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Court : Rajasthan

Decided On : Apr-27-2000

Reported in : 2000(2)WLN218

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

Appeal No. : D.B. Civil Special Appeal No. 1568 of 1999

Appellant : Birbal Singh

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Rajesh Balia, J.

1. This appeal arises out of the judgment of learned Single Judge holding that the excavator 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 M/s. Birla Cement Works & another v. State of Rajasthan and Ors. in D.B. Civil Special Appeal No. 149/2000

decided on 24.2.2000 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 the meaning of Motor Vehicles Taxation Act and that even 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 the 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 of 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 HI 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 before raising demand has been made without notice to the petitioner-assessee. It is only appropriate that this appeal be decided in the light of the same judgment.

4. Accordingly, we allow this appeal as well as the petition filed by the petitioners, set aside the demand raised vide Annex. 4/1 to 4/27 by treating the same to be the show cause notices proposing levy of tax under the Act of 1951. The appellants-petitioners shall be free to file objections, if any, to the aforesaid notices within a period of six weeks. On filing such objections, the assessing officer shall decide those objections after affording the petitioner opportunity to lead any evidence as they want to and the taxation officer shall also be free to bring evidence on record which he wants and decide upon such objections and determine the demand, if any, recoverable from the petitioners within a further period of six months in

accordance with the observations made in the Birla Cement Works' case. During this period, the amount deposited by the assessee shall not be refunded but shall remain as security for the demands proposed to be raised vide the impugned notices and to be adjusted against the amount, if any, that may be determined recoverable on the final outcome of the proceedings. The appellants shall further furnish a security to the satisfaction of the Taxation Officer for the balance amount, if any, outstanding against sum proposed to be assessed against him. There shall be no orders as to costs.

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