IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.144 of 2023

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M/s Navyuga Engineering Company Ltd. Having its Office at 171, Patliputra Colony, Patna through its authorized representative namely Mr. Yerra Gopi Srinivasa Babu, M, Aged 39 years, S/o Y.L.H Kesavarao Resident of- 4-74, Temple Street, Uppuluru, District- West Godavari, Andhra Pradesh (the Authorized Person).

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary-cum- Commissioner, State Tax Department, Government of Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes (Appeals), State Tax Department, Magadh Division, Gaya.
3. The Deputy Commissioner, State Tax Department, Nawada Circle, Nawada.
4. The Commercial Taxes Officer (Assessing Officer), State Tax Department, Integrated Check Post Rajauli, Nawada.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Samir Kumar, Advocate

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

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-10-2024

The appeal is filed against the order of the Tribunal which affirmed the order of penalty, imposed on detention at check-post. The appellant is a works contractor, who was awarded the work of construction of Ganga Expressway by the Bihar State Road Transport Corporation, as per Annexure-1. For the purpose of execution of the works contract, the appellant who had other work sites, transported a rig machine from their work site at Arunachal Pradesh to Bihar; which machinery was dismantled and loaded in the truck before transportation. The appellant had generated SUVIDHA dated 21.05.2016 prior to the transportation; which had validity, till 5:02.32 p.m. of 05.06.2016 for a declared value of Rs. 2 crores.

2. The truck reached the Integrated Check-Post at Rajauli, Bihar on 06.06.2016 after the expiry of the document uploaded as SUVIDHA. On detention and verification, the driver of the vehicle produced the SUVIDHA document which had expired on 05.06.2016. The appellant's contention was that the truck developed a technical snag and the delay was occasioned only because of the repairs having taken some time. On the appellant being informed of the detention as also the expiry of the document, the appellant generated another SUVIDHA dated 06.06.2016. The said document was not accepted and penalty was imposed, which order was upheld by the Tribunal by the impugned order in the appeal.

3. The appellate authority examined the provisions of the Bihar Value Added Tax Act, 2005 (for brevity 'VAT Act'); specifically Section 60 and 61 and Rule 41(1) of the Bihar VAT

Rules 2005. It was found that the validity of the document uploaded on the electronic media was determined keeping in view the distance to be covered from movement of goods from one work site to another work site. If the movement of goods was not completed within the time stipulated then it is a liability cast on the consignor, consignee and the transporter. Considering the claim of delay occasioned due to the truck developing a technical snag, it was found that the consignor/ consignee or the transporter had the option to generate a fresh form for the purpose of transportation of goods beyond the period as declared in the earlier SUVIDHA, which would erase any suspicion of a multiple transport. That having not been done, the subsequent SUVIDHA generated, after detention, cannot be relied upon to absolve the liability under Section 60. Specific reliance was placed on ***Guljag Industries v. Commercial Tax Officer; (2007) 7 SCC 269*** to find that *mens rea* is not an essential ingredient for imposition of penalty and mere contravention of the provision attracts only a civil liability on failure to comply with the prescription under the Act and Rules. The learned Tribunal rejected the appeal against which the aforesaid appeal is filed; which can be entertained only on substantial questions of law.

4. The appellant has framed a number of questions of law through a separate supplementary affidavit filed; which is reframed as below:-

(i) Whether the transportation of a dismantled machinery from one work site to another attracts the allegation of evasion especially when there is no tax liability since the goods are purchased by the works contractor long back and transferred from one work site to another ?

(ii) Whether the order of the Tribunal affirming the view of the lower authority that, the SUVIDHA produced subsequently, extending the time for transportation was not possible of reliance, is legally acceptable ?

(iii) Whether there could be any presumption of *mens rea* which is essential for the imposition of a penalty, when the transportation of goods did not attract any tax, which was not initiated as a result of a taxing event and the delay having occasioned only by reason of the truck having developed a technical snag ?

5. The learned Senior Counsel Sri Mrigank Mauli appearing for the appellant would stress upon the transportation of the dismantled machinery not attracting any tax for reason of there being no sales effected. The learned Senior Counsel pointed out the invoice for the purchase of machinery which was long back. It is also an established fact that the petitioner had different work sites and the transportation was made from one work site to another. There is no element of *mens rea* and there was no reason to impose penalty, is the argument.

