

State Bank of India Raj Bhawan Branch

Miscellaneous Appeal No.451 of 2015

FORUM

Patna High Court

ORDER DATE

08 Aug 2023

NOTE TYPE

Source extract

01 CONCLUDING COURT PASSAGE - SOURCE EXTRACT

In the absence of such an allegation, though the escaped duty may be reclaimed within one year, there cannot be any imposition of penalty under Section 11AC. Section 11 AC, in paragraph no. 29 of the said judgment, was declared to be “punishment for an Act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the Section” (sic). 14. We have to examine the provision under Section 271C in the background of the aforesaid declaration of law made based on the specific words employed in the provision under Section 11AC. Section 271C does not have any restriction insofar as the penalty being leviable only on the conscious wrong doing or deliberate deception by the assessee. The mere failure to deduct the whole or any part of the tax as required under the provisions of Chapter-XVII-B, 115-O(2)(i) and the second proviso to Section 194B(ii) would be liable to penalty. The assessee’s claim of exemption from tax by reason of the interest being paid to Government entities cannot be sustained. Exemption from tax is a statutory mandate, to be decided by the authorities under the Income Tax Act and not the assessee. There is hence no ground to absolve the imposition of penalty, as discernible from the words employed in the provision; which is distinct and different from those employed in Section 11AC of the Central Excise Act. The question with respect to the sustainability of a penalty on the facts and circumstances of the case is found in favour of the revenue and against the assessee. 15. The appeals stand dismissed answering all the questions in favour of the revenue and against the assessee.

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