IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.878 of 2018
In
Civil Writ Jurisdiction Case No.9102 of 2018

* * *

Surendra Thakur Son of late Ishwar Narayan Thakur, Resident of Village-Prem Nagar, P.S.-Runnisaidpur, District-Sitamarhi.

... ... Appellant/s

Versus

1. The State Of Bihar
2. The District Magistrate, Sitamarhi.
3. The District Transport Officer, Samastipur.
4. The District Certificate Officer, Sitamarhi.
5. The Treasury Officer, Sitamarhi.

... ... Respondent/s

* * *

Appearance :

For the Appellant/s	:	Mr. Surendra Kishore Thakur, Advocate
		Mr. Subodh Jha, Advocate
		Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Rastogi, A.A.G. 10
		Mr. Parijat Saurav, A.C. to A.A.G. 10

* * *

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-04-2019

Heard learned counsel for the appellant.

It appears that the petitioner had earlier filed writ petition C.W.J.C. No. 7293 of 2008 that was disposed off on 7th May, 2008. The said judgement is extracted hereinunder:

"A number of writ petitions seeking to challenge the same thing as has been challenged in this writ petition came up for consideration before a Division Bench of this Court on 4th March, 2008 when in view of the consensus arrived at between the petitioners, the learned counsel for the petitioners in those writ petitions sought liberty to withdraw the writ petitions on the terms as have been recorded in the order of the Division Bench dated 4th March, 2008 passed in the said writ petitions (C.W.J.C. No. 16260 of 2007 and analogous cases).

The learned counsel appearing in support of the present writ petition seeks leave to withdraw the present writ petition on similar terms and conditions.

The prayer is allowed, and accordingly, petitioner is permitted to withdraw the writ petition with liberty to seek redressal of his grievances before the State Government pointing out the anomalies in the rate of additional tax between the owners of motor vehicles having 205" wheel base and those between 114" - 167" wheel base during the period 16th July, 2002 to 17th April, 2006 resulting from enactment of Bihar Motor Vehicles Taxation (Amendment) Act, 2002 (Bihar Act 6 of 2003). Further liberty sought for is and granted to pray before the State Government to provide the benefits as given by Notification No. 2518 and 2520 dated 1.7.2004 with retrospective effect as also for waiver of the penalty in case it is held that the petitioner is liable to pay additional tax.

Needless to state that in case such prayer is made to the State Government within six weeks, it shall consider the same in accordance with law within six months from today.

Till the decision on the representation is taken, petitioner shall pay road tax at the rate of Rs.

267/- per seat per quarter without any penalty for the period between 16.7.2002 and 17.4.2006.

On payment of tax and additional tax, as aforesaid, tax token shall be issued to the petitioner.

The writ application is permitted to be withdrawn with liberty as above.”

The appellant does not appear to have filed any proceedings for contempt on the basis of the allegations of non-compliance of the said order.

Certificate proceedings for realization of the penalty amount as well as the tax dues arising out of the provisions of the Bihar Motor Vehicles Taxation (Amendment) Act, 2002 appears to have been initiated. For the realization of such tax the Certificate Officer, when proceeded to realize the same and passed an order on 24th May, 2017, the appellant instituted C.W.J.C. No. 9102 of 2018 that has given rise to the present proceedings. The petition has been dismissed on 18th of May, 2018 describing the claim to be a stale claim as no effective steps were taken by the appellant after the observations made in the judgement dated 7th of May, 2008.

The learned counsel for the appellant contends that the appellant is entitled to the exemption under the notification dated 1st of July, 2004.

In our considered opinion, if the appellant is aggrieved by any imposition of tax or penalty then in that event the remedy of the petitioner-appellant lay in approaching the appropriate forum questioning the correctness or otherwise of such imposition of penalty or tax under the relevant rules either before the Appellate Authority or any other authority enjoined upon with any obligation to entertain such a grievance.

The petitioner appears to have filed a writ petition which was withdrawn on the terms and conditions as referred to in the order dated 07.05.2008 extracted hereinabove. The certificate proceedings appear to have been initiated in the year 2011-12 culminating in the order of the District Certificate Officer on 24th May, 2017. The appellant does not appear to have taken any such steps for questioning the imposition of the tax or penalty before the appropriate forum nor did the appellant file any proceedings for contempt before this Court on account of non-compliance of the orders, if any, that was there in favour of the appellant in the year 2008.

Consequently, the learned Single Judge was justified in refusing to entertain the petition on the ground of the cause of action being stale as the appellant had not taken any steps after 2008.

We are, therefore, not inclined to entertain this appeal without prejudice to the remedy of the appellant to approach the appropriate authority or forum for redressal of his grievance.

The appeal stands dismissed with the above liberty.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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