(1987) 04 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1701 of 1981 (R)

Aasiana Bar APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-04-1987

Acts Referred:

Constitution (Forty-sixth Amendment) Act, 1982 — Section 6(1), 6(2)

Citation : (1987) PLJR 669 : (1988) 70 STC 6

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Biren Poddar, for the Appellant; S.C. Chattopadhyay, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In this case, the petitioner has challenged the orders of assessment as contained in annexures 1, 1/1, 1/2 and 1/3, that is, for the years 1974-75, 1975-76, 1976-77 (from 1st April, 1976 to 22nd May, 1976), 1976-77 (from 23rd March, 1976 to 31st March, 1977) respectively.

2. The principal points upon which the petitioner has filed the present writ petition challenging the aforementioned orders of assessment are that no sales tax was payable with regard to the articles of food sold in the restaurant itself and consumed by the customers. In this connection reference has been made to a decision of the Supreme Court reported in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, . The aforementioned judgment came up for review also and the same is reported in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, .

3. The aforementioned points have also been considered in a Division Bench judgment of this Court in C. W. J. C. No. 1430 of 1981 (R) and C. W. J. C. No. 1433 of 1981 (R) (Rajasthan Jalpan v. Additional Superintendent of Commercial Taxes) wherein it has been held that "the food-stuffs which were served to the

customers in the restaurant, the dominant purpose whereof was sale of food and the rendering of services were merely secondary and unless and until such a finding is arrived at, no sales tax is payable to the food-stuffs so served to the customers in the restaurant". The learned counsel for the petitioner further draws my attention to the Constitution (Forty-sixth Amendment) Act, 1982 whereby and whereunder Article 366 was amended by insertion of a clause, that is, (29A). Article 366(29A)(f) reads as follows :

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

By reason of the Constitution (Forty-sixth Amendment) Act, 1982, the recovery of tax on the sale or purchase of goods was validated to certain extent as would be evident from Sub-section (1) of Section 6 of the said Act. However, Sub-section (2) of Section 6 which provides for exemption so far as the validation of imposition of taxes as provided for in Sub-section (1) of Section 6 reads as follows :

(2) Notwithstanding anything contained in Sub-section (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax-

(a) where such supply has been made, by any restaurant or eating house (by whatever name called), at any time on or after the 7th day of September, 1978, and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time; or

(b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made at any time on or after the 4th day of January, 1972, and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time :

Provided that the burden of proving that the aforesaid tax was not collected on any supply of the nature referred to in Clause (a) or, as the case may be, Clause (b), shall be on the person claiming the exemption under this sub-section.

After the aforementioned amendment in the Constitution, the Bihar Finance Act, 1981 was suitably amended by the Bihar Finance Act, 1984 which came into force with effect from 1st April, 1984. The said relevant amendment is contained in Section 2(t)(vi) and Section 60A(2)(b). Section 60A for all intent and purpose reproduces Section 6 of the Constitution (Forty-sixth Amendment) Act. In terms of the aforesaid amendment, there cannot be any doubt that the taxes which were illegally assessed in view of the aforementioned decision of the Supreme Court as also of this Court as referred to hereinbefore now have got the statutory sanction in terms of Section 60A(2)(b) of the Bihar Finance Act, 1981 read with

Section 6(2)(b) of the Constitution (Forty-sixth Amendment) Act.

In the result, this writ application is allowed. Annexures 1 series as referred to above are hereby quashed. There will be no order as to costs.