IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.570 of 2011

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1. The State of Bihar through the Principal Secretary cum Commissioner, Commercial Taxes, Government of Bihar, Patna
2. The Principal Secretary cum Commissioner, Commercial Taxes, Bihar, Patna
3. The Joint Commissioner, Commercial Taxes (Appeal), Central Division, Patna, Commercial Taxes Department, Bihar, Patna
4. The Commercial Taxes Officer, Bureau of Investigation (I.B.), Central Division, Patna

.... Appellants

Versus

M/s Azad Transport Co. Pvt. Ltd. Bindeshwar Lane (in front of Aprasa Hotel), Patna (at present B. Block, Bansal Tower, R.K. Bhattacharya Road, Patna)

.... Respondent

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Appearance :
For the Appellants : Mr. Vikash Kumar, Advoate.
For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 14-03-2016

I.A. No. 4588 of 2011

The application is for condonation of delay of three years six months and twenty five days in filing the present appeal under the Bihar Value Added Tax Act, 2005.

2. It is pointed out that initially the file was processed as if the appellant is to avail the remedy of reference before the Tribunal itself against the order dated 24th of August, 2007 passed by the Tribunal. Against the said order, the appellant filed reference under Section 48 of the Bihar Finance Act, 1981, which was found to be not maintainable vide order dated 28th of July, 2010. It is thereafter, the appellant had filed the present appeal along with the present Interlocutory Application.

3. Keeping in view the interest of justice, we deem it appropriate to condone the delay in filing the appeal and to hear the appeal on merits.

4. I.A. No. 4588 of 2011 is, thus, allowed.

M.A. No. 570 of 2011

1. The appellant-State has raised as many as 18 substantial questions of law arising out of an order passed by the Commercial Taxes Tribunal, Bihar on 24th of August, 2007, whereby the Tribunal set aside the order of imposition of penalty under Section 31(3) and Section 33(5)(b) for violation of Section 31(2a) and 33(5)(a) of the Bihar Finance Act, 1981 (hereinafter referred to as “the Act”).

2. We have heard learned counsel for the appellant and find that no substantial question of law arises for consideration.

3. As per facts from the record, there was surprise inspection of the assessee’s premises located at Kadamkuan, Patna on 28th of February, 2004. The Stock Register, Bills, Purchases invoices, Goods Receipts, Computer files etc. were produced by the Manager before the inspecting officer. The Inspecting Team found that the accounts were not maintained as per Section 31(1), 32 and 31(2a) of the Act and also in prescribed proforma. No permit was produced for goods purchased from outside State and goods were kept in transit storage for the purpose of tax evasion. 88 consignments of goods were seized. A show-cause notice was issued fixing 1st of March, 2004 for reply and production of documents relating to seized goods. After granting opportunity of hearing to the assessee, the Commercial Tax Officer imposed penalty under Section 31(3) read with Section 33(5)(b) of the Act. The appeal preferred against the said order was dismissed. It is thereafter, the Tribunal in a further revision, set aside the order passed by the Commercial Tax Officer. Aggrieved, the revenue is in appeal.

4. The learned Tribunal has found that as per the Inspection Report, Seizure List and Penalty Order, the petitioner produced books of accounts in which goods found in inspection were accounted for. The tribunal noticed that though the maintenance of account was not in accordance with the prescribed form and that

irregularities were also found but the extent of irregularities were not pointed out by the inspecting team. Thus, the Tribunal found that it is not a valid ground for imposition of penalty. The Tribunal also found that a number of goods were gift items having no commercial value. Therefore, no penalty could have been imposed. Several consignments were for those whose value was less than Rs. 5,000/- for which no road permit is required for their transportation. Still further, the purchase invoices, consignment notes etc. relating to 51 consignments were produced at the time of inspection and others were produced at the time of hearing. Since documents were produced, the Tribunal found that the dealer could not be liable for penalty as imposed by the Commercial Tax Officer as affirmed in appeal.

5. We find that the findings of the Tribunal are findings of fact on the question of explanation of the assessee regarding production of the documents relating to 88 consignments. Some of the consignments were gifts and thus, were not taxable. Some others were of less than Rs. 5,000/- for which no road permits were required. In respect of others, the documents were produced either before the assessing officer may be at the time of hearing before the officer.

6. Since documents were produced before the Assessing Officer at the time of consideration of imposition of penalty, which the Tribunal has found to be satisfactory, we do not find any substantial question of law for consideration in the present appeal. The same is, thus, dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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