IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4567 of 2015

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Balurghat Technologies Limited, through its Manager, Branch Office, Raksol, Bihar

... ... Petitioner/s

Versus

1. The State Of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes Department, New Secretariat, Patna.
2. The Deputy Commissioner of Commercial Taxes, Integrated Check Post Jalalpur, Gopalganj.
3. The Commercial Taxes Officer (Probation), Integrated Cheek Post, Jalalpur, Gopalganj, Commercial Tax Department, Government of Bihar, Patna.
4. The Commercial Taxes Officer, Integrated Check Post, Jalalpur, Gopalganj, Commercial Taxes Department, Government of Bihar, Patna.
5. The Joint Commissioner Commercial Taxes, Muzaffarpur, Commercial Taxes Department, Government of Bihar, Patna.
6. The Monitoring Authority, Integrated Check Post, Jalalpur, Gopalganj, Commercial Taxes Department, Government of Bihar, Patna.
7. The Deputy Commissioner Commercial Taxes, Integrated Check Post Jalalpur, Gopalganj, Commercial Taxes Department, Government of Bihar, Patna.
8. The Deputy Commissioner Commercial Taxes, Gopalganj, Commercial Taxes Department, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Piyush Lall, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-12-2023

The issue agitated in the writ petition is the imposition of penalty after the detention of goods in the entry check post, which goods were transported without the statutory declaration form D-VII, which is in violation of Section 60(2) of the Bihar Value Added Tax Act, 2005 (for brevity, ‘the Act’).

2. Sri Piyush Lall, the learned counsel appearing for the petitioner, would contend that the goods were intended for export and the absence of statutory declaration form alone cannot result in penalty since the invoice clearly indicated the export to Nepal. It is also submitted that Section 56(4) (b) speaks of the satisfaction of the authority detaining the vehicle, as to attempt to evade tax which is a rebuttable presumption. The petitioner had produced the statutory declaration form subsequently. It is also submitted that the goods intended for export could be said to have resulted in an attempt to evade tax only if under Section 62 it had not exited the State of transit within seventy-two hours as stipulated in the said provision. It is argued that the proceedings are not in accordance with law and in violation of the statutory provisions.

3. Learned Government Advocate Sri Vikash Kumar, on the other hand, would rely on ***Guljag Industries v. Commercial Taxes Officer, (2007) (7) SCC 269,*** to contend that

there is no question of *mens rea* insofar as the violation of the statutory prescription and the absence of the document; essentially to substantiate the export and the transit through the State of Bihar as spoken of by the petitioner. It is also submitted that the declaration form subsequently produced was not generated before the commencement of the transport and was one generated subsequent to the detention of the vehicle.

4. On facts it has to be noticed that the petitioner was transporting goods worth Rs.25,57,440/- and the invoice accompanying the goods indicated the sale by the manufacturing-company in Ghaziabad, U.P. to a trader in Kathmandu, Nepal. The goods were seized at 4:00 a.m. on 05.02.2015. The order-sheet accompanying Annexure-6, a translated copy of which was produced before us, clearly indicates that after the detention of the vehicle and preparation of inspection report and seizure list, a show cause notice was served on the driver with 07.02.2015 as the date fixed for hearing. The driver had sought for many adjournments which were granted on 07.02.2015, 11.02.2015 and on 14.02.2015. On 19.02.2015, the driver had produced written objection with some documents. Annexure-4 is said to be the declaration form generated which is dated 05.02.2015. In fact, the transport

commenced on 04.02.2015 and SUVIDHA form D-VII produced as Annexure-4 was generated after the detention of the vehicle and detection of the discrepancy, insofar as the mandatory document not accompanying the transport. This led to the order passed on 20.02.2015 wherein penalty was imposed.

5. ***Guljag Industries*** (*supra)* was a case in which the provisions of the Rajasthan Sales Tax Act, 1994 was considered wherein an officer at a check-post or barrier was empowered to seize and pass orders to retain any goods if the transport by a vehicle, boat or animal is accompanied by a false declaration or which are not covered by the documents prescribed under sub-section (3). The penal provision also empowered the officer to impose a penalty for possession of goods not covered by goods vehicle record or other documents prescribed under the statute, or for submission of false declaration of documents. It was in this context that ***Guljag Industries*** *(supra)* declared that there is no reason for *mens rea* under the said provision.

