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Subhash JaIn Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-04-2000

Reported in : 2000(3)WLN158

Judge : Rajesh Balia and; Mohd. Yamin, JJ.

Acts : Rajasthan Motor Vehicles Taxation Act, 1951 - Sections 3

Appeal No. : Civil Spl. Appeal (Writ) No. 1098 of 1999

Appellant : Subhash Jain

Respondent : State of Rajasthan

Advocate for Def. : Vineet Kothari, Adv.

Advocate for Pet/Ap. : K.K. Shah, Adv.

Disposition : Appeal allowed

Judgement :

1. This appeal arises out of the judgment of learned single Judge holding that the excavators which are machines mounted on tyres and are capable for using roads, fall within the definition of Motor Vehicles within the meaning of Motor Vehicles Act and therefore are exigible to tax under Rajasthan Motor Vehicles Taxation Act as Motor Vehicles.

2. Both the learned counsel state that in like circumstances similar question has been decided by a Division Bench of this Court in Birla Cement Works v. State of Rajasthan in D.B. Civil Special Appeal No. 149/2000 decided on 24-2-2000 (AIR 2000 Rajasthan 251) by holding that before determining tax under the Motor Vehicles Taxation Act, an opportunity of hearing is necessary to be given to the tax payer in which tax payer is entitled to raise an issue that machines in question are not motor vehicles within themeaning of Motor Vehicles Taxation Act and thateven if they are motor vehicles, the same are not liable to tax because dominant use of such vehicles is not to use public roads, or that vehicles may be liable to be registered under Motor Vehicles Taxation Act but as the vehicles which are sought to be subjected to tax are vehicles of special type meant for use in the factory or premises off the owner only cannot be subjected to tax by State Legislature. The Court has also expressed in that case that Motor Vehicles Taxation Act has to be construed in the context of legislative field reserved for the State Legislature for levying tax on motor vehicles. Under entry 57 of List II of VII Schedule of the Constitution taxes on vehicles, whether mechanically propelled or not suitable for use on roads, including tram-cars subject to the provisions of Entry 35 of List III only can be imposed. An enquiry has to be made and exigibility to tax on the vehicle in each case has to be examined in the light of objections raised by the owner of the vehicle.

3. Accordingly learned counsel for the parties state that determination of tax in respect of excavators in question shall also have to be determined in the light of aforesaid principles in the first Instance by the Taxation Officer. Inasmuch as determination of tax has to be made before raising any demand. In the present case the petitioners have come before this Court in apprehended seizure of their vehicle, which have not been subjected to tax nor any proceedings for determinating liability under Motor Vehicles Taxation Act, 1951 has been initiated.

4. In the aforesaid circumstances we allow this appeal as well as the petition filed by the petitioners. The respondents are restrained from seizing the excavator in question unless determination of any sum, if any, payable under Motor Vehicles Taxation Act, 1951 in appropriate proceedings in accordance with law is made keeping in view principles for such determination stated in Birla Cement Works

case.

5. It is stated by the learned counsel for the appellant that after the passing of the order under appeal the vehicle in question has been seized on 3-5-2000. He further states that no demand has been raised so far in respect of excavator in question.

6. in the aforesaid circumstances, we further direct that the vehicle in question can be released on the furnishing solvent security in the sum of Rs. One Lakh to the satisfaction of Taxation Officer.

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