(1993) 08 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No. 2318/93 (R)

Unique Transport Service and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 12-08-1993

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

Citation : (1993) 2 BLJR 1371

Hon'ble Judges : S.B. Sinha, J;N. Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.B. Sinha and N. Roy, JJ.—Heard the learned Counsel for the petitioner and the learned Government Advocate.

2. This Application is directed against an order dated 2-8-93 passed by respondent No. 3 whereby and whereunder he has imposed penalty of Bs. 92, 899.29 paise in purported exercise of powers conferred upon him u/s 31(3) of the Bihar Finance Act, 1981.

3. It appears that in relation to a consignment which was loaded in five trucks, one road permit was issued. Petitioner''s truck was intercepted and the driver of the truck could not produce the road permit. However, in the chalan the number of the road permit was mentioned as 182207. In that road permit it was mentioned that the consignment has been booked in all the five trucks.

4. Mr. S. L. Agrawal, the learned Counsel appearing on behalf of the petitioner, submitted that in the facts and circumstances of this case tae petitioner cannot be said to have any mens rea so as to attract the penal provisions of Sub-section (3) of Section 31 of the Bihar Finance Act, 1981. Sub-section (3) of Section 31 of the Act reads as follows:

If any clearing, booking or forwarding agent or Dalai or person transporting goods contravenes the provisions of Sub-section (1) or (2-a) 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 abetement, after giving the person concerned an opportunity of being heard in the manner prescribed, direct him to pay by way of penalty, an amount which shall be equal to three times the amount of tax calculated on the value of goods in respect of which particulars or information or incorrect particulars or information has been furnished under Sub-section (1) or no cash memo or bill or challan (and the prescribed declaration by the commissioner under Sub-section (2-a) has been produced before the prescribed authority under Sub-section (2-a) or rupees one thousand whichever is greater.

In view of the fact that no finding has been arrived at by booking the consignments in five trucks on the basis of one road permit, the petitioner has been able to evade any ax payable under the said Act and further in view of the fact that, there is no clear finding as to whether the petitioner has any mens rea or not. in our opinion, the impugned order cannot be sustained. It is now well-know that finding on existence of mens rea is essential before an order of penalty can be passed.

5. For the reasons aforementioned, this writ application is allowed, the impugned order dated 2-8-93 as contained in Annexure 3 is quashed and the matter is remitted back to the respondent No. 3 for a fresh decision in accordance with law.

6. However, the petitioner may file an application for release of the truck and the goods which the respondent No. 3 should consider on its own merits and dispose of the same within three days from the date of filing or such application.