6. Section 60 of 'the Act' speaks of an establishment of the check-post and sub-section (2) requires every transport of goods other than those specified in Schedule-I to file before the authority at the check-post or barrier a correct and complete declaration in such form and manner as may be prescribed. Sub-

section (4) by clause (a) empowers such authority or officer to seize any goods along with the vehicle or carrier if he suspects that the same is being transported in contravention of the provisions of Section 60(2) after carrying out interception and inspection of the vehicle. Clause (b) of Section 60(4) also makes Section 56 *mutatis-mutandis* applicable in the case of seizure, penalty, search, release and confiscation of goods. Section 56(4) (b) empowers and mandates such authority *inter alia* seizing a vehicle to impose a penalty equal to three times the amount of the tax calculated on the value of such goods, for the purpose of release, if the person in-charge of goods fails to produce any evidence or fails to satisfy the said authority regarding the proper accounting of goods.

7. Hence, as submitted by the learned counsel for the petitioner even if the detention is made on a suspicion that the goods are being transported in contravention of the provisions of sub-section (2) of Section 60, the person in-charge of the goods has to be given an opportunity to prove that there is no such contravention. The person in-charge of the goods has to satisfy the authority by producing material evidence not only regarding the compliance of the provisions of the statute, but also regarding the proper accounting of goods.

8. In the present case, a reading of the order indicates that the driver of the vehicle attempted to move ahead without filing the documents prescribed which filing at the check-post was mandated by Section 60(3). The vehicle was intercepted by the authority at the check-post and on the driver being asked to produce the documents, the statutory declaration form D-VII was found absent. The declaration form now produced is also one generated after the detention. Hence, it is crystal clear that there was no declaration form uploaded in the site by the petitioner before the transport commenced, which is mandatory since the declaration form has to accompany the consignment.

9. A declaration form subsequently generated, after the detention of the vehicle and statutory violation was noticed by the check-post authority, would not enable the satisfaction as required under Section 60 read with Section 56 of the VAT Act. In this context, we will have to refer to a three-judge Bench decision of the Hon'ble Supreme Court in ***State of Rajasthan v. D.P. Metals, (2002) 1 SCC 279*** which also considered the provision considered in ***Guljag Industries*** *(supra).* Looking at the provision which only attracted a civil liability of penalty it was found that there were two circumstances which arose from the above provision making the transporter liable for penalty.

First, the non-compliance of the provision would be not carrying the documents mentioned in the clause and second if false or forged document or declaration is submitted. A submission of false or forged documents can be presumed, without anything further, to be an attempt to mislead the authorities and evade tax, since hiding the truth and tendering falsehood would *per se* show existence of *mens rea*. It was then held that similarly where, despite grant of opportunity under the provision if the required documents referred to are not produced, even though the same should exist, it would clearly prove the guilty intent. In such circumstance, it cannot be held that the breach of the provision is merely technical or venial.

10. Once the ingredients of the provisions are established after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy a lesser amount of penalty was the declaration of the three-judge Bench. It was also held that if by mistake some of the documents are not readily available at the time of checking and when an opportunity is given in accordance with the principles of natural justice, the transporter or the consignor has the opportunity to produce the documents which ought to have existed at the time of transport which, however, was not

accompanied for reason of human error or inadvertence.

11. We find that the goods were detained on a valid suspicion which could not be rebutted by the person in-charge of the goods despite an opportunity of hearing being granted. In fact, the declaration form indicated the violation of the statutory provision which mandated the transport to be accompanied with a statutory declaration form which also had to be generated prior to the commencement of the transport.

12. In the present case, admittedly, the statutory declaration was not accompanying the transport. The same was produced afterwards as indicated in Annexure-4. However, it has been noticed that the declaration form did not accompany the transport only because it was never generated. If it was generated before the commencement of the transport and it was not accompanying the transport for some valid reason, then definitely there is no reason to impose penalty. However, in the present case, the submission of the declaration form generated on the subsequent date, clearly indicates the guilty intent and the breach cannot be regarded as technical or venial.

13. As far as Section 62 is concerned, the same applies only when the goods have entered the State validly after filing of the prescribed documents in the entry check post and

obtaining a transit pass. When a transit pass is obtained from the entry check post, the goods have to leave the exit check-post not later than seventy-two hours. In the present case, the goods were detained at the entry check-post where the goods were entering the State of Bihar and on detention, the person in-charge of the goods was not able to produce the statutory declaration form. The goods were detained and no transit pass was issued. In fact, if the goods were taken into the State of Bihar without filing the documents and if the goods were not detained and the absence of the statutory declaration form was not detected, it could have led to sale within the State. In that circumstances, there would be no statutory form or a check post entry to make the assessment, which definitely leads to tax evasion.

14. We find absolutely no reason to interfere with the order of penalty passed and dismiss the writ petition. We find that at the time of admission of the writ petition, the vehicle was released on furnishing bank guarantee for the penalty imposed. We direct the bank guarantee to be enforced.

15. The writ petition would stand dismissed with the above directions.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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CAV DATE	
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