

(2005) 02 PAT CK 0082
In the Patna High Court
Case No : C.W.J.C. No. 10068 of 2003

Jai Hanuman Distributors

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Bihar Finance Act, 1981 — Section 11, 11(1), 11(2), 11(3), 11(4)
Bihar Sales Tax Rules, 1983 — Rule 10, 10(1), 10(2)
Central Sales Tax Act, 1956 — Section 15, 3, 4, 7

Citation : (2005) 1 BLJR 709 : (2005) 2 PLJR 258 : (2006) 145 STC 309

Hon'ble Judges : Negendra Rai, Acting C.J.; R.S. Garg, J

Bench : Division Bench

Advocate : K.N. Jain and R. Usha, for the Appellant; R.K. Dutta, SC IV and Purnendu Singh, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, A.C.J.

1. The petitioner, a dealer in India Made Foreign Liquor (for short IMFL) registered under the Bihar Finance Act, 1981 (hereinafter referred to as the Act) has challenged the assessment order dated 30.6.2003 with regard to assessment period 1999-2000 whereby demand of Rs. 5,47,725/- has been raised on the basis of circular of the Commissioner dated 12th July, 1994 whereby direction has been issued to deduct only sales tax-and not additional tax paid at the immediately preceding stage of the sale from the total sale price in order to arrive at the value added sale price while determining the tax which is to be levied in the hands of the petitioner.

2. The case of petitioner is that for determining the liability to pay tax, the sales tax and additional tax paid at the immediately preceding stage of the sale are to be deducted from the total sale price in view of the definition of tax u/s 2(x) of the Act which includes both tax and additional tax. On this ground, the assessment order is vitiated as additional tax has not been deducted and the

direction of the Commissioner on the basis of which assessment order has been passed is contrary to the statutory provision.

3. The stand of the State on the other hand is that the petitioner is a dealer in IMFL and the said product is notified for the multi point levy of tax u/s 11(3) of the Act read with Entry No. 2 in Annexure-11-B of the Act. The adjustment of tax on each point of levy of tax will be made in terms of Rule 10(2)(b) of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as the Rules). According to Section 11 (3) of the Act, sales tax is to be charged on the sale price and the sales tax paid at the earlier stage is to be deducted from the tax as calculated. The additional tax is levied u/s 6 of the Act and it is a self contained provision and its provision will apply in view of the non-obstante clause excluding the operation of Sections 11, 12, 13 and 21 at the rate and in the manner with regard to sales and purchase as provided in the said section. The circular dated 12th July, 1994, contained in Annexure-1 to the writ application is old one and the Assessing Officer was not even aware of the said circular and he has passed the assessment order taking into consideration the provisions contained in Section 11(3) of the Act and Rule 10 of the Rules. u/s 11(3) of the Act only sales tax and not additional tax is to be deducted as the tax paid at the preceding stage. If total tax paid at the earlier stage is to be deducted, then the provision of Section 6 of the Act will become redundant for the simple reason that the additional tax is payable at each and every stage of sale.

4. Thus, the only question which falls for consideration is as to whether the additional tax paid at the initial stage is also to be deducted along with sales tax u/s 11(3) of the Act from the total sale price in order to arrive at the value added sale price on which the tax is to be levied in the hands of the petitioner.

5. To appreciate the said point the relevant statutory provisions have to be stated first. In this connection, reference may be made to Sections 2(x), 6, 11(3) and 21 of the Act and Rule 10(1)(b) of the Rules which are as follows :

Section 2(x) "Tax" includes the sales or purchase tax levied u/s 3 as also additional tax levied u/s 6 of this part;

Section 6. Charge of additional tax.-Notwithstanding anything contained in Sub-section (3) of Sections 11, 12, 13 and 21 or in any notification issued thereunder every dealer having a gross turnover exceeding the specified quantum as laid down in Section 3 shall, with effect from a date to be specified by the State Government by a notification published in Official Gazette, pay an additional tax at such rate, not exceeding two percentum of his gross turnover (excluding the sales or purchase of goods which have taken place either in the course of inter-State trade or commerce, or outside the State, or in the course of import of goods into, or export of goods out of the territory of India) as the State Government may, from time to time by notification in the Official Gazette, fix :

Provided that State Government may fix different rates within the ceiling rate of 2 percentum on the gross turnover of different goods :

Provided further that in the case of declared goods, as defined in the Central Sales Act, 1956 (Act LXXIV of 1956)-

(i) Where the tax payable u/s 3 or Section 4 equals the maximum amount of tax permissible u/s 15 of the Act, no additional tax shall be payable under this section.

