WP(C) 1224/2014
BEFORE
THE HON’BLE MR JUSTICE HRISHIKESH ROY
THE HON’BLE MR JUSTICE MANOJIT BHUYAN

The first petitioner is a dealer registered under the Assam Value Added Tax Act, 2003 (hereinafter referred to as the VAT Act ) and also the Central Sales Tax Act, 1956. They are aggrieved by realization of tax and penalty, under Section 75 of the VAT Act, in respect of the Gold Ornaments imported by the dealer on 13.12.2013 from Mumbai, through the Jet Airways.

The dealer completed the statutory formalities to take delivery of the goods at 12:51 hours on 14.12.2013 and therefore they assail the legality of the levy of tax and penalty by projecting that the petitioners never had any intention to evade tax and the necessary documentation was done online within the permitted period, in terms of the decision taken in the meeting held on 2.6.2012 (Annexure-XVIII) betweens the Tax Authorities and Jewellery traders.

Mr. A. Goyal, the learned Counsel submits that the concerned consignment of jewellery was intended for delivery to customers in connection with marriage ceremonies and therefore the dealer under compulsion had to pay the assessed tax of Rs.96,063/- and the penalty of Rs.2,88,189/-, to honour their business commitments.

The assessee however refers to M/s Hindustan Steel Ltd vs. State of Orissa reported in 1969(2) SCC 627 to project that imposition of penalty upon the registered dealer is wholly irrational in as much as necessary statutory formalities were completed by the dealer on 14.12.2013 itself, before they applied to take delivery of the goods carried by the Cargo Company on 14.12.2013. He further submits that element of mens rea is absent and therefore the levy of penalty in such quasi criminal procedure, is wholly unjustified.

However Mr. S. Saikia, the learned Standing Counsel, Finance (Taxation) Department submits that show-cause-notice in the present case was issued to the Cargo Company, whereas steps were taken in the present case, by the jewellery dealer.

The exchange of pleadings here is complete and therefore after hearing the learned Counsel, the case be admitted. The Registry should list this case for final haring after 4 weeks.

The realisation of penalty and tax is made subject to result of this case.