(2003) 11 PAT CK 0011

In the Patna High Court

Case No : C.W.J.C. No. 9664 of 2003

Indexport Limited and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Citation : (2003) 11 PAT CK 0011

Judgement

1. The petitioners, a company registered under the Companies Act, 1956 have filed the present writ application challenging the Notification No. S.O. 88 dated 31st March, 2003 putting the product marketed by them, namely, coconut oil, from entry No. 63 having sales tax at the rate of nine per cent to the category of hair oil under entry No. 245 having sales tax at the rate of twelve per cent.

2. The petitioners have challenged the notification on four grounds.

(i) Entry No. 245 deals with hair oil only and it cannot take under its sweep any oil not exclusively used as hair oil.

(ii) Coconut oil has always been treated as an edible oil and included as such under entry No. 63 and, accordingly, its inclusion under entry No. 245 is impermissible in law.

(iii) Coconut oil is used for two purposes, namely, edible oil and hair oil, and once it is used as edible oil it cannot be treated as a hair oil and, accordingly, its inclusion under entry No. 245 is bad in law.

(iv) Coconut oil is edible oil also and as such its exclusion from the category of edible oil and inclusion in the category of hair oil requiring payment of higher rate of sales tax is discriminatory visa-vis the other edible oil.

3. The State has filed a counter-affidavit stating therein that in Bihar coconut oil is used as hair oil only and not as an edible oil and taking into consideration the said fact it has been changed from entry No. 63 to entry No. 245.

4. Mr. Pal, learned senior counsel appearing for the petitioners drew our attention

to two judgments of the Supreme Court in the case of Ayurveda Pharmacy and Another Vs. State of Tamil Nadu, and in the case of Commissioner of Central Excise, Calcutta Vs. Sharma Chemical Works, in support of the said submissions.

5. From perusal of the judgment of the apex Court in the case of Commissioner of Central Excise, Calcutta Vs. Sharma Chemical Works, we find that it has been held that the burden of proving a particular product to fall under a particular tariff item is always on the Revenue and the main criteria for determining classification is normally the use it is put to by the customers who use it.

6. Thus, the question as to whether the inclusion of coconut oil under entry No. 245 is valid or not has to be judged with reference to its user by the customers in the State of Bihar.

7. The said question cannot be decided as an abstract proposition of law. It requires verification of factual matters and the State has to produce the material to discharge the onus which lie on it. We, in writ jurisdiction, cannot take evidence and decide the question of user. There is remedy available under the Bihar Finance Act, 1981 where the authorities can go into the factual aspect of the matter as well as the legal aspect.

8. Accordingly, we are of the view that let the matter be first decided at the appropriate stage by the authority in terms of the provisions of the Act. Thereafter, this Court, if the situation arises, may decide the question.

9. With the aforesaid observation, the writ application stands disposed of.