6. The learned Government Advocate relied on two judgments of this Court one reported in ***(2024) 1 BLJ 333 M/s Ceat Limited v. State of Bihar and Others*** and C.W.J.C. No.4567 of 2015 ***Balurghat Technologies Limited v. State of Bihar*** dated 01.12.2023.

7. ***Guljag Industries (supra),*** examining a similar provision found that what comes out from the provision is a penalty for misdemeanor with civil liability and not necessarily one, where there is a requirement of *mens rea* for the purpose of imposition of penalty. ***Ceat Ltd. (supra)*** specifically took note of ***Guljag Industries*** and extracted *inter alia* paragraph 29 which found the provision examined in the said decision, requiring the goods in movement, to travel with the prescribed declaration properly filled in. There the declaration form, though was signed, was blank insofar as the details of the consignment; which was held to be a *modus operandi* to hood wink the competent officers at the check post. The material particulars, not being available in the declaration form, it was impossible for the Assessing Officer to assess the taxable goods. Even the ground of inter-State transaction not attracting a liability to tax, would not by that alone absolve the liability for contravention of the provision. The mere contravention itself would raise a ground for penalty despite the goods being put

under movement as a local sale, import, export or inter-State transaction. Any goods in movement will have to be supported by the requisite declaration and a contravention would attract the civil liability of penalty; which also does not require a finding on *mens rea,* is the binding declaration.

8. ***Guljag Industries (supra)*** also referred to ***State of Rajasthan v. D.P. Metals (2002) 1 SCC 279*** and found the same to be not applicable to the facts of a defect in the declaration form accompanying the transport. Insofar as ***D.P. Metals (supra)*** is concerned; the goods were carried without the declaration form, which was later produced as having been generated even before the transport commenced.

9. Both in ***Ceat Ltd.*** and ***Balurghat Technologies Ltd (both supra)*** the contention was also of no tax liability having been attracted insofar as the transportation of goods were concerned. In ***Ceat Ltd. (supra)*** there was a stock transfer from the warehouse at Patna to that in the State of Jharkhand. The SUVIDHA form produced had a separate invoice number from the invoice carried along with consignment. It was argued that the SUGAM-G form uploaded in the portal of the State of Jharkhand, with respect to the very same consignment had the correct invoice number. A Division Bench of this Court found on facts, that there is a reasonable ground of attempt to carry out multiple transportation; since if there was no checking at the check-post, there could have been a further transport made under the same invoice, which could go unnoticed by the Department.

10. ***Balurghat Technologies Ltd (supra)*** was a case of export into Nepal; again not attracting any tax liability, and the vehicle was detained at the entry check-post of the State of Bihar. The detention at the entry check-post was for reason of transport without statutory declaration form, which was in violation of Section 60(2) of the Bihar VAT Act. Again, ***Guljag Industries*** and ***D.P. Metals (both supra)*** were relied on to find that despite the alleged transaction not attracting tax, if the consignment is not supported by the prescribed declaration, then it attracts the civil liability of penalty. Therein also a subsequently generated declaration form, after detention, was produced which was held to be not in accordance with the dictum of ***D.P. Metals (supra)***. The subsequent production of a document, when the detention was on account of declaration form not accompanying the consignment, can only inure to the benefit of the consignor/consignee, when the same is generated prior to the commencement of transportation. The Division

Bench in ***Balurghat Technologies Ltd. (supra)*** categorically relied on the cited decisions of the Hon'ble Supreme Court to find 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 document which ought to have existed at the time of transportation which, however was not accompanied, for reason of human error or inadvertence.

11. With the aforesaid dictum in our mind, we look at the facts of the case. Admittedly, the detention of the vehicle was on account of the vehicle having reached the check-post only after the time provided for transportation in the declaration form had expired. If, as submitted by the appellant, the truck developed a technical snag, then before re-commencing transportation or at least before the expiry of period of transportation; a further form ought to have been generated. The generation of a declaration form subsequent to the detention cannot at all be relied on.

12. The binding precedents clearly indicates that the mere contravention of the provision; even if the transaction does not attract tax liability, makes the transport liable to penalty and there is no requirement of *mens rea.* The document generated subsequent to detention cannot result in the consignor/consignee being absolved of the liability to penalty. The fact that the transportation was not pursuant to a taxable event, would be inconsequential, insofar as the imposition of penalty, based on the contravention of the provision. The questions of law are answered in favour of the Revenue and against the assessee.

13. The appeal stands rejected.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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