

Bachan Traders Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-15-2005

Judge : Nagendra Rai, Actg. C.J. and S.N. Hussain, J.

Acts : Bihar Finance Act, 1981 - Sections 16(8) and 17(3)

Appeal No. : CWJC No. 11294 of 2004

Appellant : Bachan Traders

Respondent : State of Bihar and ors.

Advocate for Def. : R.K. Datta, Standing Counsel and Purnendu, Adv.

Advocate for Pet/Ap. : Debi Pal, Sr. Adv., P.K. Sahi, S.K. Singh and Vikas Kumar, Advs.

Disposition : Application dismissed

Judgement :

1. The petitioner, a sole proprietorship firm through its sole proprietor Arun Kumar, has filed the present application for quashing the order dated October 19, 2000, passed by the Assistant Commissioner, Commercial Taxes (respondent No. 4), who in exercise of power under Section 17(3) read with Section 16(8) of the Bihar Finance Act, 1981 (hereinafter referred to as 'the Act') passed an order of assessment in which he has included the turnover of the period May 21, 1997 to

November 16, 1997 in the taxable turnover, the appellate order dated April 25, 2001, passed by the Joint Commissioner of Commercial Taxes (respondent No. 3) and the order of the Tribunal dated July 22, 2004 by which the appellate authority and the revisional authority have upheld the order of the assessing authority.

2. The controversy in this case is as to whether the petitioner is liable to pay sales tax on sale of country made liquor for the period of May 21, 1997 to November 16, 1997 ?

3. It is an admitted fact that prior to May 21, 1997, sales tax on country made liquor was not leviable. For the first time the sales tax on the country made liquor was imposed by the State of Bihar at 25 per cent by a notification dated May 21, 1997 issued under the Act. A wholesale dealer S.K. Consolidated Ltd., filed a writ application (CWJC No. 5220 of 1997) challenging the aforesaid notification. The petitioner and others also filed writ applications challenging the same. This Court on June 3, 1997, passed an interim order in the writ application (CWJC No. 5220 of 1997) staying the notification. Thereafter, in the petitioner's case and others also the similar order of stay was passed and those were clubbed together and on June 26, 1997 the court directed for final disposal of the matter and the interim order was directed to continue till the disposal of the writ petitions. However on November 17, 1997, this Court in the case of the petitioner (CWJC No. 5298 of 1997) clarified the matter that the interim order dated June 3, 1997 passed in CWJC No. 5220 of 1997 is modified to the extent that let the assessment proceeding be go on but realisation of tax in pursuance of the notification dated May 21, 1997 contained in annexure 6 shall remain stayed till further orders. Thereafter, it appears that the order of stay was vacated and the said writ applications including the application filed by the petitioner's proprietorship firm through Arun Kumar were not pressed and the writ applications were withdrawn.

4. Mr. Debi Pal, Senior Advocate, appearing on behalf of the petitioner submitted that as admittedly the notification dated May 21, 1997 was stayed on June 3, 1997 and was vacated on November 17, 1997, as indicated above, the petitioner is not liable to pay the sales tax for the said period (May 21, 1997 to November 16, 1997) on the turnover for the simple reason that once the notification was stayed,

the petitioner did not collect the sales tax and if he had not collected the same then he could not be penalised and in that view of the matter the assessment order for the aforesaid period for levying the tax on the turnover of the said period is impermissible in law. In support of the said submission he has relied upon a judgments which will be referred at the appropriate stage.

5. Learned Counsel for the State raised two points. Firstly, he submitted that even if the claim of the petitioner was considered and rejected by the appellate authority and the revisional authority, he still has an adequate and efficacious remedy of reference as provided under the provision of the Bihar Finance Act. Thereafter, if the same is decided against the petitioner then he may take the recourse to the filing of a writ application and as such his application on the ground of availability of efficacious and effective alternative remedy is not maintainable. Secondly, he submitted that in any view of the matter it is settled law that if any stay order is granted and the same is subsequently vacated then the liability to pay tax begins from the date of notification.

6. So far the maintainability matter is concerned, both the parties have cited decisions in support of their respective stand.

