(1995) 01 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No. 422 of 1995

Ambuj Kumar Shaw and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 23-01-1995

Acts Referred:
Bihar and Orissa Excise Act, 1915 — Section 92

Citation : (1995) 01 PAT CK 0003

Hon'ble Judges : K. Venkataswamy, C.J;S.J. Mukhopadhaya, J

Bench : Division Bench

Judgement

1. In this case Petitioner Nos. 1 and 2 are aggrieved by the demand, as contained in Annexure ''1'', and Petitioner No. 3 is aggrieved by the demand, Annexure ''2''. Their, grievance is like this. The Petitioners after paying necessary duty have imported Indian made foreign liquor and beer and presently they have in stocks such imported liquor end beer. By a decision dated 7.11.94 the State Government have decided to increase the rate of duty from the present rate by Rs. 5/- per L.P.L. on Indian made foreign liquor and Rs. 2/- per bulk litre on beer.

2. Learned Counsel for the Petitioners submits that unless this decision is notified, as required u/s 92 of the Bihar Excise Act, that cannot be given effect to, and according to learned Counsel, so far as this decision is concerned, this has not been published in the Government gazette. Apart from that, he has also raised Anr. point that in any event the stocks on trade cannot be subjected to increased rate of duty. In support of that he placed reliance on an unreported judgment of the Division Bench of the Orissa High Court in Original Jurisdiction Case No. 1988 of 1985 (Garg Beverage (Pvt.) Ltd. v. Superintendent of State Excise, Cuttack) and also a decision of the Supreme Court in Civil Appeal No. 93 of 1965 (The Deputy Commissioner, Excise, Bangalore v. M/s Phipson and Co. Ltd.). In the Division Bench decision of the Orissa High Court the learned Judges had considered identical provisions and they held that the stock in hand of a licensee at the time of enhancement of duty could not be subject to enhanced

duty. The same ratio is laid down in the decision of the Supreme Court.

3. Learned Counsel appearing for the revenue invited our attention to Annexure ''3'' to the writ application and submitted that the intention of Annexure ''3'' is to subject enhanced duty only on Indian made foreign liquor and beer to be imported on and from that date. He is not in a position to state clearly whether the decision to increase duty has been published in the Gazette or not.

4. In the circumstances, as we are concerned with the increase of duty to the stock at hand as on 7.11.94, we are not deciding the question whether the increase of duty can be given effect to in the absence of publication of the notification in the Gazette as required u/s 92 of the said Act, However, we hold that the increased rate of duty cannot be made applicable to the stocks at hand on 7.11.94.

5. The writ petition is disposed of accordingly.

6. Let a copy of this order be given to the State counsel.

