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Court : Patna

Decided On : Apr-07-1998

Judge : R.A. Sharma and A.K. Prasad, JJ.

Appeal No. : C.W.J.C. No. 263 of 1998 (R)

Appellant : Bihar Foundry and Castings Ltd.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Mr. K. Roy

Disposition : Application Dismissed

Prior history : R.A. Sharma, J. 1. The petitioner applied for certificate of exemption from payment of sales tax on purchase of raw materials under the State Government's Notification No. S.O. 95. The Sales Tax Department of the State rejected the petitioner's prayer for exemption. The petitioner, thereafter, filed C. W.J.C. No. 2490 of 1995 (R). This Court allowed the said writ application vide judgment dated 27.9.1995, quashed the Notification No. S.O. 95 and declared that the petitioner is entitled to sale

Judgement :

R.A. Sharma, J.

1. The petitioner applied for certificate of exemption from payment of sales tax on purchase of raw materials under the State Government's Notification No. S.O. 95. The Sales Tax Department of the State rejected the petitioner's prayer for exemption. The petitioner, thereafter, filed C. W.J.C. No. 2490 of 1995 (R). This Court allowed the said writ application vide judgment dated 27.9.1995, quashed the Notification No. S.O. 95 and declared that the petitioner is entitled to sales tax exemption on purchase of raw material. Pursuant to the said judgment of this Court the petitioner made an application on the basis of which the benefit of exemption from payment of sales tax was granted to it.

2. The Government of Bihar filed a Special Leave Petition against the aforementioned judgment of this Court before the Supreme Court, in which an interim order dated 31.3.1997 staying the operation of the said judgment of this Court, was passed by the Apex Court.

3. After the Apex Court passed the aforementioned interim order, the Joint Commissioner, Commercial Taxes (Adm.), Jamshedpur, vide his letter dated 31.12.1997 asked the TELCO Ltd. not to sell scraps of other raw materials to the petitioner without charging full sales tax. The TELCO Ltd., accordingly, sent a letter dated 2.1.1998 to the petitioner informing it that exemption from payment of sales tax granted to it has been withdrawn by the Sales Tax Department and it 'will raise a debit note on you for the past transactions and bill with full tax for the current sale'. Vide letter dated 7.1.1998 the Deputy Commissioner Commercial Taxes, Ranchi, also informed the petitioner that as the judgment of this Court under which exemption from payment of sales tax was granted to it has been stayed by the Hon'ble Supreme Court, its application seeking exemption from tax is rejected. Being aggrieved the petitioner filed a writ application, being C.W.J.C. No. 153 of 1998 (R), which was dismissed as withdrawn by the Division Bench of this Court on 21.1.1998 by the following order:

Heard Mr. K. Roy, learned Counsel for the petitioner and learned S. C. I for the State.

In Course of the argument, learned Counsel for the petitioner prayed for withdrawing this writ application saying that he will approach the Hon'ble Supreme

Court for necessary clarification. He may do so.

4. The petitioner has, thereafter, filed this second writ application. At the threshold an objection about the maintainability of the second writ application has been raised. We have heard the learned Counsel for the petitioner and the learned Standing Counsel No. 1 on the question of maintainability of this writ application.

5. It is well settled that if a writ application has been withdrawn without permission to file a fresh writ, the fresh writ in the same matter is not maintainable. In this connection reference may be made to *Sarguja Transport Service v. State Transport Appellate Tribunal Gwalior and ors.* : [1987]1SCR200 and *Avinash Nagra v. Navodaya Vidyalaya Samiti and ors.* : (1997)IILLJ640SC .

6. The learned Counsel for the petitioner has, however, submitted that as the causes of action in the two writ applications different, the present writ is maintainable. It is not possible to agree with the learned Counsel.

7. In the first writ application (C.W.J.C. No. 153/98R) the relief prayed for by the petitioner was as under:

That this application is directed against order dated 7.1.1998 passed by the Respondent No. 3 by reasons of which the concerned Respondent has rejected the application of the petitioner for extension of the period for exemption in payment of sales tax on purchase of raw-materials under Notification No. S.O. 95 and also against letter dated 31.12.97 issued by the respondent No. 5 by which he has informed the Respondent No. 6 that exemption certificate granted to the petitioner since been withdrawn by the D.C.C.T., Ranchi, no scrap or other raw-materials to sell to the petitioner without charging full rate of sales tax.

The relief claimed in the second writ application, i.e., the present application, is also reproduced below:

That this application is directed for issuance of a writ of mandamus commanding upon the Respondents to treat the order of withdrawal of the benefit under S.O. 95 w.e.f. the date of its withdrawal i.e. 7.1.1998 and also issuance of necessary directions upon the Respondents to issue necessary instruction to the Respondent

No. 6 to sell the raw-materials to the petitioner with full sales tax only from the date of withdrawal i.e. from 7.1.1998 and not retrospectively.

8. The first writ application was filed challenging the orders dated 7.1.1998 and 31.12.1997, passed by the Deputy Commissioner Commercial Taxes, Ranchi, and the Joint Commissioner Commercial Taxes, Jamshedpur respectively. It is true that the said two orders have not been directly challenged in the present writ application, but the petitioner has challenged the right of the respondents to withdraw the benefit of exemption from payment of tax pursuant to the said orders with retrospective effect.

9. In the present case there is also a further prayer seeking direction to the Manager (Finance) TELCO (respondent No. 6) not to realise sales tax from the petitioner retrospectively. In the earlier writ application the petitioner has filed the letter dated 2.1.1998 issued by the Manager (Finance) TELCO, whereby the petitioner was informed that 'it shall raise a debit note on you for the past transactions and bill with full tax for the current sale', as Annexure-5. The petitioner was thus fully aware of the fact that in view of the said two orders impugned in that writ application the tax will be realised from it with retrospective effect, i.e., on past transactions. This is also clear from Paragraph No. 26 of the earlier writ application, which contains reference to the said letter of the TELCO dated 2.1.1998. Even then it did not seek any relief against recovery of the tax with retrospective effect. The causes of action in both the writ application being the same, the present writ is not maintainable.

10. That apart, presuming that the causes of action in two writ application are different, even then the second writ application will not lie because both the causes of action are based on the same facts. In *State of Uttar Pradesh v. Nawab Hussain* : [1977]3SCR428 , the Supreme Court in this connection has laid down as under:

But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have, therefore, treated such a course of

action as an abuse of its process....

11. This writ application is, therefore, not maintainable and is accordingly rejected.

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