(1998) 08 PAT CK 0052

In the Patna High Court

Case No : C.W.J.C. No''s. 2047 and 2077 of 1998 (R)

Poddar Trading Corporation APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 03-08-1998

Acts Referred:
Bihar Sales Tax Rules, 1983 — Rule 19, 19(1)

Citation : (1999) 47 BLJR 221 : (1998) 3 PLJR 425

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. The petitioners have filed these two writ petitions challenging the order dated June 29. 1998 passed by the Commercial Taxes Officer, Singhbhum Circle, u/s 20(1) of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") imposing penalty. The validity of Rule 19 of the Bihar Sales Tax Rules. 1983 (hereinafter referred to as, "the Rules") has also been challenged.

3. Against the said order imposing penalty, Section 45 of the Act provides for appeal. The remedy of appeal is efficacious and adequate remedy. It is, therefore, not proper to entertain these writ petitions on account of availability of the alternative remedy. It is open to the petitioners to challenge the order of penalty before the appellate forum under the Act.

4. Rule 19 of the Rules deals with opportunity of hearing and the same is reproduced herein :

"Rule 19. Opportunity of hearing.--(1) The authority referred to in Rule 18 shall, in the matter of a proceeding Under Sub-Sections (8) and (9) of Section 16, Sub-section (2) of Section 19, Sub-section (1) of Section 20, Sub-section (3) of Section 26, Sub-section (3) of Section 31, Sub-section (3) of Section 32 and

Section 50, serve or cause to be served upon the person proceeded against a notice which shall contain a gist of the accusations, a date of hearing which shall in no case be more than 15 days from the date of issue of notice, and the time of hearing."

5. The learned counsel for the petitioners has confined his challenge to the last part of Sub-Rule (1) of Rule 19, which has been underlined* as above by us according to which a date of hearing is to be fixed within 15 days from the date of issue of notice. The submission is that by fixing the date within 15 days from the date of issue of notice a reasonable opportunity of being heard is denied to the dealer. This submission cannot be accepted.

6. It is true that according to Sub-Rule (1) of Rule 19 a date for hearing has to be fixed, which shall in no case be more than 15 days from the date of issue of notice. But in view of the language of Rule 19(1) the word "issue" is to be equated with the word "service". The date of issue of notice is not the date on which it is issued. The issuance of notice is complete when there is actual or deemed service on the dealer. In this connection reference can be made to the decision of the apex Court in Banarasi Devi Vs. Income Tax Officer, Calcutta, . That apart rule does not require that the appeal must be heard on the date so fixed. Sub-Rule (3) of Rule 19 gives power to the concerned authority to adjourn the case, if its facts and circumstances so warrant.

7. We do not find anything wrong with the said rule and the challenge of the petitioners to the same is rejected.

8. The writ petitions are, accordingly, dismissed on the ground of alternative remedy.

9. It will be open to the petitioners to challenge the impugned order before the alternative forum under the Act. It is open to the petitioners to raise all such plea as may be permissible under the law before the concerned authority.