IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 652 OF 2019

STATE OF GOA, THR. THE CHIEF
SECRETARY AND 2 ORS. ... Petitioners

Versus

GOA MOTORS PVT. LTD., VASCO. ... Respondent

Ms. Priyanka Kamat, Addl. Government Advocate for the Petitioners.

Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.
Date:- 15th October, 2019

P.C.

Heard Ms. Kamat, learned Addl. Government Advocate for the Petitioners.

2. The challenge in this petition is to the judgment dated 03.07.2014 made by the Administrative Tribunal in Value Added Tax Appeal No.16/2010.

3. At the outset, it is necessary to note that though the impugned order was made on 03.07.2014, this petition has been instituted only on 24.09.2018. The explanation for this inordinate delay in paragraph 16 of the petition is hardly satisfactory. The explanation starts with the statement

that after the impugned order was made the concerned Government Advocate received the file only on 20.06.2016 i.e. after the period of almost two years. The record indicates that the Government was represented in Value Added Tax Appeal No.16/2010 before the Administrative Tribunal. There is no explanation as to why two years period was required to only move the file so that the same reaches the office of the Government Advocate. Thereafter as well, the routine reasons have been set out that the file is moved from table to table in order to explain further delay of almost two years. On the ground of inordinate and unexplained delay itself this petition is required to be rejected.

4. In any case, we note that by the impugned order the Tribunal has only set aside the penalty imposed upon the assessee in terms of Section 10 of the Central Sales Act, 1956 (the said Act). In the present case, the Tribunal has noted that there was no formal representation as such on the part of the assessee and therefore, element of *mens rea* was ruled out. The Tribunal thereafter relying upon the decision of the Hon'ble Apex in the case of ***Commissioner of Sales Tax Vs Sanjiv Fabrics***[1] has held that element of *mens rea* is condition precedent for levying penalty under Section 10 of the said Act and on this basis set aside the penalty imposed upon the assessee.

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1 2010(35) VSTI (SC)

5. According to us, there is no case of jurisdictional error made out by the Petitioners so as to warrant interference in the impugned order.

6. For the aforesaid reasons, this petition, is dismissed. There shall be no order as to costs.

NUTAN D. SARDESSAI, J. **M. S. SONAK, J.**

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