(2007) 08 PAT CK 0028

In the Patna High Court

Pawan Kumar Rajgarhis @ Pawan Rajgarhia APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Citation : (2007) 08 PAT CK 0028

Judgement

Abhijit Sinha, J.—Pawan Kumar Rajgarhia, the Director of M/s. Maa Annapurna Transport Agency (Pvt.) Ltd., has filed this application u/s 482, Cr.P.C. for quashing of the entire criminal proceeding including the order dated August 6, 2005 passed by the Additional Chief Judicial Magistrate, Patna City, in Didargunj P.S. Case No. 16 of 2004 whereby he has taken cognizance of offences under Sections 49, 31(2)(A), 33(5)(A), 31(2)(B) and 33 of the Bihar Finance Act, 1981 (hereinafter referred to as, "the Act").

2. One Digambar Prasad Tripathi, the Assistant Commissioner of Commercial Taxes, Investigating Bureau, Patna Division, submitted a written report on February 25, 2004 to the officer-in-charge, Didargunj P. S., stating, inter alia, that on the directions of the Commissioner, Commercial Taxes, Bihar, Patna a surprise inspection was made of the godown premises of M/s. Maa Annapurna Transport Agency located at Sabbalpur and in course thereof certain irregularities in respect of maintenance of registers regarding some of the goods kept therein were detected and as some of the documents in respect of certain goods could not be produced on demand by the godown in-charge the same amounted to a violation of Section 31(2)(A) read with Section 33(5)(A) of the Act and as such the unaccounted goods were seized u/s 31(2)(B) read with Section 33(5)(B) of the Act and were handed over to the godown in-charge for safe keeping. It was further alleged that taxes involved in the seized goods were being evaded by the transporter in collusion with the consignors and a request was made to take appropriate action u/s 49 of the Act. It was also stated that a separate proceeding for imposing penalty was being initiated by the Commercial Taxes Department for the said violation.

3. It was submitted on behalf of the petitioner that he being a transporter is engaged in mere transportation of goods belonging to various customers from one destination to another including outside the State and for the said purpose goods are temporarily kept in different godowns and branch offices at different places for booking, delivery and transhipment. It is further said that the petitioner being a transporter has no concern with the purchase or sale of the goods under transportation and any sales tax levied thereupon is payable only by the purchaser or the seller of the goods, he being a dealer under the Act who is carrying on a business of purchase/sale of goods. In that view of the matter, according to the learned Counsel for the petitioner, no question of evasion of sales tax at the hands of the petitioner can be said to have arisen. It was further sought to be submitted that u/s 31(2)(A) of the Act a duty has been cast upon the transporter to carry a prescribed declaration along with a cash memo or bill or challan in respect of the goods under transportation and produce the same on demand before the sales tax authority failing which there is power of seizure of goods u/s 31(2)(B) and imposition of penalty u/s 31(3) of the Act, which are subject to appeal and revision under Sections 45 and 46 of the Act, respectively. It is further submitted that Section 49 of the Act deals with offences of penalties and the maximum punishment of three years is applicable to the dealers and sellers and not to the transporter. The learned Counsel further sought to point out that the filing of first information report before the police for instituting a case u/s 49 of the Act for investigation is illegal as police has no power to investigate the offences purported to have been committed under the Act which is a Special Act and the provisions of general law would not apply. It was also submitted that under the provisions of Section 49 of the Act no prosecution can be launched without prior sanction of the Commissioner of Commercial Taxes. In support of the submissions the learned Counsel sought to rely upon the case of Hindustan Lever Ltd. v. State of Bihar [1997] 1 APLR 56.

Admittedly the petitioner is a transporter who transports goods of its customers from one destination to another or sometimes retains goods in its godown for delivery to the consignee or for transportation to another destination. He is not amenable to pay any taxes to the Commercial Taxes Department under this provision. Admittedly also no prior sanction of the Commissioner of Commercial Taxes had been obtained prior to taking of cognizance and the investigation by the police in view of the provisions of the Act being special provision was non est in the eye of law.

4. The learned State counsel in trying to defend its action has referred to paragraph 9 of its show cause wherein it was sought to be submitted that proceeding u/s 31(3) of the Act had been initiated against the petitioner and penalty had been imposed and the said penalty had been upheld by the appellate authority and as such there was no illegality in filing the criminal case against the petitioner and the submissions of the petitioner''s counsel cannot be accepted. He has also sought to deny that the police does not have the power to investigate into the matter and that investigation in this regard was restricted

only to the investigation bureau.

It has been submitted on behalf of the petitioner that a revision was filed being Revision Case No. PT147/2005 against the order of the JCTT (Appeal), Patna Division, which had set aside the order passed in the appeal.

5. It is by now well-settled that once the order of adjudication/levy of penalty is set aside or quashed and the assessee''s contention is accepted and upheld by the Tribunal, the order of the Tribunal must be taken as the very basis for quashing the proceeding arising from prosecution launched by the Revenue. Reference in this connection can be made to the cases of Patna Guinea House and Others Vs. Commissioner of Income Tax and Another, Ashirvad Enterprises and Others Vs. State of Bihar and Another, and K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax,

Due regard being had to the facts and circumstances of the case and the discussions above the prosecution of the petitioner cannot be sustained in law. Accordingly the order taking cognizance is hereby quashed and the application is allowed.

