

04. 30.04.2018

Heard Mr. K.K. Jena, learned counsel for the petitioner and Mrs. S. Patnaik, learned Addl. Government Advocate for the State.

At the outset, Mr. Jena, learned counsel submits that he is giving up his prayer made in the writ application for declaring the Board's Excise (Fixation of Fees on Mahua Flower) Rules, 1976 as amended in the month of June, 2000 as ultra vires vis-à-vis the provisions of Bihar & Orissa Excise Act, 1915. To that effect, he files a memo which may be kept on record.

Challenge in the present writ petition has been made to the demand notices dated 01.02.2012 under Annexure-2 series purportedly claiming for deposit of non-realization of transport fee on short-drawn MGQ. Purportedly the demand notices were based on the objection raised by the audit for non-payment of transport fee on short drawn MGQ of Mahua flower in respect of O.S. shop during the year 2009-10. The issue raised herein is no more res integra in view of the judgment of this Court in W.P.(C) No.14493 of 2004 disposed of on 19.09.2014. The relevant portion of the said judgment is quoted herein below:

“In the case at hand, we are clearly of the view that in the absence of transportation (whether it is intra-district or inter-district), there can be no claim for levy of transport fee. In the case at hand since the petitioner has reiterated that he has procured Mahua flower from individual retailers (Adivasis), who collect the same from the forest and at the time of purchasing such commodity, the same have been entered in the register maintained under the excise rules and counter signed by the Excise Inspector. Allowing the claim and

or demand of transport fee inter alia may also tantamount to levy of a transport fee on the produce which has been purchased by the petitioner from a person who has sold it within the retail limit specified by the State.

Therefore, we are of the considered view that both the questions framed herein above are answered in favour of the petitioner and against the State. The State cannot levy a transport fee unless the requirements of Rule-4(A) are satisfied and nor can a presumptive transport fee be claimed on the basis of actual utilization, since the same would tantamount to levying transport fee on purported transactions by an individual, who has sold the Mahua flowers within the limit prescribed for the purpose of retail sale for which transport fee was payable.”

Learned Addl. Government Advocate on behalf of the State has no objection to the submission of learned counsel for the petitioner that the issue raised herein is covered by the aforesaid judgment.

The demand notices under Annexure-2 series are quashed in terms of the direction contained in the aforesaid judgment. Accordingly, the writ application is disposed of.

Free copy of this order be handed over to the learned counsel for the State for necessary communication.

Urgent certified copy of this be granted on proper application.

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**I.Mahanty,J.**

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**Biswajit Mohanty,J.**

Prasant