(2024) 12 PAT CK 1245

In the Patna High Court

Case No : Miscellaneous Appeal No.351 of 2019

Hindustan Petroleum Corporation Ltd — APPELLANT

Vs

State of Bihar And Others — RESPONDENT

Date of Decision : 03-12-2024

Acts Referred:
Bihar Value Added Tax Act, 2005 — Section 73(2)

Citation : (2024) 12 PAT CK 1245

Hon'ble Judges : K. Vinod Chandran, CJ;Nani Tagia, J

Bench : Division Bench

Advocate : D.V.Pathy, Vikash Kumar

Final Decision : Rejected

Judgement

K. Vinod Chandran, CJ

1. The petitioner has filed the above appeals against Annexure-6 order (in M.A. No. 351 of 2019) and Annexure-8 order (in M.A. No. 352 of 2019), passed by the Commercial Taxes Tribunal, Bihar, Patna. From the above orders, there is no question of law arising since, the impugned orders only reject the appeals for not having made the pre-deposit of 20 per cent.

2. Learned Counsel for the appellant contends that as per the proviso to Section 73 (2) of the Bihar Value Added Tax Act, 2005, the Tribunal has to record reasons when waiving or reducing the amount of pre-deposit, which necessarily indicates an application of mind. In fact, Annexure-4 order (in both the appeals) were passed without such application of mind, is the contention.

3. Annexure-4 order ought to have been challenged in a writ petition, which the learned Counsel points out, was challenged in CWJC No. 13248 of 2018. In the writ petition, a Division Bench of this Court granted a further opportunity to the petitioner to file a duly considered (sic) waiver application raising all the grounds, along with the judgments of the High Court and the Hon’ble Supreme Court on the basis of which the waiver is sought for and if the same is done, the Tribunal

was directed to reconsider the issue of waiver, with the observation that the consideration shall be in the light of the decision in Idea Cellular Infrastructure Services Limited v. State of Bihar, and pass a fresh order with regard to waiver within a period of 15 days of the presentation.

4. The judgment in the writ petition was passed on 06.08.2018. Annexure-6 order (in M.A. No. 351 of 2019) was passed in the appeal by the Tribunal on 15.04.2019 rejecting the appeal itself for reason of the application for waiver having been rejected as per Annexure-4.

5. There is nothing produced to show that the appellant herein had complied with the order of this Court in CWJC No. 13248 of 2018. Learned Counsel for the appellant points out the statements made in the appeal memorandum which indicates that an application was duly filed in compliance with the order in the writ petition on 25.01.2018 and despite the matter being heard on 03.12.2018, the order impugned was passed. Even if such an order was passed and the issue of waiver was not considered afresh, the appellant ought to have filed a contempt application or a writ petition in that regard. As of now, the impugned orders in the appeals do not raise any question of law. We find no reason to interfere with the impugned orders since apparently no question of law arises from the order.

6. In such circumstances, both the appeals stand rejected.

7. Interlocutory Application(s), if any, shall stand closed.