IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.520 of 2017

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M/s Patna Drug House, a partnership firm having its place of business Uday Palace, Govind Mitra Road, Patna through its partner Pravin Kumar Thakur, S/o Sri Janardan Thakur resident of RMS Colony, Road No. 1A, Kankarbagh, Patna- 800020.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Department of Commercial Taxes, New Secretariat, Bailey Road, Patna.
3. The Joint Commissioner of Commercial Taxes, (Appeals) Patna Division, Patna.
4. The Commercial Taxes Officer, Patna North Circle, Patna.

... ... Respondent/s

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with

Miscellaneous Appeal No. 521 of 2017

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M/s Patna Drug House, a partnership firm having its place of business Uday Palace, Govind Mitra Road, Patna through its partner Pravin Kumar Thakur, S/o Sri Janardan Thakur resident of RMS Colony, Road No. 1A, Kankarbagh, Patna- 800020.

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3. The Joint Commissioner of Commercial Taxes, (Appeals) Patna Division, Patna.
4. The Commercial Taxes Officer, Patna North Circle, Patna.

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 520 of 2017)

For the Appellant/s	:	Mr.Gautam Kumar Kejriwal, Advocate
		Mr. Alok Kumar Jha, Advocate
		Mr. Mukund Kumar, Advocate
		Ms. Ekta Rani, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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(In Miscellaneous Appeal No. 521 of 2017)

For the Appellant/s	:	Mr.Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate Ms. Ekta Rani, 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 : 17-10-2023

The appellant is aggrieved with the order of penalty issued under Section 19(2) of the Bihar Finance Act, 1981 (For brevity 'Act'), being three times the amount of tax sought to be evaded.

2. The questions of law arising in the above appeals, are re-framed as follows:-

(i) Whether the assessee, who is the second seller, can be said to have evaded any tax on the sale of medicines; which sale is taxable only at the first point?
(ii) Whether the assessee by non-disclosure of the purchases made by the assessee from the manufacturer has attempted to evade tax and if so found guilty of evasion, what would be the computation of tax evaded, which has to determine the penalty?

3. Shri Gautam Kumar Kejriwal, learned counsel appearing for the assessee, points out that there can be no tax evasion found, especially when the appellant was a second seller

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and had paid the tax on his purchase, to certify which, he had produced Form IX-C, as provided under the Bihar Sales Tax Rules, 1983 (For brevity 'Rules').

4. Shri Vikash Kumar, the learned Government Advocate points out that in any event there is evasion of turnover tax and non-disclosure of the purchase in the accounts would also entail an attempt to evade tax at the point of first sale.

5. The non-disclosure found is of two transactions, one coming to Rs. 3,60,352/- and other coming to Rs. 18,92,564/-. The assessee is engaged in the sale of medicines and admittedly medicines are taxable at the first point of sale. The assessee has purchased medicines from the manufacturer inside the State of Bihar and has paid tax to the said manufacturer, which is evidenced by the certificate issued under Form IX-C of the Rules. It is also an admitted fact that the assessee had not disclosed the transaction in his books of accounts.

6. Section 19(1) of the Act, *inter alia*, provides for an escaped assessment of any turnover of a dealer, under assessed or assessed at a rate lower than that which was correctly applicable; to be re-assessed within eight years from

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the date of the order of assessment or re-assessment. In the event of such escaped assessment being for reason of the dealer having concealed, omitted or failed to disclose wilfully or furnished incorrect particulars of the turnover there could be imposed a penalty under sub-section(2), not exceeding three times but not less than an amount equivalent to the amount of tax which is or may be assessed on the escaped turnover. Hence, the penalty to be imposed under Section 19(2) has a direct nexus with the computation of the tax amounts evaded.

7. Annexure-II issued under Section 11 to the Bihar Finance Act specifies the point of levy of sales tax under the Act. Medicine, which is in Sl. No. 16 is at the point of first sale by the manufacturer, if the goods are manufactured in Bihar as per clause (b) of the 'Stage of Levy' under Annexure-II.

8. In the present case, the assessee, being a second seller of medicines, does not have the liability to pay tax on his sale of medicines. The exigibility to tax of medicines occurs at the first sale, which is the purchase of the assessee from the manufacturer, who was also within the State of Bihar. The assessee has purchased the medicines, which relates to the turnover found to have escaped assessment, from a manufacturer within the State of Bihar and hence, the sale by

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the manufacturer to the assessee is the first sale exigible to tax.

9. Form IX-C, as required under Rule 12(2) of the Rules, has not been produced at the time when the original proceedings were commenced and continued. However, it was produced later and there was no dispute regarding the credibility of such certificate produced and, in any event, the tax liability is of the seller within the State, the manufacturer who supplied the medicines to the assessee. The assessee is the second seller who sold it to the end consumer; which later sale is not exigible to tax under the Act. The first question is answered in favour of the assessee and against the revenue since the sale of the assessee, which is the second sale, is not exigible to tax.

10. Insofar as the second question is concerned, it is also an admitted fact that the assessee is liable to turnover tax. The assessee hence would be liable for penalty with respect to the turnover tax sought to be evaded at three times, as found in the order of penalty.

11. The first question is answered in favour of the assessee and the second question is answered against the assessee. The Assessing Officer would compute penalty on the basis of the rate of turnover tax as applicable in the subject assessment years, which are 2001-2002 and 2002-03. The

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appeals are partly allowed, as above.

12. Interlocutory application, if any, shall also stand closed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	30.10.2023
Transmission Date	

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