

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9000 of 2017

1. The Union Of India through the General Manager, Eastern Railway, Kolkata.
2. The Deputy Chief Materials 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. Devendra Kumar Sinha, Sr. Advocate

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

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 13-02-2020

Heard Mr. Devendra Kumar Sinha, learned senior counsel for the petitioners- Eastern Railway and Mr. Vikash Kumar, learned SC - 11.

The present writ application has been filed for quashing of the assessment order dated 23.09.2016 passed by respondent no. 3 under Section 8 of the Bihar Entry Tax Act, 1993 read with Section 28 of the Bihar Value Added Tax Act, 2005 (hereinafter



referred as the Act 2005) for the assessment year 2013-14 and quashing of the demand notice issued under Section 25 and 29 of the Act, 2005, the demand notice issued under Section 47 of the Bihar VAT Act as well as amended notice issued under 47 of the Bihar VAT Act.

The relief, as prayed for has been stipulated in paragraph no. 1 of the writ petition, which reads as follows:-

“(i) For issuance of a writ in the nature of writ of certiorari or any other appropriate writ, order or direction for quashing the assessment order dated 23.09.2016 passed by Respondent No. 3 under section 8 of Bihar Entry Tax Act, 1993 read with section 28 of Bihar Value Added Tax Act, 2005 whereby the amount of tax has been assessed for assessment year 2013-2014 to the tune of Rs. 1,32,75,385/- and amount of penalty has been imposed to the tune of Rs. 1,32,75,385/- total amounting to Rs. 2,65,50,770/-

(ii) For quashing notices of demand dated 23.09.2016 under section 25 and 29 of the Bihar VAT Act, 2005 in Form N-VIII for the period 2013-2014 issued by the respondent no. 3 whereby petitioners have been directed to deposit Rs. 1,32,75,385/-



towards amount of tax and Rs. 1,32,75,385/- towards penalty total amounting to Rs. 2,65,50,770/- into the Government Treasury.

(iii) For quashing of the notice of demand under Section 47 of the Bihar VAT Act in Form N-XI for the amount of Rs. 3,08,98,489/-, Rs. 2,38,95,693/- & Rs. 8,24,32,543/- for period 2012-2013, 2013-2014 and 2014-2015 total amounting to Rs. 13,72,26,725/- communicated vide memo no. 264 dated 15.03.2017 issued by Respondent No. 3 directing the respondent no. 4 to pay in the Government Treasury a sum of Rs. 13,72,26,725/- from the account of the petitioners claimed to be due to the Government as being wholly arbitrary and illegal.

(iv) For quashing of the amended notice of demand under section 47 of the Bihar VAT Act in Form N-XI for the amount of Rs. 3, 08,98,489/-, Rs. 2,38,95,693/- & Rs. 8,24,32,543/- for period 2012-2013, 2013-2014 and 2014-2015 total amounting to Rs. 13,72,26,625/- communicated vide memo no. 271 dated 17.03.2017 issued by Respondent No. 3 directing the respondent no. 4 to pay in the Government Treasury a sum of Rs. 13,72,26,625/- from the



account of the petitioners claimed to be due to the Government as being wholly arbitrary and illegal

(v) For issuance of writ in the nature of writ of mandamus or any other appropriate writ, order or direction commanding the respondents to refund the amount of Rs. 1,32,75,385/- towards tax and Rs. 1,32,75,385/- towards penalty total amounting to Rs. 2,65,50,770/- which has been recovered by the respondent no. 3 by special mode of recovery under section 47 of Bihar VAT Act from the respondent no. 4

(vi) For any other relief or reliefs which the petitioners may be found entitled in the facts and circumstances of the case.”

It is submitted by learned senior counsel for the petitioners that the issue with regard to treating the Railway as a dealer and amenable to entry tax have been conclusively decided by the Hon’ble Supreme Court and now the question is with regard to the quantum of assessment of tax liability and penalty for which the petitioners have preferred an appeal along with stay petition under Section 72 of the Act being MGST - 14 / 16- 17 which is pending before Joint Commissioner, Commercial Taxes (Appeals), Bhagalpur. A statement to that effect has been made in paragraph -



10 of the writ petition. Learned Senior Counsel further submits that in similarly situated writ application, a Coordinate bench of this Court vide order dated 23.04.2018 passed in CWJC No. 8586 of 2017 [The Union of India through the General Manager, Eastern Railway, Kolkata & Anr. versus The State of Bihar through the Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna and Ors.] permitted the General Manager Eastern Railways to file stay petition in the pending appeal and directed to stay the recovery till disposal of stay petition. The relevant portion of the order reads as under:-

“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 Court 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 filed 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.”

More over in similar circumstances recovery has been stayed till disposal of appeal by a Co-ordinate bench of this Court



vide order dated 31.01.2020 passed in CWJC No. 6549 of 2018 [The Union of India through the General Manager, Eastern Railway, Kolkata and Anr. Versus The State of Bihar through the Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna and Ors.] however the appeal was directed to be disposed of on its own merit within a period of three months.

The relevant portion of the order dated 31.01.2020 passed in CWJC No. 6549 of 2018 reads as follows:-

“Well, the present case is squarely covered with the order dated 23.04.2018 passed by a co-ordinate Bench of this Court in CWJC No. 8586 of 2017, titled as The Union of India & Ors. vs. The State of Bihar & Ors., which fact is not so disputed. As such, we dispose of the present petition giving directions, contained in the said order, *mutatis mutandis* insofar as applicable also to the instance case.

We only hope and expect the appropriate authority to consider and decide the appeal on its own merit and with reasonable dispatch within a period of three months thereafter.

We also direct that till the decision of the appeal, no coercive steps for recovery of the amount shall be taken.”



Hence, it is submitted by learned counsel for the petitioner to dispose of the present writ application.

Mr. Vikash Kumar, learned SC - 11 submits that now in terms of the order dated 31.01.2020 passed in CWJC No. 6549 of 2018 there is no dispute that in view of the law laid down by the Hon'ble Supreme Court the Railway is amenable to entry tax however, there is provision of filing appeal under Section 72 of VAT Act, 2005. Hence, for stay of recovery of penalty, the petitioners should press the stay petition pending before the Appellate authority. Mr. Vikash Kumar, learned SC- 11 submits that the issue with regard to treating the Railway as a dealer being amenable to entry tax has attained finality and hence the Railway should deposit the assessed amount as well as the penalty as soon as possible.

Considering the rival submissions of the parties, since the petitioner has availed the alternative remedy of appeal, we are not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India. However, since a Co-ordinate bench of this Court vide order dated 23.04.2018 passed in CWJC No. 8586 of 2017 (The Union of India and Anr. Vs. The State of Bihar and Ors.) stayed the recovery, as quoted above, till the



disposal of the stay petition, we are of the considered view that since the appeal along with the stay petition, admittedly, are pending before the Appellate authority, the Joint Commissioner (Appeal), Commercial Taxes, Bhagalpur, it is expected from the Appellate authority to dispose of the stay petition filed in MGST 14/2016-17 preferably within three months of the receipt/production of a copy of this order. Till the disposal of the application for stay before the Appellate authority, the concerned authority may not take any coercive step for the recovery of the assessed amount as well as penalty.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/anil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30-05-2020
Transmission Date	NA

