(2010) 09 PAT CK 0109

In the Patna High Court

Case No : CWJC No. 725 of 1995

Kanti Devi APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0109

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—The Petitioner has preferred this writ petition with the prayer to quash the order dated 28.10.94 (Annexure-3), passed by the learned Deputy Commissioner of Commercial Taxes, Muzaffarpur, whereby penalty in terms of Section 20(1) of the Bihar Finance Act, 1981 (hereinafter referred to as ''the Act''), read with Bihar Sales Tax Rules, 1983 (hereinafter referred to as ''the Rules'') has been imposed for submitting incorrect returns.

2. According to the writ petition, it is with respect to the period 1992-93. Basudeo Prasad, the Petitioner''s late husband, was the owner and sole proprietor of a business which was run in the name and style of Shiv Shakti Dal & Oil Mills, Imamganj, Muzaffarpur, and was registered as a dealer under the Act and the Rules. Basudeo Prasad died on 17.6.94, leaving behind the Petitioner, the widow, as his heir and legal representative. It is further stated in the writ petition that the Petitioner had forwarded her communication dated 22.9.94, to the Deputy Commissioner, Commercial Taxes, Muzaffarpur Circle, informing him that the business of the Petitioner''s husband had been closed, and the registration certificate was surrendered. This was followed by receipt of notice dated 1.10.94 (Annexure-1), calling her upon to show cause as to why the returns submitted by the noticee had not disclosed the purchase made from Amrit Vanaspati Company Limited, Ghaziabad, and its sale, and tax under the Act, and penalty in terms of Section 20(1) of the Act, be not imposed on her. She had shown cause by her petition accompanied with the affidavit marked Annexure-2 to the writ petition, wherein the stand was taken that the business

had been closed on 1.9.94, and the registration certificate had been surrendered. It was further stated in the application that her husband had informed her while he was alive, that he had not received any such consignment from Amrit Vanaspati. On a consideration of the materials before him, the learned Deputy Commissioner passed the impugned order imposing penalty of Rs. 50,040/- in terms of Section 20(1)(A) of the Act. Hence this writ petition.

3. While assailing the validity of the impugned action, learned Counsel for the Petitioner submits that there was no notice to the Petitioner and, therefore, the impugned order should not have been passed against her. He further submits that, after the death of her husband followed by surrender of the registration certificate, no penalty can be imposed on her. After demise of the owner, no order in assessment proceeding could be passed, against the deceased owner, nor the widow can be proceeded against. He relies on the provisions of Sections 20 and 38 of the Act. He also relies on the following judgments of Division Bench of the Bombay High Court:

(i) Kishenchand Tolaram v. Ghanekar (1961)12 STC 562

(ii) Commissioner of Sales Tax v. Modern Mercantile Works (1976)38 STC 372

4. Learned Government Counsel has supported the impugned order. He submits that the Petitioner''s late husband was the sole owner of the business and she is the heir and legal representative. Therefore, she is liable to pay in terms of Section 38 of the Act. He also submits that tax is the first charge in terms of Section 29 of the Act. He also relies on Rules 19 and 20 of the Rules. He further relies on the judgment of the Full Bench of Andhra Pradesh High Court in State of Andhra Pradesh v. Godavarthi Kasiviswanadham (1970)25 STC 1.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The admitted position is that the Petitioner''s late husband was the sole owner and the proprietor of Shiv Shakti Dal & Oil Mills, and the Petitioner is the heir and the legal representative in the capacity of the widow. It relates to the period 1992-93, prior to the death of her husband. It is further the admitted position that he had filed returns in his lifetime and was pending considering on the date of his demise. The Department had received report from Investigation Bureau that the Petitioner''s husband had received consignments of vanaspati during the period in question from Amrit Vanaspati, which had not been disclosed in the returns. Therefore, the aforesaid notice dt. 1.10.94 (Annexure-1), had been issued in the name of the business which was received by the Petitioner. In compliance of the show-cause notice, she had shown cause by her application marked Annexure-2 to the writ petition. It is evident on a perusal of the same that she had taken all pleas available to her in law. On a consideration of the materials before him, the learned Deputy Commissioner has passed the impugned order wherein he has found as an issue of fact that the consignments received from Amrit Vanaspati had not been disclosed in the returns, and the Department had learnt of the same from the

report of the Investigating Bureau, Government of India. In such a situation, the Deputy Commissioner has passed the impugned order in terms of Section 20(1) of the Act, whereby he has quantified the amount of suppression in the return at the hands of her husband and has inflicted amount of penalty quantified at Rs. 50,040/-.

