IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5879 of 2016

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1. The Chief Works Manager, Eastern Railway Jamalpur, having its Chief and Controlling Office at 3, Koylaghat Street, Kolkata- 700001 (West Bengal)

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner of Commercial Taxes, Bihar, Patna
2. The Joint Commissioner of Commercial Taxes (Appeal), Bhagalpur Division, Bhagalpur
3. The Assistant Commissioner of Commercial Taxes, Munger Circle, Munger

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Bijoy Kumar Sinha
For the Respondent/s : Mr. LALIT KISHORE (PAAG)

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 13-04-2018

Challenging the order dated 15.07.2009 passed by the Joint Commissioner of Commercial Taxes (Appeal), Bhagalpur Division, Bhagalpur in Appeal Case No. MGST-5/2009-10 and the assessment order passed by the Assessing Officer for the financial year 2008-09 leading entry tax and penalty on the petitioners, this writ petition has been filed under Article 226 and 227 of the Constitution.

2. Having heard learned counsel for the parties, we find that before the Assessing Officer so also before the Appellate Authority, the Railway Administration herein, were

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harping on the ground that they being an establishment of the Union of India by virtue of Article 285 of the Constitution, they are not liable to pay any indirect tax. The learned Assessing Officer and the Appellate Authority have rejected this contention of the petitioner primarily on account of certain judgments already rendered with regard to the issue in question, i.e., **Union of India Vs. State of Bihar** reported in **2012 (4) PLJR 616**. It was the case of the Railway Administration that against this order passed by the High Court of Patna SLP are pending before the Hon'ble Supreme Court, and, therefore, they were waiting decision of the Hon'ble Supreme Court with regard to the legal question involved.

3. It is pointed out before us today during the course of hearing by Sri Vikash Kumar that the the Civil Appeal filed by the Union of India has been rejected. Their contention with regard to the exemption available to them by virtue of Section 285 has been rejected in view of the earlier judgment of the Hon'ble Supreme Court in the case of **Karya Palak Engineer CPWD, Bikaner Vs. Rajasthan Taxation Board, Ajmer and Ors. reported in 2004 (7) SCC 195**; and therefore, the issue with regard to the liability to pay due tax decided by the Hon'ble Supreme Court.

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4. Sri S.D. Sanjay argued that before the Assessing Officer and so also before the Appellate Authority the petitioners were only canvassing the legal ground, they were not granted proper opportunity to submit documents and other materials with regard to the quantification of the duty and imposition of the penalty, and to that effect, as opportunity has not been granted to them, they should now be granted opportunity to produce all the relevant materials for the purpose of assessment of tax, as this has not been done after grant of due opportunity.

5. Sri Vikash Kumar refuted the aforesaid contention and argued that in spite of the settled legal principle the petitioners were unduly delaying the assessment proceedings and therefore based on the documents already available on the record the Assessing Officer having proceeded in the matter and aiding imposed penalty on account of delay caused has not committed any error and now the legal question having been decided against the appellants this petition is liable to be dismissed.

6. Having heard learned counsel for the parties, we are of the considered view that as far as the liability of the petitioner to pay tax and the objections raised by them by virtue

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of Article 285 of the Constitution is concerned, now with regard to the same the issue stand settled by the Hon'ble Supreme Court and after dismissal of their Civil Appeal bearing No. 9565/2017 to 11176-78/2017 on 29th August, 2017 and this issue is no more in dispute.

7. However, we find some substance in the argument of Sri S.D. Sanjay to that effect that the assessment order has been passed based on the documents already available without granting an opportunity to the petitioner to produce relevant document and challenge the quantification of the duty made by the reference to the document and various other transactions which were relevant for deciding the quantification of entry tax.

8. In our considered view, the dispute in question is for payment of tax between the department/union of India and the State of Bihar and *prima facie* we are satisfied that during the proceeding of assessment, in view of the legal objections raised, the railway administration was not granted adequate opportunity to produce their documents, vouchers, account book to demonstrate the nature of transaction etc. That being so, it is a fit case where with regard to the quantification of entry tax, one more opportunity should be granted to the

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railway administration and the question of their bonafide in delaying the payment of entry tax and the liability to pay the penalty should be reconsidered in the light of the various judgments with regard to the issue in question.

9. Accordingly, we allow this appeal in part, uphold the orders passed by the assessing Officer and the Appellate Authority. So far as the objections with regard to exemption available to the petitioner by virtue of Article 285 is concerned, the same has to be rejected in view of the judgment rendered by the Hon’ble Supreme Court as indicated hereinabove

10. However, the appellant shall appear, now, before the Assessing Officer with the certified copy of this order on 1st of May, 2018. Assessing Officer shall grant adequate opportunity to the petitioner to produce all documents and evidences in support of their contention with regard to quantification of entry tax and after considering the evidences and documents produced, the Assessing Officer shall finalize the assessment order in accordance with law within a period of three months.

11. Needless to emphasize that after finalizing the assessment order the objection of the railway administration with regard to imposition of penalty and their bona fide in not

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paying the tax in time shall be considered and the question of imposition of penalty decided afresh in accordance with law.

12. With the aforesaid, this appeal stands disposed off.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Arvind/Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.04.2018
Transmission Date	NA

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