(1996) 07 PAT CK 0022

In the Patna High Court

Case No : C.W.J.C. No''s. 5582 and 5529 of 1992

Sanju Lampu and Another — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:
Bihar Finance Act, 1981 — Section 31(1), 31(2), 31(3)

Citation : (1997) 1 PLJR 787 : (2003) 133 STC 202

Hon'ble Judges : D.P. Wadhwa, C.J;Aftab Alam, J

Bench : Division Bench

Advocate : L.N. Rastogi and Sandeep Kumar, for the Appellant; Rameshwar Prasad IIk, General and O.P. Agrawal, Standing Counsel II, for the Respondent

Final Decision : Allowed

Judgement

1. These two writ petitions are similar on facts and involve the same question of law and hence they were heard together and are being disposed of by this common order.

2. Both the writ petitions relate to the seizure of truck carrying lottery tickets and the passing of an order of penalty in terms of Section 31(3) of the Bihar Finance Act, 1981.

3. In C.W.J.C. No. 5582 of 1992 the petitioner is the driver of a truck bearing registration No. WB-37-1107 which alongwith the lottery tickets loaded on it was seized on June 17, 1992 on the orders of the Deputy Commissioner of Commercial Taxes, Intelligence Branch, Patna Division, Patna, u/s 31(1) and 31(2)(a) of the Bihar Finance Act. On the next day June 18, 1992 an order was passed in purported exercise of power u/s 31(3) of the Act imposing penalty amounting to Rs. 15,13,712,10.

4. C.W.J.C. No. 5529 of 1992 is filed by the driver of a truck bearing registration No. DDL-3675. This truck alongwith the goods being carried on it and the transport receipt issued by the transporting company along with the challan and

invoices, etc., was seized by the Deputy Commissioner of Commercial Taxes, Intelligence Branch, Patna Division, Patna, on June 17, 1992. On June 18, 1992 an order was passed imposing penalty of Rs. 10,93,686 u/s 31(3) of the Act.

5. The petitioners in these writ petitions assailed the orders of penalty on a number of grounds including the liability to pay sales tax on lottery tickets as also the mode of computation of the value of the tickets which are to be subjected to tax. It is, however, not necessary to go into those questions as these two writ petitions are fit to be allowed in the light of a Bench decision of this Court in O.C. Corporation and Others Vs. State of Bihar and Others, . In the aforesaid decision it was observed and held as follows :

"On the submission of the learned counsel for the petitioners that merely for contravention of Sub-section (2a) of Section 31 of the Act for not carrying the prescribed form and/or carrying form with defective entries cannot per se entail penal provisions under Sub-section (2b) and Sub-section (3) of Section 31 of the Act, learned Advocate-General has fairly conceded that for mere contravention of the provisions of Sub-section (2a) of Section 31 of the Act may not attract penal action as contemplated under Sub-section (2b) and Sub-section (3) of Section 31 of the Act. Sub-section (2b) provides that if the prescribed authority is satisfied on such verification and search that the transportation of goods is being made in contravention of the provisions of Sub-section (2a) or in a manner which is likely to lead to evasion of tax payable, he may, notwithstanding anything contained in this part, seize the goods or the carrier or vehicle or vessel along with the goods and documents relating to the goods and the carrier, vehicle or vessel. Similarly Sub-section (3) of Section 31 of the Act provides that if any clearing, booking or forwarding agent or dalal or person transporting goods contravenes the provision of Sub-section (1) or (2a) in a manner which is likely to lead to evasion of any tax payable under this part, the prescribed authority, may without any prejudice to any action u/s 49 of this part on the charge of abetment, after giving the person concerned an opportunity of being heard in the manner prescribed, impose penalty. As such the condition precedent for seizing the goods or the carrier, vehicle or vessel alongwith the goods and documents relating to the goods and the carrier, vehicle or vessel in the exercise of power under Sub-section (2b) of Section 31 of the Act and imposing penalty in the exercise of power under Sub-section (3) of Section 31 of the Act is that the prescribed authority must be satisfied that the goods in question transported through the State of Bihar were sold or purchased in the State of Bihar and were clandestinely transported by evading payment of taxes due to the State. Such ''satisfaction must be arrived at on some positive materials and not on mere suspicion and the prescribed authority before proceeding to take action in the exercise of power under the provision of Sub-section (2b) and Sub-section (3) of Section 31 of the Act, must record reasons for deriving satisfaction that the goods transported through the State of Bihar, were in fact sold or purchased in the State of Bihar and are being clandestinely transported, evading payment of taxes. In the absence of any materials disclosing that the goods transported are sold or purchased in the State of Bihar, any action in the exercise of power under Sub-section (2b) and Sub-section (3) of Section 31 of the Act for mere contravention of Sub-section (2a) of Section 31 of the Act will be illegal and without jurisdiction."

6. Thus the condition precedent for the seizure of the goods or the vehicle is that the prescribed authority must be satisfied that the goods in question were sold or purchased in Bihar and were being clandestinely transported by evading tax payable to the State. Such satisfaction has to be arrived at on the basis of some positive materials and not on mere suspicion.

7. From a perusal of the impugned orders in the two cases, we are satisfied that there is no consideration much less any finding on these aspects of the matter which are held to be the conditions precedent for the seizure and the imposition of penalty in terms of Section 31(3) of the Act. The impugned orders, therefore, are clearly unsustainable and are accordingly quashed.

8. In the result, these two writ petitions are allowed. However, without any order as to costs.

