(2003) 03 PAT CK 0042

In the Patna High Court

Case No : C.W.J.C. No. 2934 of 2003

Escorts Limited — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:
Constitution of India, 1950 — Article 286(1)

Citation : (2003) 2 PLJR 668

Hon'ble Judges : Nagendra Rai, J;Chandra Mohan Prasad, J

Bench : Division Bench

Advocate : L.N. Rastogi, Sanjay Kumar No. 1 and Kalpana Rastogi, for the Appellant; R.K. Dutta, for the Respondent

Judgement

1. Heard learned Counsel for the parties.

2. The Petitioner is aggrieved by the order of assessment dated 30.12.2002 passed by the Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna, as contained in Annexure-1 series, levying entry tax for the assessment years 1999-2000 and 2000-2001 under the provisions of Bihar Tax on Entry of Goods into Local Areas (for Consumption, Use or Sale Therein) Act, 1993, hereinafter referred to as the ''Act''.

3. It is an admitted position that there is right of statutory appeal against the said order. Learned Counsel for the Petitioner, however, submitted that he has challenged the legality of the order on the ground that the order is contrary to the constitutional mandate contained in Article 286(1)(a) of the Constitution of India and as such alternative remedy will not stand in the way of entertaining and deciding the point raised in this writ application.

4. No doubt, availability of alternative -remedy is not an absolute bar in entertaining the writ application. When the vires of the provision is challenged or the order is without jurisdiction and in other similar circumstances this Court may interfere even if alternative remedy is available. The question is as to

whether in this particular case this Court should exercise its discretion or not.

5. Learned Counsel for the Petitioner submitted that entry tax on inter-State sale is contrary to the mandate contained in Article 286(1)(a) of the Constitution of India.

6. Entry tax is not a tax on sale. It is a tax which is in the nature of fee for entry of goods into local areas for the purposes of sale, consumption and use therein. It is also settled that the State Legislature has power to legislate on the said subject by virtue of Entry 52 of List II (State List) of the Seventh Schedule of the Constitution of India. As the entry tax is not levied on sale, there is no question of levying entry tax on inter-State sale. In that view of the matter, question of violation of the provisions of Article 286(1)(a) of the Constitution of India does not arise so far entry tax is concerned and as such the said submission advanced by Mr. Rastogi, learned senior counsel appearing for the Petitioner, in our view, is fit to be rejected.

7. Every sale in the local area is not subject to entry tax under the provisions of the Act. The sale should be made in the local areas for the purposes of consumption, use or sale in that local area or for consumption in other local areas. A Division Bench of this Court has considered the matter in the case of Hindustan Lever Ltd. and Another Vs. State of Bihar and Others , and has held in para-21 as follows:

21. Thus, in view of the settled law, the authorities under the Act including the Tribunal, have committed a serious error of law in holding that once the goods have entered into the local area and have been sold, the charging section will come into play and the dealer will be liable to pay tax. The authorities have to decide while levying tax under the Act apart from entry of goods for consumption and use, the sale was also made for consumption and use in the concerned local area or taken out and consumed in other local areas. However, it is for the dealer to prove at the relevant stage to the satisfaction of the assessing authority that the sale was for the purpose of taking out the goods to the other local areas or goods were re-exported and were not for the purposes of consumption or use. Therefore, the first point urged on behalf of the Petitioners succeeds and it is held that the Respondent-authorities have committed a serious error of law in coming to the aforesaid conclusion.

8. Thus, in each case it is a question of fact to determine as to whether sale is for any of the aforesaid purposes or the sale is not connected with use, consumption or sale therein. The said question cannot be said to be pure question of law justifying interference in writ jurisdiction bypassing right of statutory appeal provided to the Petitioner. In our view, the authorities are competent to consider the matter in the light of law settled by this Court as well as Apex Court reference of which has been made in the aforesaid judgment of this Court.

9. Accordingly, we are of the view that the Petitioner should take recourse to the

remedy of appeal and if the authorities find that the sale is not for any of the aforesaid purposes in that case the sale will not attract levy of entry tax. If the Petitioner files an appeal within two weeks from today along with limitation petition, the authority will condone the delay in filing the appeal as the writ application was filed before this Court under bonafide legal advice. Thereafter, the authority will decide the matter in accordance with law and if any stay petition is filed, the same should be disposed of within one week from the date of filing of the said petition.

10. With the aforesaid observation, this writ application stands disposed of.

