IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.111 of 2017

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M/s Swastika Smokeless Coke Company Pvt. Ltd son of Late Surajdeo Prasad resident of New Diliyan, Old G.T. Road, Dehri-On-Sone, District - Rohta.

... ... Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Commercial Taxes Tribunal, Bihar, Patna through its Secretary.
3. The Commissioner of Commercial Taxes, Vikash Bhawan, New Secretariat, Patna.
4. The Commercial Taxes Officer, Aurangabad Circle, Aurangabad.

... ... Respondent/s

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with

Miscellaneous Appeal No. 112 of 2017

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... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr. Lokesh Kumar, Advocate
		Mr. Vishal Kumar, Advocate
For the Respondent/s	:	Mr. Ajeet Kumar, GA-9
		Mr. Nalim Vilochan Tiwary, AC to GA-9

(In Miscellaneous Appeal No. 112 of 2017)

Appearance :

For the Appellant/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Lokesh Kumar, Advocate Mr. Vishal Kumar, Advocate
For the Respondent/s	:	Mr. Ajeet Kumar, GA-9 Mr. Nalim Vilochan Tiwary, AC to GA-9

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-01-2024

The above appeal arises from the orders of the Tribunal which confirmed the penalty orders passed under Section 16(8) and 16(9) of the Bihar Finance Act, 1981. The assessment years are 2000-01 and 2001-02. The assessment order passed under Section 17(2) was on account of the late filing of returns and delayed payment of tax; which resulted in imposition of penalty under Section 16(8) and 16(9).

2. The imposition of penalty was subjected to a revision before the Commissioner of Commercial Tax and then an appeal before the Tribunal; both of which proved unsuccessful. Though, there are no questions of law framed in the appeal, on a reading of the memorandum and orders impugned, we frame the following question of law:

> *'Whether, the penalty imposed under Section 16(8) and 16 (9) of the Bihar Finance Act, 1981, was in a mechanical and routine manner, thus*

making it perverse and un-reasonable?'

3. The quantum assessed to tax was not challenged and the challenge is/was only against the penalty. Section 16(8) makes mandatory the imposition of penalty on failure to furnish any returns within the due date, for every day of default, at the rate not exceeding 50 rupees. Sub-Section 9 of Section 16 requires a penalty on failure to pay the tax within the due date at the minimum rate of 2.5% and not exceeding 5% for the first 3 months and then at the minimum rate of 5% and the maximum 10% for the further periods in which delay continues.

4. The learned counsel for the appellant relied on the decision in ***M/s Indian Oil Corporation Ltd. v. State of Bihar & Others,*** reported in ***(2003) 3 PLJR 561*** from which we extract paragraph 19 hereunder: -

> *"...Section 16(9) of the Finance Act provides for minimum or maximum penalty and question to be considered is as to whether in such cases any discretion is left to the authority not to impose the tax. In other words, where in view of the nature of the provisions, minimum penalty has to be imposed by the authority and it has no discretion. The law is well-settled that the order imposing penalty is quasi judicial in nature and it involves exercise of judicial discretion. It is not an order which has to be passed by the authority mechanically. It is equally well-settled that unless the party, under obligation to pay tax, has acted*

> *dishonestly, intentionally, in defiance of law or in conscious disregard of obligation and is guilty of conduct contumacious, the penalty ordinarily will not be imposed. Even in a case where minimum penalty is prescribed the authority is not debarred from exercising the judicial discretion and on consideration of fact it can come to the conclusion that no case for imposition of penalty is made out. However, such power is to be exercised, when there is a technical or venial breach of the provisions of the Act or where the breach was bona fide and not intentional..."*

The learned counsel vehemently argued that though a minimum and maximum penalty is mandatory as per the provision, the Assessing Officer still has the discretion to absolve the assessee from the penalty, if sufficient cause is shown and it is proved that the breach was bona fide and not intentional.

5. We have to specifically notice the judgment of the Hon'ble Supreme Court in ***Hindustan Steel Ltd. v. State of Orissa*** reported in ***(1970) 25 STC 2011*** relied on in the cited decision. Therein, the appellant was engaged in construction work which was carried on through contractors. There was supply of material to the contractors and the appellant had not registered under the Orissa Sales Tax Act, which led to the Assessing Officer levying tax and penalty for failure to register itself as a dealer. The Hon'ble Supreme

Court accepted the argument of the assessee that the appellant-company was under a bonafide belief that the company was not a dealer requiring registration under the Act. A technical or bona fide mistake would not necessarily lead to the imposition of even a minimum penalty as prescribed, when the authority vested with such powers comes to the conclusion that no case of penalty is made out, is the binding declaration.

6. In the present case, the only contention of the petitioner who is a registered dealer was that, on the division of erstwhile State of Bihar and Jharkhand, the assessee labored under a confusion as to the returns being filed and tax being paid.

7. We find the same to be not a bonafide belief since the assessee was all along a registered dealer and even after the bifurcation of the States, remained within the State of Bihar. The bonafides of the explanation having been found against the assessee, there is no ground for answering the question of law in the affirmative. The breach of the appellant assessee was neither technical or venial nor was it bonafide or unintentional. Admittedly, the penalty imposed under Section 16(8) and 16(9) were at the minimum of the rates prescribed.

We answer the question of law against the assessee and in favor of the revenue.

8. The appeal stands rejected.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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