Ram Pratap Singh v. Union Of India And 7 Others

WRIT TAX No. 1213 of 2023 | Decision: 2024-01-25 | Allahabad High Court

Neutral Citation No. - 2024:AHC:12617-DB

Court No. - 39

Case :- WRIT TAX No. - 1213 of 2023

Petitioner :- Ram Pratap Singh Respondent :- Union Of India And 7 Others Counsel for Petitioner :- Anand Kumar Pandey Counsel for Respondent :- A.S.G.I.,C.S.C.,Naveen Chandra Gupta

Hon'ble Saumitra Dayal Singh,J. Hon'ble Manjive Shukla,J.

1. Heard Mr. Anand Kumar Pandey, learned counsel for the petitioner, Mr. Naveen Chandra Gupta, learned counsel for the Respondent Nos. 1,2,3 and 9 and Sri Ankur Agarwal, learned Standing Counsel for respondent Nos. 4 to 8.

2. Challenge has been raised to the order dated 27.9.2023 passed by the respondent no. 9, rejecting the petitioner's claim for exemption from GST on motor vehicle purchased by him being a private car.

3. Undisputedly, the petitioner is a person with disability described as hearing impairment. The certificate issued by the Chief Medical Officer, Ballia dated 30.12.2015 has been relied to establish 55% hearing impairment. Referring to the provisions of 'Rights of Persons with Disabilities Act, 2016' and the Rules framed thereunder as also notification No. RT-11036/57/2020 MVL issued by the Ministry of Road Transport and Highways dated 3.2.2023, it has been vehemently urged that the hyper technical discretion has been practiced by the State authorities refusing to grant GST exemption to the petitioner. In so far as petitioner is 'Divyangjan' he is entitled to equal protection in law including as to exemption from GST on purchase of motor cycle as has been granted by the respondent authorities to persons with orthopedic disability.

4. The argument advanced by the learned counsel for the petitioner is attractive. A person with disability whether ocular or hearing or locomotor or other disability deserves accommodation to be provided by the society at large and by the State institutions, in particular. It is a self apparent truth that a person born with disability or a person who suffers disability, though remains equal

citizen with equal rights and protection in law, at the same time he is met with challenges more than the other citizens not so burdened.

5. While the above may be true by way of principle, at present we are confronted with a purely legal aspect and not a wider jurisprudential issue in the context of a fiscal statute. We are required to decide whether there exists a statutory right in favour of the petitioner to claim exemption from GST on purchase of motor vehicle.

6. Undoubtedly, under the Central GST Act, 2017 and the U.P. GST Act, 2017, goods and services are taxed at prescribed rates as per the Schedule applicable to the individual goods and services.Under the scheme of those enactments, tax is imposed not on persons but goods or services based on their identity. Thus, motor vehicles fall under Schedule-III, Entry-400 and are thus liable to tax at the rate of 18%.

7. A perusal of the said taxing entry clearly indicates that on the amendment made vide notification No. 14 of 2019 dated 30.9.2019, provision has been made to exempt from payment of GST, sale of motor vehicle to persons with orthopedic physical disability. No provision has been made to provide for such exemption/ benefit in favour of any other category of persons.

8. Thus, while creating tax liability on sale of motor vehicles, exclusionary clause has been carved out by the legislature to exclude applicability of tax on motor vehicles when sold to specified category of persons.

9. No challenge has been made to the legislative entry, referred to above. In the prevailing level of technology and in the background of road safety concerns, certain motor vehicles have been adopted for convenient and safe use by persons with orthopedic physical disability.

10. Whether such exemption may be available on the strength of reasoning to enable persons with other disabilities to purchase such vehicles to be driven by persons not suffering from such disability for the aid and help of the person such as the petitioner, that issue may be examined in appropriate proceedings, if challenge is made to the notification dated 30.9.2019.

11. In absence of any pre-existing statutory right, the simple challenge raised to the communication dated 27.9.2023, rejecting

the claim for exemption in light of statutory provisions, cannot be faulted.

12. Accordingly, the present writ petition is dismissed in its present form, leaving it open for the petitioner to file appropriate petition, if so advised.

Order Date :- 25.1.2024 n.u.

(Manjive Shukla, J) (S.D. Singh, J)

2024-02-01T18:09:39+0530 High Court of Judicature at Allahabad