IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.926 of 2010

==

1. The State of Bihar through Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar, Patna
2. The Joint Commissioner, Commercial Taxes Department, Patna Division, Patna
3. The Assistant Commissioner, Commercial Taxes Department, Patliputra Circle, Patna

.... Appellants

Versus

M/s. Phooltas Autos Limited, now known as M/s. Maurya Motors Ltd., C-1, Industrial Area, Patliputra, Patna

.... Respondent

==

Appearance :

For the Appellant/s : Ms. Nivedita Nirvikar, G.A. 10 with
Mr. Avinash Kumar, AC to G.A.10

For the Respondent/s : M/S Sandeep Kumar, Alok Kumar,
Ajit Kumar & Jitendra Pd. Singh, Advocates

==

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 01-07-2016

Heard learned counsel for the appellant-State and learned counsel for the respondent.

2. The appeal is directed against the judgment and order dated 15.1.2010 passed by the Commercial Taxes Tribunal, Bihar in Revision Case No. PT-223 of 2004 by which the Tribunal has set aside the order dated 28.9.2004 passed by the Joint Commissioner, Commercial Taxes (Appeal), Patna Division, Patna in Appeal Case No. STPR-41 for the period 2001-02 and held that the penalty order under the provisions of Section 20(1)(b) of the Bihar Finance Act, 1981 (hereinafter referred to as 'the Act'), was bad, which order dated

16.9.2009 of the Joint Commissioner had confirmed the order passed by the Assessing Officer.

3. The respondent is a limited company which was a dealer of M/s.Telco at the relevant time and registered with the Commercial Taxes Department of the State. The business premises of the company was inspected on 8.1.2001 by the officers of Bureau of Investigation, Bihar and on the basis of the reports of the inspecting team proceedings under Section 20(1)(b) of the Act were initiated and an ex parte penalty order dated 8.11.2001 was passed by the Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna imposing a penalty equivalent to the tax assessed to the extent of Rs.1,99,226.73. The appeal filed by the petitioner before the Joint Commissioner, Commercial Taxes was dismissed by order dated 28.9.2004. Before the Tribunal it was found that the penalty had been levied for the reason that the sale shown by the petitioner to have taken place on 26.7.2000 itself, on which date the rate of tax was 4%, whereas according to the Revenue, the actual delivery of vehicles took place after 26.7.2000, on which date the rate of tax was 12% and thus the difference of 8% was evaded, which was the amount of tax assessed, and similar amount of penalty was imposed under Section 20(1)(b) of the Act.

4. Before the Tribunal the stand of the assessee was that the

concerned vehicles were delivered to the assessee ex-factory at Jamshedpur by M/s. Telco and therefore the assessee had absolute right to sell the same, which sale was actually made on 26.7.2000 itself to the intending consumers mentioning details like chassis No., engine No., etc. and the same was rightly shown by them in the returns and in accounts and thus there was no concealment of the turnover as the transfer of property in goods had already taken place on 26.7.2000 and imposition of penalty was wholly unjustified. On the other hand, the stand of the department was that there were conditions in the sale document that price and associated taxes may change without notice and hence price will be applicable as per the price prevailing on the date of delivery and thus the transfer of property in the vehicles was not complete on 26.7.2000, rather it took place subsequent to that date and thus it was a case where an attempt was made to evade tax by concealing turnover.

5. The Tribunal on the aforesaid facts noticed that the revision itself was against the order of penalty under Section 20(1)(b) of the Act, which provides that a penalty can be imposed if one has furnished incorrect turnover or incorrect particulars of sale and purchase in the return and only if there is incorrect turnover and concealment, action under Section 20(1)(b) of the Act can be resorted to. It was found that the petitioner had not made any concealment in

the return or books of accounts, rather he genuinely took the sale completed by that fateful day, i.e., 26.7.2000. It was found that the authorities also held that there was no concealment in the return or books of account and the only ground was that on the same figure of sale, the sale itself had been shown by the authorities after the crucial date, i.e., 27.7.2000, on which date the sales tax would be 12% instead of 4% and it was therefore according to the Tribunal not a case of evading tax on incorrect turnover. For the said reason the order imposing penalty was found to be irregular, bad and contrary to provision of Section 20(1)(b) of the Act and, accordingly, it was set aside.

