(2008) 09 PAT CK 0124

In the Patna High Court

Case No : CWJC No. 12404 of 2008

Ganga Sagar Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Citation : (2009) 4 PLJR 496

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Ashok Kumar Jha, Suman Kumar Mishra and Satyendra Rai, for the Appellant; Ram Chandra Prasad Bhagat and Ajay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition takes exception to the order dated 15th April, 2008 passed by the Member. Board of Revenue, dismissing the revision petition tiled by the petitioner. The brief facts are thus:-

(a) The petitioner is a registered owner of the vehicle (truck) bearing registration No. CGIA-9891.

(b) The petitioner made an application to the District Transport Officer; Siwan as well as the State Transport Commissioner for exemption of tax in respect of the said vehicle with effect from 15th March, 2005.

(c) The petitioner claimed that the said vehicle met with an accident on 12th January. 2005 in the State of Jharkhand within the area of Barahi Police Station.

(d) The petitioner first approached this court by filing writ petition being C.W.J.C. No. 2032 of 2007 for a direction to the District Transport Officer, Siwan for completion of the enquiry in connection with the application made by him for exemption of tax. The said writ petition was disposed of on 7th March, 2007 directing the District Transport Officer, Siwan to complete the enquiry within two weeks from the date of receipt/production of a copy of the order and forward the application alongwith his enquiry report to the State Transport Commissioner. The State Transport Commissioner, in turn, was directed to pass final order on the petitioner''s application for exemption within six weeks from the date of receipt of the enquiry report from the District Transport Officer.

(e) The District Transport Officer concluded the enquiry and he found that the vehicle was a defaulter vehicle, inasmuch as, tax was not paid for a period much before the accident. The District Transport Officer asked the petitioner to file requisite papers of the vehicle and pay arrear taxes but no neither filed the requisite papers nor paid the arrears. The enquiry report was forwarded by the District Transport Officer to the State Transport Commissioner, Bihar.

(f) The Joint State Transport Commissioner heard the matter and passed final order dated 26th June. 2007. He held; that the full papers were not made available concerning the subject vehicle; that the surrender of the said vehicle was not in statutory form ''J'': that the requisite affidavit was not filed by the petitioner and that the vehicle was found plying during the temporary surrender period and it was. seized by the Enforcement Sub-Inspector. Me. accordingly, rejected the application for tax exemption.

2. Aggrieved by the order of the Joint State Transport Commissioner dated 26th June. 2007, the petitioner approached second time by filing writ petition being C.W.J.C. No. 12851 of 2007. The said writ petition was dismissed with liberty to the petitioner to approach the revisional authority.

3. The petitioner then filed revision application before the Board of Revenue The Board of Revenue rejected the revision application on 15th April, 2008 as noticed above. Hence, the present writ petition which is third proceeding at the instance of the petitioner.

4. The counsel would submit that it was the State Transport Commissioner who was required to consider the application for exemption of tax as directed by this Court in the order dated 7th March. 2007 but that was not done and the application for tax exemption was considered by the Joint State Transport Commissioner, which was not proper. He would also submit that the subject vehicle was in the judicial custody and during the period of judicial custody, the tax ought to have been exempted.

5. None of the contentions has any merit. It is true that in the order dated 7th March, 2007. this court directed the State transport Commissioner to pass final order on petitioner''s applications for exemption of tax but that did not mean that if the Joint State Transport Commissioner had the jurisdiction to consider the said application, he could not have done so. It is pertinent to notice that the authority or competence of the Joint State Transport Commissioner in considering the application for exemption of duty has not been put in issue nor anything has been shown to us that the Joint State Transport Commissioner did not possess any authority or competence to consider the application for tax exemption. The first contention is overruled.

6. As regards second submission of the counsel for the petitioner, suffice it to say that there is no ground set up in the application for tax exemption that vehicle remained under judicial custody and for that period tax may be exempted. What is stated in the application is that the petitioner was in judicial custody and therefore, he could not get the trucks repaired. This point was not even argued before the Board of Revenue. Besides that, diverse grounds have been given by the Joint Commissioner for not granting exemption, inasmuch as, required papers, i.e., tax payment, fitness certificate on the date of surrender, insurance papers, permit papers of a goods carrier were not made available and that vehicle was found plying during the surrender period.

7. As a matter of fact, the vehicle has been tax defaulter for quite some time before the application for tax exemption was made.

8. All in all. the consideration of. the matter by the Board of Revenue, cannot be said to suffer from any legal flaw. The writ petition does not deserve to be admitted and is dismissed in limine.