(ii) Where the additional tax under this section together with the tax payable u/s 3 or Section 4 would exceed the maximum amount of tax permissible u/s 15 of that Act, the additional tax shall stand reduced to such amount as, together with the tax payable as aforesaid, equals the said maximum amount.

(2) The State Government may, by notification and subject to such conditions and restriction, as it may impose, exempt from the levy of additional tax gross turnover in respect of any goods or class or description of goods.

Section 11 (3):-Where by a notification published under Sub-section (1) the State Government specifies in respect of any goods, class or description of goods that the sales tax shall be levied at more than one point, or on all the points, the amount of sales tax paid at each preceding stage of sale shall be adjusted against the amount of tax payable at each subsequent stage of sale in the prescribed manner.

Section 21. Taxable turnover.-(1) For the purpose of this part the taxable turnover of a dealer shall be that part of his gross turnover which remains after deduction.

[(a) (i) in case of the works contract the amount of labour and any other charges in the manner and to the extent prescribed]

(ii) Sale price on account of sales exempted u/s 7.

(b) amount of sales tax actually collected as such, if any, along with the sale prices received or receivable in respect of sales of goods.

(c) sale prices on account of sales to a registered dealer other than a dealer liable to any tax under Sub-section (4) of Section 11 and specified in his registration certificate as being required for resale by him inside Bihar or in course of inter-State trade or commerce :

Provided that in the case of such sales a declaration in the prescribed form duly filled up and signed by the registered dealer to whom the goods are sold, or by his manager declared u/s 15 is furnished in the prescribed manner by the selling dealer.

(d) sale prices at the subsequent stages of sales of such goods as are specified by a notification issued under Sub-section (1) of Section 11 as being subject to tax at the first point of sale in Bihar, if necessary evidence as required by Sub-section (2) of Section 11, are produced in the prescribed manner before the prescribed authority.

[(1-A) Where any dealer claims that he is not liable to pay tax on any part of his gross turnover in respect of any goods by reason of transfer of such goods by him to any other dealer or to his agent or principal, as the case may be, for sale, the burden of proving this claim shall be on the dealer and for this purpose along with other evidences he shall furnish before the prescribed authority a declaration in the forms and in the manner prescribed.]

(2) Where any goods or sales exempted from the levy of tax by a notification issued by the State Government in this behalf under Sub-section (3) of Section 7 are purchased by a dealer after furnishing a declaration as mentioned in or provided by the notification or where any goods specified in the certificate of registration of a dealer are purchased by him after furnishing a declaration as provided in Clause (c) of Sub-section (1) but are utilised by him for any purpose other than those specified in such a notification or specified in Clause (c) of Sub-section (1), as the case may be, the sale price of the goods so purchased shall, without prejudice to any action which is or may be taken u/s 49, be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

Rule 10(1)(b) : Less the amount of tax paid at the immediately preceding stage of sale/purchase."

6. No doubt the tax includes both tax and additional tax as per definition u/s 2(x) of the Act but Section 11 deals with the point or points in the series of sales at which the sales tax shall be levied and Sub-section (3) of Section 11 clearly provides that when there is multi point of levy of sales tax, the amount of sales tax paid at each preceding stage of sale shall be adjusted against the amount of tax payable at each subsequent stage of sale in the prescribed manner. Section 11 (3) of the Act does not speak deduction of tax paid at subsequent stage. Section 21 of the Act which defines taxable turnover also provides that the deduction is to be made from the amount of sales tax actually collected and it does not speak of additional tax or tax. This apart, no doubt, Rule 10(1)(b) which deals with the manner of adjustment of tax in respect of goods notified under Sub-section (3) of Section 11 mentions about deduction of tax and not sales tax but it is well settled rule of interpretation that the rule cannot travel beyond the statutory provision contained in the Act. When Section 11(3) of the Act specifically states that the sales tax paid at the preceding stage is to be deducted in the case of multi point levy of tax, then the word "tax" under Rule 10(1)(b) of the Rules by no stretch of imagination will mean anything beyond the sales tax.