6. Section 20 of the Act reads as follows:

20. Escaped turnover detected before assessment.--(1) If the prescribed authority in the course of any proceeding or otherwise under this part is satisfied that any registered dealer or a dealer to whom grant of registration certificate has been refused under the third proviso to Sub-section (2) of Section 14--

(a) has concealed any sales or purchases or any particulars thereof, with a view to reduce the amount of tax payable by him under this part, or

(b) has furnished incorrect statement of his turnover or incorrect particulars of his sales or purchases in the return furnished under Sub-section (1) of Section 16 or otherwise, the prescribed authority shall, after giving such a dealer an opportunity of being heard in the manner prescribed, by an order in writing direct that he shall in addition to any tax which is or may be assessed u/s 17, pay by way of penalty, in a case falling in Clause (a), sum not exceeding three times but not less than an amount equal to the amount of tax and in a case falling in Clause (b), a sum not exceeding two times but not less than an amount equal to the amount of tax on the suppressed turnover or on concealed or incorrect particulars.

(2) The penalty under Sub-section (1) may be imposed before completion of assessment, and for determining the amount of penalty, the prescribed authority may quantify the amount of tax provisionally in the prescribed manner.

(3) Any penalty imposed under Sub-section (1) shall be without any prejudice to any action which is or may be taken u/s 49. Section 20 can be applied in a situation if statement of turnover is incorrect. We are convinced on the basis of the materials on record that incorrect particulars were furnished in the returns, justifying penalty proceeding in terms of Section 20 of the Act. Section 38 of the Act provides for payment of taxes or penalty by the executor, administrator, successor-in-interest or legal representative, and shall be liable to pay out of the property of the deceased. Section 29 of the Act provides that any amount of tax and penalty payable by a dealer or any other person shall be the first charge on the property of the dealer or such person. In other words, Section 29 clearly enables the authorities under the Act to recover tax and penalty from the heir, successor, and the legal representative of the deceased dealer. Furthermore, notices were duly served on the Petitioner in terms of Rules 19 and 20 of the Rules, and did show cause to the same by her communication marked Annexure-2.

7. The materials adverse to the business were received from the report of

Investigating Bureau. The substance of the same was clearly conveyed to her through the show cause notice marked Annexure-1 to the writ petition. This was adequate compliance of law that substance of an order must be conveyed to the person whereby she is adversely affected. Reference may be made to the judgment of the Supreme Court in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, That was a case where the Respondent was a doctor in the services of the Orissa Government. A dispute arose about her date of birth. The State Government had conducted an enquiry in which the Respondent had not been noticed, and had acted on the basis of the report. The High Court allowed the writ petition preferred by the employee, set aside the order altering the date of birth which was to the prejudice of the Respondent, and observed that the State Government was bound in law to convey the report or the substance of the same to the person who would be adversely affected by the decision founded on the same. The Supreme Court dismissed the appeal preferred by the State Government, and upheld the judgment of the High Court. Paragraph-12 of the judgment of the Supreme Court is relevant and is reproduced here in below:

12. It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first Respondent. Thereafter, the first Respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed.

We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first Respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first Respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State.

8. Learned Counsel for the Respondents has rightly relied on the judgment of the Full Bench of Andhra Pradesh High Court in State of Andhra Pradesh v. Godavarthi Kasiviswanadham (supra), wherein, in a comparable circumstances, the Andhra Pradesh High Court held that the provision for levy and collection of penalty for contravening the requirements of the taxing statutes has become an integral part of such enactments and one of their purposes. Under Rule 23(1), the legal representative is liable to pay tax and penalty only to the extent and limit of the deceased dealer''s assets in his hands.

9. In the result, the writ petition is dismissed. The impugned order dated 28.10.94 (Annexure-3), is hereby upheld. The Petitioner shall be liable to make payment of the penalty as per the impugned order out of the property of the deceased with interest @ 9% from the date of the impugned order till the date of payment. In the facts and circumstances of the case, there shall be no order as to costs.