(1998) 06 PAT CK 0020

In the Patna High Court

Case No : C.W.J.C. No. 236 of 1989

Shanker Trading Company and Another — APPELLANT

Vs

The State of Bihar and Another — RESPONDENT

Date of Decision : 30-06-1998

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

Citation : (1999) 1 PLJR 525

Hon'ble Judges : D.S. Dhaliwal, J;Aftab Alam, J

Bench : Division Bench

Advocate : Ramesh Kumar Agrawal and Jitendra Kumar Sinha, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam and D.S. Dhaliwal, JJ.—The Petitioner No. 1 is a trader whose goods (600 tins of Vegetable oils) while being transported on a truck bearing registration No. WMK 9692 were intercepted by the Sales tax authorities on 11.8.1989. On demand by the authorities, the truck driver, Petitioner No. 2 produced before, them challan, dated 8.8.1989 and bijak, dated 7.8.1989 showing the purchase of the goods from a firm in Calcutta. According to him the goods after their purchase at Calcutta were being transported to Begusarai at the Petitioner''s address. The driver, however, failed to produce the road permit in form XXVIII-B in original but only produced its photo copy. The Sales tax authorities not being satisfied in the absence of the road permit in its original seized the truck along with the goods and initiated a proceeding u/s 31(3) of the Act. On 18.3.1989 the Sales Tax officer passed the final order levying an amount of Rs. 22,826/- as sales tax on the seized goods along with penalty @ three times of the tax amount. It is this order which is sought to be challenged in this writ petition.

2. From a perusal of the order, it is evident that the Sales Tax Officer proceeded on the assumption that mere infraction of Sub-section (1) or (2a) of Section 31

would ipso facto attract the imposition of penalty u/s 31(3) of the Bihar Finance Act, 1981. The assumption is quite erroneous as section 31(3) lays down that on contravention of Sub-section (1) or (2a) of Section 31 the penalty would be levied provided the contravention was made in a manner which was likely to lead to evasion of tax payable under the provisions of he Act.

3. There is no finding much less any consideration on this aspect of the matter in the impugned order. The impugned order, therefore, appears to us to be unsustainable in law. The view taken by us is supported by a Bench decision of this Court in Sanju Lampu and Another Vs. State of Bihar and Others, (to which one of us Aftab Alam, J. was a party).

4. Following the aforesaid decision of this Court, this writ petition must succeed. We accordingly quash the impugned order dated 11.8.1989 contained in Annexure ''2'' to this writ petition.

5. In the result, this writ petition is allowed.

No order as to costs.