(2011) 01 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4232 of 2010

Kiran Traders and Suppliers APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0076

Final Decision : Allowed

Judgement

R.M. Doshit, C.J.—This petition preferred under Article 226 of the Constitution arises from the judgment and order dated 29th March 2007 passed by the Commercial Taxes Tribunal, Bihar, Patna in Revision Case No. PT- 551 of 1997.

2. The matter relates to the levy on Sales tax on sale of lottery tickets under the Bihar Finance Act 1981. According to the authorities the sale of lottery tickets was a sale of goods and was liable to levy of sales tax. Pending the Revision before the Commercial Tax Tribunal, the Hon''ble Supreme Court decided the matter otherwise, in the matter of Sunrise Associates Vs. Govt. of NCT of Delhi and Others, . The Hon''ble Court held that a lottery ticket at the most is a instrument and gives rise to an actionable claim. It does not amount to sale of goods within the meaning of the relevant Sales Tax Act. However, in view of the earlier contrary opinion expressed in the matter of H. Anraj Vs. Government of Tamil Nadu, the Supreme Court observed that its decision would be prospective in nature. The Court observed:

51. We are therefore of the view that the decision in H. Anraj incorrectly held that a sale of a lottery ticket involved a sale of goods. There was no sale of goods within the meaning of Sales Tax Acts of the different States but at the highest a transfer of an actionable claim. The decision to the extent that it held otherwise is accordingly overruled though prospectively with effect from the date of this judgment.

3. In spite of the aforesaid judgment the Tribunal below held that the sale of

lottery tickets was sale of goods and that the matter being relevant to the year 1992-93, the judgment in the matter of Sunrise Associates will have no applicability.

4. Feeling aggrieved the Assessee has preferred this writ petition.

5. It is not in dispute that under the Bihar Finance Act 1981 the definition of goods u/s 2(h) specifically excludes actionable claims.

6. Hence, the aforesaid judgment in the matter of Sunrise Associates will apply with full force. The only contention raised before us by the State is that the matter being relevant to the year 1992-93, the judgment delivered in the year 2006 making it applicable from the date of the judgment cannot apply.

7. We cannot accept such contention. In fact, the Supreme Court in its latter judgment in the matter of State of Utter Pradesh and Anr. v. Sugal & Damani 2007(8) VST 469 (SC) has clarified the situation. The prospective overruling of the earlier judgment in the matter of Sunrise Associates has been explained to mean that "neither the State will be liable to refund the tax, already collected nor collect any further tax for the period prior to the date of judgment".

8. In view of the above legal position, we have but to allow this writ petition.

9. The petition is allowed, the impugned judgment and order dated 29th March 2007 passed by the Commercial Taxes Tribunal, Bihar, Patna in Revision Case No. PT- 551 of 1997 is quashed and set aside. It is held that the matter at hand will be governed by the judgment of the Hon''ble Supreme Court in the matter of Sunrise Associates (supra). Legal consequences will follow.

10. The parties will bear their own costs.