dismissal of the S.L.P. by the Hon’ble Supreme Court it is a settled principle of law that the railway administration is also a dealer liable to pay entry tax under the Value Added Tax Act and, therefore, the order of assessment passed was proper and rejecting the application for stay on such consideration the learned Appellate Authority has not committed any error.

Sri D.K. Sinha, learned Senior Counsel for the petitioner, argues that there was no bona fide belief with regard to the law laid down by this Court and affirmed by the Hon’ble Supreme Court. However, learned counsel for the railway argues that they have already deposited the tax amount and, for the present, pending disposal of their appeal, at least, recovery of the penalty should be stayed.

Learned counsel for the State points out that as on date the entire liability including tax and penalty seems to have been recovered by the authorities concerned and, for the same, he invites our attention to the Notice in Form N-XI at page 46 (Annexure-5) to show that the entire liability amounting to Rs.9,51,20,584/- which is the tax liability and the penalty liability for the three Financial Years, i.e., 2013-2014, 2016-2017 & 2017-2018, have already been recovered.

Taking note of the submissions made, for the present, we are not inclined to go into the merits of the issue with regard to the liability of the railway to pay the tax in question. The same being pending consideration before the Appellate Authority, it is for the Appellate Authority, at the first instance, to decide the aforesaid issue based on the judgment, already indicated by us during the course of hearing.

However, as far as deposit of penalty is concerned, for the present, taking note of the similar situation that was considered in a dispute, identical in nature between the railway and the tax department on 16.04.2012 in CWJC No.7279 of 2012, in case the penalty amounts for the periods in question have not been recovered, recovery of the penalty amounts should be kept in abeyance till disposal of the appeal before the Appellate Authority.

However, in case the penalty amount has also been deposited or recovered as canvassed by learned counsel for the State Sri Vikas Kumar, the same need not be refunded to the railway administration for the present but the refund of the same shall be subject to the final decision only in the appeal.

As the question of recovery of penalty is disputed by the railway administration, we are passing the aforesaid order protecting the rights of the railway administration for payment of penalty for the present in case it has not been recovered till date.

With the aforesaid, the Writ Application stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10-04-2018
Transmission Date	