7. Learned Counsel for the petitioner submitted that the settled law is that ordinarily or normally the court does not interfere with an order where an alternative remedy is available but in a case like this when the petitioner has challenged the jurisdiction of the authority to impose the tax for the aforesaid period, the writ application is maintainable even though the petitioner has not availed of the alternative remedy of pursuing the reference.

8. Learned Counsel appearing for the State on the other hand submitted that the alternative remedy of reference cannot be allowed to be bypassed, which has been held by the Supreme Court to be an effective remedy. We do not want to go into this question in this case for the reason that both the parties have addressed the court on merit also. As such we are of the view that it is necessary to decide the matter on the merit itself instead of going into the question of maintainability on the ground of availability of an alternative remedy, which we will decide in an appropriate case.

9. So far the merit is concerned, according to the learned Counsel for the petitioner as the notification was stayed by this Court which was later on vacated or modified, the petitioner is not liable to pay tax for the aforesaid period for the simple reason that once the notification was stayed and it was not in operation he did not collect the tax on the turnover and any direction for payment of tax for the aforesaid period will cause undue hardship to the petitioner. He also submitted that the petitioner's case deserves equitable consideration by this Court. In support of the aforesaid submission, he has relied upon two judgments of the Supreme Court passed in the case of West Bengal Hosiery Association v. State of Bihar : AIR 1988 SC1814 and British Physical Lab India Ltd. v. State of Karnataka : (1999)1SCC170 .

10. In the case of West Bengal Hosiery Association : AIR 1988 SC1814 the apex Court has quashed the notification granting exemption from payment of sales tax to the dealers of the State of Bihar on the ground that it was void ab initio and accordingly held that payment of tax for the relevant period might lead to undue hardship to the dealers in the State of Bihar who might have sold locally manufactured hosiery goods without taking into consideration any amount on account of the liability to sales tax in view of the exemption. They would suffer hardship if direction is issued for collection of sales tax during the relevant period and accordingly directed that the arrears of sales tax which would become payable by the dealers in the State of Bihar in respect of sales of local hosiery goods made during the period when the said notification was in operation should not be collected.

11. The same view was taken by the apex Court in the case of British Physical Lab India Ltd. : (1999)1SCC170 wherein also the rates of concession for dealers of locally manufactured television sets and components were quashed by the apex Court. The State took steps to recover the differential amount of tax from such dealers. Taking into consideration the hardship faced by such dealers and in the interest of justice and equity, the Supreme Court restrained the State from collecting amount by the said notification.

12. The aforesaid two decisions, in our view, were rendered after taking into consideration the facts of those cases namely notifications, on the basis of which the dealers could not collect the tax, were held to be invalid and as such the sales tax should not be realised from them. Here the case is quite different and is fully covered by the law laid down by the apex Court, which has been relied upon by the learned Counsel for the State, in the case of Ouseph Mathai v. Abdul Khadir : AIR 2002 SC110 , wherein the stay was granted regarding dispossession of the tenants and then it was argued that once their case was dismissed by the High Court they deposited the amount and as such they have not committed any fault. The apex Court held that it is settled law that stay granted by the court does not confer a right upon a party and it is granted always subject to the final result of the matter in the court and at the risks and costs of the party obtaining the stay. After the dismissal of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the court which had granted the stay. Grant of stay does not automatically amount to extension of a statutory protection.

13. Thus, in view of the aforesaid settled law of the apex Court, the petitioner has no case. This apart, if the claim of the petitioner is allowed then he will be rewarded for his own wrong act, which has no sanction in law.

14. Admittedly, the petitioner filed an application and a stay order was granted and later on that order was vacated and thereafter he withdrew the case. Had it been a case that his claim would have been allowed by this Court, as has done in the aforesaid two cases which were relied upon by the counsel for the petitioner, then the matter would have been different. Here is the case that the petitioner filed a case and obtained a stay order, which was later on vacated and thereafter he withdrew the case. In such a situation, he cannot take the benefit of his own wrong. This apart the similar question has been considered in a batch of cases (CWJC No. 4696 of 1999) by a division bench of this Court and the same were also dismissed.

15. In the result, there is no merit in this application and the same is dismissed.