
(1992) 09 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7806 of 1991

Madan Mohan Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-09-1992

Acts Referred:

Citation : (1992) 09 PAT CK 0029

Judgement

1. Although this case has been listed under the heading "To be mentioned", with the consent of the parties, it has been taken up for hearing and is being finally disposed of along with other identical writ applications.

2. In this application, the petitioner is a retail licence vendor in country spirit which is alcoholic liquor for human consumption. He purchases the country spirit from the respondent wholesaler. The writ application has been filed for a declaration, inter alia, that, in terms of Section 206C of the Income Tax Act, 1961 (in short, "the Act" hereinafter), the wholesaler cannot collect any amount as Income Tax because he is an "individual" and thus does not fall within the purview of the definition "seller" as contained in Clause (b) of the Explanation appended to Section 206C of the Act. Alternatively, it has been submitted that, in any view of the matter, the deduction of any amount by way of Income Tax can be only on the basis of the cost price of the country spirit purchased by the petitioner.

3. So far as the alternative prayer is concerned, it has already been held by us in C. W. J. C. No. 7278 of 1992 disposed of on September 9, 1992 (Ramjee Prasad Sahu and Others Vs. Union of India (UOI) and Others), that Income Tax can be collected only with reference to the cost price of the country spirit.

4. So far as the first relief is concerned, Mr. Rastogi, learned counsel appearing on behalf of the Income Tax Department, has fairly conceded that, in view of the definition of "seller" referred to above, if the status of the wholesaler for the purpose of the Income Tax Act, 1961, is that of "individual" or "Hindu undivided family" or "association of persons" then such wholesaler cannot collect any

amount as Income Tax u/s 206C of the Act.

5. Accordingly, in view of the assertions made by the petitioner in the writ application, the submissions of the parties at the Bar and the relevant statutory provisions, we are of the opinion that if the status of the respondent wholesaler in respect of the transaction in question is that of individual for the purpose of Income Tax proceedings under the Act, then it will not be permissible on his part to collect any amount as Income Tax u/s 206C of the Act. Since the respondent wholesaler has not appeared to disclose his status, we are unable to record any finding in this regard. It will thus be open for the wholesaler to decide on his statutory obligation under the provisions in question and act accordingly. If he proceeds to act on a wrong assumption of his status, it will be open for the Department to take such action against him as may be permissible in law.

6. We may further make it clear that this order is being passed keeping in view the amendments made by reason of the Finance Act, 1992, in terms whereof Section 44AC has since been deleted and Section 206C has been substituted with effect from April 1, 1992.

7. It goes without saying that the matter relating to collection of Income Tax for periods prior to April 1, 1992, shall be governed by the provisions as they stood at the relevant time subject, however, to the judgment of the Supreme Court in Bihar Excise Vendors Association v. Union of India and Ors. (T. P. No. 42 of 1989), wherein the vires of the provisions of Sections 44AC and 206C are pending adjudication.

8. We also direct that the amount, if any, deposited by the petitioner(s) pursuant to the interim order passed by this court shall be duly adjusted by the Income Tax Department after the final Income Tax assessment is made in this regard.

9. This writ application is thus disposed of.