(1998) 01 PAT CK 0010

In the Patna High Court

Case No : CWJC No. 11201 of 1997

Mushtaque Ahmed APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 16-01-1998

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1998) 59 ECC 517 : (1998) 2 PLJR 460

Hon'ble Judges : B.M. Lal, C.J;S.K. Singh, J

Bench : Division Bench

Judgement

1. The decision rendered in this writ petition shall govern the disposal of the following writ petitions:--

C.W.J.C. No. 11203 of 1997 (Abdul Hamid v. The State of Bihar and Ors.); C.W.J.C. No. 11204 of 1997 (Nayaz Ahmad v. The State of Bihar and Ors.); C.W.J.C. No. 11428 of 1997 (Md. Atahar Imam v. The State of Bihar and Ors.); C.W.J.C. No. 11433 of 1997 (Md. Abbas v. The State of Bihar and Ors.) : C.W.J.C. No. 11434 of 1997 (Md. Iftakhar Ahmad v. The State of Bihar and Ors.); C.W.J.C. No. 11435 of 1997 (Binod Kumar v. The State of Bihar and Ors.); C.W.J.C. No. 11538 of 1997 (Israr Ahmad v. The State of Bihar and Ors.); C.W.J.C. No. 11537 of 1997 (Ibrar Ahmad v. The State of Bihar and Ors.): C.W.J.C. No.-11600 of 1997 (Gopi Nath Prasad and Anr. v. The State of Bihar and Ors.); C.W.J.C. No. 11678 of 1997 (Govind Kumar and Ors. v. The State of Bihar and Ors.); C.W.J.C. No. 11840 of 1997 (Jagar Nath Prasad v. The State of Bihar and Ors.); C.W.J.C. No. 132 of 1998 (Dinesh Prasad and Ors. v. The State of Bihar and Ors.); C.W.J.C. No. 133 of 1998 (Sheo Narayan Prasad and Anr. v. The State of Bihar and Ors.): C.W.J.C. No. 11268 of 1997 (Sudhir Kumar v. The State of Bihar and Ors.); C.W.J.C. No. 11275 of 1997 (Ghyasuddin v. The State of Bihar and Ors.): C.W.J.C. No. 11282 of 1997 (Md. Noor Alam v. The State of Bihar and Ors.); C.W.J.C. No. 11305 of 1997 (Ramesh Prasad Shah v. The State of Bihar and Ors.); C.W.J.C. No. 11333 of 1997 (Ajaya Kumar v. The State of Bihar and Ors.);

C.W.J.C. No. 5232 of 1997 (Sanjay Kumar and Ors. v. The State of Bihar and Ors.) : C.W.J.C. No. 5297 of 1997 (Deep Narain Gupta and Anr. v. The State of Bihar and Ors.); C.W.J.C. No. 5411 of 1997 (Bhagwan Das and Ors. v. The State of Bihar and Ors.); C.W.J.C. No. 6864 of 1997 (Hamid Hussain v. The State of Bihar and Ors.) : C.W.J.C. No. 7322 of 1997 (Bhagwan Prasad Ors. v. The State of Bihar and Ors.); and C.W.J.C. No. 8155 of 1997 (Shambhu Prasad and Ors. v. The State of Bihar and Ors.).

2. By this petition under Article 226 of the Constitution of India, the petitioner, who is a country liquor contractor carrying on business of vending country liquor by virtue of licence granted to him u/s 20 of the Bihar Excise Act, 1915 (hereinafter to be referred to as ''the Act'') challenges the validity of the Notification beings S.O. No. 94 dated 21.5.1997 issued in exercise of power u/s 11(1) of the Bihar Finance Act, 1981 whereby and whereunder the Schedule appended to the Notification dated 26.12.1997 has been amended and by which 25% sales tax has been imposed on various articles including the country liquor.

3. The impugned Notification, Annexure 5 dated 21st May, 1997 reads as under:--

S.O. 92 dated 21st May, 1997. In exercise of powers conferred by Sub-section (1) of Section 11 of Bihar Finance Act, 1981 (Bihar Act 5 of 1981), the Governor of Bihar is pleased to specify molasses, potable spirit, methylated spirit, rectified spirit, country liquor, spice country liquor whether imported or manufactured inside India, opium and narcotics as the commodities on which sale tax shall be levied at First point of sale in Bihar in manner prescribed in Sub-section (2) of said section.

The Notification shall come into force with effect from date of its publicaion.

4. It is contended that the petitioner''s business of purchasing country liquor and selling to the cousumers does not come within the purview of "First point of sale" and, therefore, the petitioner is not covered under the alleged Notification dated 21st May, 1997. Consequently any levy of sale tax within the meaning of the provision of Sub-section (1) of Section 11 of the Bihar Finance Act does not arise. Therefore, charging of any sale tax in this regard is without jurisdiction.

5. While filing the counter-affidavit, it is stated on behalf of the respondent, State of Bihar, that liability of collection and payment of the tax on the sale of country liquor has been declared taxable at the "First point" of sale inside the State of Bihar. Therefore, the tax on country liquor on first point of sale the liability to pay tax commences no sooner first point of sale takes place. In this regard a specific statement--vide paragraph 3 of the counter-affidavit has been made that first point of sale covers only the manufacturers within the State or the whole-sellers.

6. In pursuance of the alleged. Notification referred to above, yet the State Government has not issued any demand notice against the petitioner asking him to pay sale tax in compliance with the alleged Notification. Thus, in the absence

of any demand notice how the petitioner is affected by the alleged Notification thereby maintaining this petition is a short question to be decided.

7. This plea is also raised in the counter-affidavit contending that first point of sale covers the liability to pay tax by the manufacturers and whole-sellers. Thus, in the absence of any demand in this regard by the State Government on the strength of the alleged Notification against the petitioner we are of the considered opinion that this petition is premature and is not maintainable inasmuch as no relief can be granted in favour of the petitioner against the State Government.

8. The interim order, if any passed in this case stands vacated.

9. Accordingly this petition is finally disposed of.

