(2009) 03 PAT CK 0104

In the Patna High Court

Case No : CWJC No. 998 of 2009

ITC Limited APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Citation : (2009) 2 PLJR 933

Hon'ble Judges : J.B. Koshy, C.J;Dharnidhar Jha, J

Bench : Division Bench

Advocate : Ram Balak Mahto, Rohitabh Das and Ranjit K. Das, for the Appellant; Lalit Kishore, for the Respondent

Judgement

1. When demand was raised for the payment from 1.4.2008 on differential amount of entry tax on tobacco with interest the petitioner approached this Court by filing writ application, contending that amount of refund due, due to collection of tax for the earlier occasion under invalid law can be adjusted from it. The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (in short the Act) was amended by the Amending Act 10 of 2001 whereby a new schedule substituting the original one was introduced with effect from 11.7.2001. It was further amended by Act 9 of 2003. In Indian Oil Corporation Limited and Another and Harinagar Sugar Mills Limited Vs. State of Bihar and Others a Division Bench of this Court held the aforesaid Amending Acts as invalid. By Act 12 of 2007 a new schedule was substituted with effect from 29.8.2006. The above Act was upheld that the Amending Act was valid and entry tax can be collected as per the amended Act which was effective from 29.8.2006. The order of demand in this case is covered by valid Act as it is for the period 1.4.2008 to 31.10.2008. It is the case of the petitioner further that the tax collected from the petitioner during 11.7.2001 to 28.8.2006 amounting to Rs. 36 crores is due to be refunded to the petitioner and the amount of Rs. 2.27 crores as demanded can be adjusted from the refund due as earlier tax was collected under invalid law.

2. It is also not in controversy that the Amending Act was valid with effect from 29.8.2006 and the petitioner has paid the tax at the earlier rate. Rate of tax was levied subsequently and if a differential amount is payable that has to be adjusted towards the refund due.

3. On the other hand, it is contended on behalf of the State Government that the Amending Act was valid and the assessment for the occasion earlier to 29.8.2006 is refundable. It is further contended that the new schedule was substituted in view of the direction of this Court in the aforesaid I.O.C. case (supra). But, it is also contended that the State has not filed any appeal against the decision in the said I.O.C. case (supra). Petitioner approached the Apex Court to adjust the demand made and challenged the order by filing SLP (S.L.P. No. 26543 of 2008) in so far as this Court upheld the validity of the Amending Act of 2007 on similar demand leading to payment of higher rate of tax. Refund requests were made but the above requests were rejected.

4. It is the contention of the State that the petitioner also challenged the validity of the Amending Act and challenged the judgment in I.O.C. case (supra). It was not the Amending Act of 2001 or 2003. But even in the SLP the refund of the tax collected from the petitioner was not granted by the Court as no application regarding refund was before the Court. The validity of similar Act came before the Supreme Court for consideration In Jindal Stainless Ltd. and Another Vs. State of Haryana and Others, . Whereafter the petitioner came before this court for the refund of the tax for the year 2001 to 2006 and this Court observed as follows:-

"In light of the above discussions, the two cases are fit to be allowed because they relate to the period 2001-2006. But I would refrain from making any order or direction in that regard since the matter is already pending before the Supreme Court."

5. It was further submitted that when some other came for the refund of the dues, this Court ordered status quo as was granted in the Apex Court (order in C.W.J.C. No. 4556 of 2008 and C.W.J.C. No. 4599 of 2008). Learned counsel for the petitioner submitted that the State did not file any SLP in the Supreme Court in so far as this Court passed order on the validity of 2007 Amending Act.

6. In our opinion, the order challenged in this petition is an appealable order and the petitioner should file an appeal alongwith a stay petition and that petition shall be considered by the appellate authority.

7. Learned Senior Counsel appearing on behalf of the petitioner submits that in view of the decision of the Supreme Court in Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, the tax collected under invalid law shall be refunded even though there is recourse to the provision of statutory appeal. If an appeal is filed for refund or at least for adjustment of the due, in our opinion, that shall be considered by the appellate authority, according to law.

8. In the facts and circumstances of the case, we direct the petitioner to file an appeal alongwith a stay petition within three weeks from today which shall be considered on merit. If such an appeal is filed, till the matter is disposed of, no coercive action shall be taken against the petitioner as regards the amount due. This petition stands disposed of with the above directions.