7. Section 6 of the Act which has been quoted above clearly shows that it talks of additional tax which is leviable at each point of sale as it provides inter alia that every dealer is liable to pay additional tax and it further provides that provisions of this section will apply irrespective of the provisions of Sections 11(3) and 21 of the Act as discussed above.

8. Thus, the additional tax at the rate as prescribed is to be collected in the

manner from every dealer in the series of sale and the same cannot be deducted u/s 11(3) of the Act even if paid at preceding stage for the obvious reason that Section 11(3) of the Act speaks of sales tax and not additional tax as defined under the Act. In the taxing statute, the Court cannot substitute or add any provision rather it has to interpret the provision as it is. If the legislature wanted that the additional tax paid at the previous stage of sales is also to be deducted from the gross sale price then it would have used the word "tax" and not "sales tax" in Section 11(3) of the Act.

9. Learned counsel appearing for the petitioner however relied upon two judgments of the Supreme Court, in the case of Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P.) Ltd., reported in, (1992) 85 STC 106, and in the case of State of Karnataka v. Sunagar Bros., reported in (1993) 89 STC 532 in support of the case.

10. In the case of Aysha Hosiery Factory (P) Ltd. (supra) the assessments in question were under the Central Sales Tax Act and the question was as to whether the levy of tax in respect of inter-State sales of the assesseees can be made by including the additional sales tax. The assesseees questioned the inclusion of the additional sales tax levy in respect of their inter-State sales on the ground that the levy under the Kerala Additional Sales Tax Act is not and could not be considered as a levy "under the sales tax law of the appropriate State". It appears that the Kerala Additional Sales Tax Act was enacted to levy additional sales tax and dealing with the said matter, the Apex Court held that additional sales tax levied under the Additional Sales tax Act is also sales tax of the same category as in the original Act and accordingly it was held that the assesseees are liable to pay sales tax at the rate including the additional sales tax in respect of their inter-State sale under the Central Sales Tax assessment orders.

11. In our view, the said case does not help the petitioner for the reason that there the question for consideration was as to whether the additional tax chargeable under the separate Act should be also treated as sales tax. The Apex Court held so for the simple reason that the State Government has only power to levy sales tax and, additional tax is part of the same even if there is separate Act levying separate sales tax. The point involved in the said case was quite different.

12. Similarly, in the case of Sunagar Bros. (supra) the question was as to whether the undisputed additional tax is also to be paid along with sales tax at the time of filing of the appeal under the Karnataka Sales Tax Act, 1957. The Apex Court having noticed that the tax includes additional tax in terms of definition held that at the time of filing of appeal, the undisputed additional tax is also to be paid.

13. In view of the definition of tax, both is included and even in the Act in question tax has also been defined and it includes both tax and additional tax. If the word "tax" had been used in Section 11(3) of the Act, the matter would have posed no problem as it would have included additional tax also but in this case,

the matter is different one and the said decision does not deal with the point in issue in this case.

14. Both the said cases were considered by the Apex Court in the case of Kumar Distributors (P) Ltd. v. State of Bihar and Ors., reported in (1995) 99 STC 441. There the question was that when the unit has been granted exemption from payment of sales tax, it will also cover exemption from charge of additional tax. Having quoted the provision of section and other sections, the Apex Court clearly held as follows :

From a careful reading of Section 6, it would be crystal clear that so far as charge of additional tax is concerned, this section is self-contained not only for charging additional tax but also for its exemption. Therefore, the exemption notifications specifically issued u/s 7(3) will not cover charge of additional tax to enable the appellants to claim exemption from payment of additional tax."

It further held that:

"We have pointed out that Section 6 is self-contained and there is an in built provision for exemption from levy of "additional tax" therein, in addition to Section 7(3) which provides for exemption from levy of "sales tax" and "purchase tax". The non-obstante clause in Section 6 also overrides Section 7(3) and Section 21 expressly. The position is, therefore, clear in this Act."

15. Thus, it was held by the Apex Court that Section 6 levying additional tax is self contained provision.

16. After considering the matter from every angle we are of the view that Section 11(3) talks of only deduction of sales tax paid at each preceding stage of sale and not additional tax and as such while making the demand of tax payable at each subsequent stage of sale for the purpose of Section 11(3) of the Act only sales tax paid is to be adjusted and not additional tax.

In the result, there is no merit in this writ application and the same is dismissed.

R.S. Garg, J.

17. I agree.