(1987) 05 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No''s. 843 and 845 of 1980 (R)

Ashoka Hotel and Restaurant and Another APPELLANT

Vs

Additional Superintendent, Commercial Taxes and Others RESPONDENT

Date of Decision : 15-05-1987

Acts Referred:
Constitution (Forty-Sixth Amendment) Act, 1982 — Section 6, 6(1), 6(2)

Citation : (1987) PLJR 1156 : (1988) 69 STC 371

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

Bench : Single Bench

Advocate : P.C. Roy, for the Appellant; S.K. Chattopadhyaya, Government Pleader I, Bijoy Dutta, Junior Counsel to Government Pleader I and M.M. Pal, Junior Counsel to Government Pleader I for State, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—These two writ applications have been heard together as both the cases involve common point of law.

2. In C. W. J. C. No. 843 of 1980 (R) the order of assessment for the years 1977-78 and 1978-79 as contained in annexures 3 and 3/A are under challenge. In C. W. J. C. No. 845 of 1980 (R) the order of assessment for the years 1977-78 and 1978-79 as contained in annexures 4/A and 4/B are under challenge.

3. The principal points upon which the petitioners have filed the present writ petitions 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, ,

4. 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 decisions 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.

5. In the result, these petitions are allowed and the order of assessment as contained in annexures 3 and 3/A in C. W. J. C. No. 843 of 1980 (R) and as contained in annexures 4/A and 4/B in C. W. J. C. No. 845 of 1980 (R) are hereby quashed.

6. The concerned respondent will now proceed to decide the case in accordance with law and in the light of the observations made hereinbefore. In the circumstances of the case there will be no order as to costs.

