(1989) 08 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No. 131 of 1989

Ziauddin and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 09-08-1989

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

Citation : (1995) 2 PLJR 736

Hon'ble Judges : S. Ali Ahmad, J;Ram Nandan Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The prayer in this application is to quash Annexures 3 and 4. Annexure 3 is a notice given to the Petitioners to show cause as to why action be not taken against them u/s 31(2a) of the Bihar Finance Act, 1981. Annexure 4 is the order imposing penalty of Rs. 1,26,000/- on the Petitioner for violation of Section 31(2a) of the Act.

2. Admittedly 1400 (fourteen hundred) tins of Vanaspati were being carried in two trucks having registration No. BRI 5731 and BRA 9724 from Begusarai to Saharsa. The officers of the Commercial Taxes, Khagaria intercepted the truck near a petrol pump on the National Highway. On demand the driver produced the cash memos, road permit and the receipt showing payment of market fee. The road permits did not mention the date of the cash memo, though it contained the numbers being 53 and 54 issued by the Petitioner No. 3. As we have mentioned earlier the cash memos were also produced, therefore, there was no difficulty in ascertaining the dates of cash memos which were not mentioned in the road permit. The officers of the Commercial Taxes thought that this was a matter which violated Section 31(3) of the Act. A notice, therefore, was given to the driver to show cause as to why a penalty should not be imposed. Almost immediately thereafter the order (Annexure 4) imposing penalty of Rs. 1,26,000/- was imposed which was three times the amount of tax leviable on the

goods that were being carried. This matter came before us earlier on 16.5.1989 when we directed that the consignment be released on furnishing sufficient security to the tune of Rs. 1,26,000/- to the satisfaction of Respondent No. 2. No counter affidavit has been filed on behalf of the Respondent No. 2. Mr. Lala Kailash Bihari Pd., Learned Counsel for the Respondent has vehemently opposed this application and has said that non-mention of the date in the road permit was wilful and by this omission tax payable under the Act could be avoided. We fail to understand how non-mention of the date on the bill will be helpful in avoiding payment of taxes. The cash memos were produced by the driver which contained dates. The number of the cash memos were mentioned in the road permit, therefore, everything that required to be seen for the purposes of satisfaction as to whether due taxes have been paid or not were produced by the driver. Non-mention of the date in column 9 of the road permit in the circumstance was highly technical and this omission in our view could not attract the provision of penalty. We accordingly, after hearing learned Counsel for the parties quash Annexures 3 and 4 and allow this application.