(1995) 01 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No. 797 of 1990

Choubey Trader APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 20-01-1995

Acts Referred:

Bihar Finance Act, 1981 — Section 20(1)(b)
Bihar Sales Tax Second Ordinance, 1979 — Section 19(1)(b)

Citation : (1995) 2 BLJR 1333 : (1995) 2 PLJR 113

Hon'ble Judges : K. Venkataswami, C.J;S.J. Mukhopadhyaya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K. Venkataswami, C.J. and S.J. Mukhopadhyaya, J.—In this case the petitioner challenges Annexure ''9'' and ''10'' of the writ petition. Annexure ''9'' is an order levying penalty u/s 20(1)(b) of Bihar Finance Act, 1981 (in short ''Act'') and Annexure '' 10'' is the demand notice.

2. The short point that arises for our consideration is when the assessee/ petitioner has disclosed the turnover in his return but claimed exemption on certain turnover, can the Assessing Officer levy penalty u/s 20(1)(b) of the Act.

3. In support of the contention that no penalty can be levied, learned Counsel for the petitioner placed reliance on a Division Bench judgment of this Court, reported in 1985 Bihar Revenue & Labour Journal 7, wherein this Court has considered the predecessor Section, namely, Section 19(1)(b) of Bihar Sales Tax Second Ordinance, 1979. While construing the scope of that Section, this Court has held that if a particular turnover is disclosed and exemption was claimed that cannot be brought under the heading of concealment for levying penalty. Apart from this, another factor was brought to our notice, namely, while finalising the assessment, the Assessing Officer accepted the case of the petitioner and granted exemption of that turn over.

4. In the circumstances, we have no hesitation to quash Annexure-9 and consequential Annexure-10. Accordingly, this writ petition is allowed. However, there will be no order as to costs.

5. Thought this petition is clubbed with other cases it has been heard and disposed of separately.