6. Learned counsel for the appellant-Revenue submits that it was a case of evading tax by the assessee and thus the authorities have rightly imposed the penalty under Section 20(1)(b) of the Act. It is also submitted that the assessment of the petitioner had been made treating the sale as having been completed after 26.7.2000 and therefore tax at the rate of 12% and not 4% was leviable which order has not been challenged by the assessee and has acquired finality and this also goes to show that it was a fit case for imposition of penalty.

7. Learned counsel for the respondent-assessee, on the other hand, submits that the penalty under Section 20(1)(b) of the Act could only be levied if there had been any incorrect statement of turnover or

incorrect statement of sales and purchase in the return furnished under sub-section(1) of Section 16 of the Act, whereas there was no such allegation at all by the Department in the matter and the only difference is with respect to the inference to be drawn on the facts submitted as to whether the sale had taken place on 26.7.2000 or thereafter. Under the said circumstances, it is submitted that the Tribunal had correctly held that it was not a case for levy of penalty under Section 20(1)(b) of the Act.

8. We have considered the submissions of learned counsels for the parties and the materials on the record. It is evident from Section 20 of the Bihar Finance Act (since repealed) that if escaped turnover is detected then penalty can be levied under sub-section (1) of Section 20 in two circumstances: firstly, if the dealer has furnished incorrect turnover or incorrect particulars of sale and purchase in the return under the Act in which the penalty shall be a sum not exceeding three times but not less than the amount of tax. The second circumstance in which penalty can be levied is provided under clause (b) of sub-section (1) of Section 20 where the dealer furnishes incorrect particulars of sale and purchase in the return submitted under the Act in which case the penalty shall be a sum not exceeding the amount of tax. The Tribunal has found as a fact that the petitioner had not concealed any turnover or figure of sale in the return, only that he

genuinely took the sale as completed by 26.7.2000. The same is a finding of fact which acquires finality with the decision of the Tribunal and can only be interfered with by this Court in exercise of its appellate jurisdiction on a substantial question of law if the said finding is based upon no material or it is perverse. That is not the stand of the State rather learned counsel for the State submits that it is not a case of furnishing of incorrect particulars or furnishing incorrect turnover rather it is a case of an attempt that was made by the dealer to show that the sale was completed on 26.7.2000 instead of the subsequent date as the deliveries have been made subsequently. That being so, the factual issue as decided by the Tribunal being also the stand of the State itself, it cannot be said that the factual issue decided by the Tribunal that there has been no concealment of any turnover or furnishing of incorrect particulars in the books of accounts, is fit to be interfered with.

As a matter of fact, the issue of concealment would be relevant where the penalty sought to be imposed is under Clause (a) of sub-section (1) of Section 20 whereas under sub-section (b) thereof penalty can be levied only if there is a furnishing of incorrect statement of the turnover or incorrect particulars of sale and purchase. This Court does not find any such stand taken by the appellants that any such incorrect statement of turnover or particulars of sale and purchase have been made and only an attempt was made to show that the sale was completed on 26.7.2000 and not thereafter. It is evident that there had been no incorrect statement made by the dealer so as to attract penalty under Section 20(1)(b) of the Act rather it was only an attempt to make the sale before 26.7.2000 by taking delivery of vehicles ex-factory on 26.7.2000 at Jamshedpur itself and thereby acquire absolute right on the same date to sell to the final customers. If the same has not been held to be completed by the Revenue and assessment made, accordingly, it is quite a different matter but it cannot be said that there was any suppression of fact much less any concealment.

9. In the aforesaid view of the matter, we are of the opinion that no question of law much less substantial question of law arises in the present matter. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

spal/-

(Sudhir Singh, J)

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2016
Transmission Date	