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15.03.2023
Ct. No.10
b.das

WPA 25952 of 2022

Goutam Kumar Sarangi
Vs.
State of W. B. & Ors.

Mr. Arabinda Chatterjee, Sr. Adv.
Mr. B. Nandi
Ms. K. Dutta
Ms. A. Biswas …for the petitioner.

Mr. Chandi Charan De
Mr. Pantu Deb Roy
Mr. A. Sarkar …for the State.

Heard learned counsels for the parties.

The petitioner is the owner of a Non AC Deluxe vehicle registered in Orissa and inter-State stage carriage permit was issued in respect of the said vehicle by the State Transport Authority, Orissa.

The petitioner was unable to operate the vehicle due to covid-19 pandemic and closing down of State borders as well as national lockdown for the period from 24th March, 2020 to 28th February, 2021. The petitioner paid tax and additional tax for the said vehicle up to 19th June, 2020.

The petitioner submitted a representation before the concerned authority for exemption/adjustment of tax and additional tax, which was not considered by the authority.

In a writ petition being WPA 19377 of 2021, a co-ordinate Bench of this Court by an order passed on 25th

January, 2022, directed the authority to consider and dispose of the representation of the petitioner within a stipulated time frame by passing a reasoned order and further granted liberty to the petitioner to place additional points before the authority for consideration. Upon the petitioner placing such additional points before the authority, the representation as well as additional points placed by the petitioner was considered by the authority, rejecting the prayer of the petitioner by an order passed on 14th September, 2022.

In the said order, the authority has placed reliance on the notification dated 23rd February, 2021 issued by the Transport Department wherein exemption of tax was applicable only for the vehicles registered in West Bengal having stage carriage and contract carriage permits issued by the State/Regional Transport Authorities of West Bengal.

The petitioner has assailed the said order primarily on the ground that the provisions laid down in the West Bengal Motor Vehicles Tax Act, 1979 and the West Bengal Additional Tax & One Time Tax on Motor Vehicles Act, 1989 with regard to exemption of tax has not been taken into consideration by the authority, which has rejected the prayer of the petitioner solely as on the basis of notification dated 23rd February, 2021.

The petitioner prays for reconsideration of his prayers by the authority.

It transpires from the order impugned that the petitioner's applications were rejected by the authority solely on the anvil of the notification issued by the Transport Department on 23rd February, 2021. The provisions laid down under Section 4(3) of the West Bengal Motor Vehicles Tax Act, 1979 and Section 9B(5)(b) of the West Bengal Additional Tax & One Time Tax on Motor Vehicles Act, 1989 were not taken into consideration.

It is trite law that a notification cannot be given effect to in contravention of the law governing the field.

In view of the above, this Court is inclined to hold that the authority should revisit the issue in the light of the observation made in this order, in accordance with law. The order impugned dated 14th September, 2022 is, therefore, set aside.

It is submitted on behalf of the respondents that the 1st respondent be directed to revisit the issue in accordance with law.

Accordingly, the concerned authority being the 1st respondent herein, is directed to revisit the issue upon taking into consideration the representation submitted by the petitioner as well as the additional points placed before the authority, within six weeks from the date of communication of this order upon affording reasonable opportunity of hearing to all the interested persons including the petitioner or his authorised representative, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

It is expected that the matter will be revisited by the 1st respondent independently without being influenced by any observation made in the earlier order and in the light of the observation made in the earlier writ petition by the co-ordinate Bench as well as in this order.

With the above observations and directions this writ petition being WPA 25952 of 2022 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)