IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8586 of 2017

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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

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Appearance :

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

For the Respondent/s : Mr. Lalit Kishore- A G

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-04-2018

This writ petition has been filed by the petitioners-Railway Administration claiming that they are not liable to pay tax under the Bihar Value Added Tax Act, 2005 and the Bihar Entry Tax Act, 1993 on the ground that they are not dealers.

The assessment and imposition of penalty have been challenged on the ground that in view of the restrictions imposed under Article 301 of the Constitution, the goods being brought through Railway and consumed inside the Railway premises cannot be subjected to tax under the aforesaid provision. The challenge is also made to the imposition of penalty.

It is seen that the orders of assessment have been challenged before this Court primarily on the ground that the issue with regard to the matter is pending before the Hon’ble Supreme Court. However, we are informed that the matter has been decided by the Hon’ble Supreme Curt and we have considered the identical issue at the instance of the Railway in Civil Writ Jurisdiction Case No. 5752 of 2018 and by an order passed on 02.04.2018, identical prayer made with regard to liability to pay duty has been rejected by this Court. Now, we find that against the order passed by the Assessing Officer dated 25.01.2017, appeal has been fled by the petitioners Vide Annexure-3 before the learned Joint Commissioner of Commercial Taxes (Appeals) Bhagalpur Division, Bihar, and it seems that the appeal is still pending and the notice of demand raised by the appellate authority is sought to be challenged and stay is sought for.

For the grounds and reasons already considered by us and taken note of in the order passed on 02.04.2018 in Civil Writ Jurisdiction Case No.5752 of 2018, we see no reason to make any indulgence with regard to the contention that the Railway Administration is not liable to pay any tax in view of the dismissal of the SLP filed by the Railway Administration and affirmation of the order passed by this Court earlier in Civil Writ Jurisdiction Case No.8169 of 2015.

Accordingly, we see no reason to make any indulgence into the matter. As the appeal filed by the petitioners is still pending, the petitioners may prosecute the appeal and seek stay of the recovery by filing an appropriate application before the appellate authority. Till the appellate authority does not decide the application for stay, coercive steps for recovery of the amount of tax and penalty shall remain stayed. The stay application shall be filed within 15 days from the date of receipt of a certified copy of this order.

With the aforesaid, the matter stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-04-2018
Transmission Date	