(2002) 09 PAT CK 0009

In the Patna High Court

Case No : C.W.J.C. No 7457 of 2002

Prithvinath Prasad APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Bihar Finance Act, 1981 — Section 14, 14(2), 17(5)
Bihar Sales Tax Rules, 1959 — Rule 3, 3(4), 7, 7(10)

Citation : (2003) 1 PLJR 546

Hon'ble Judges : P.N. Yadav, J;Nagendra Rai, J

Bench : Division Bench

Advocate : P.K. Shahi, for the Appellant; R.K. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner, who is sole proprietor of M/s Sheetal Enterprises, a proprietorship firm, has filed the present writ application for quashing the letter dated 20th May, 2002 so far as it relates to the Petitioner, whereby direction has been issued by the Commissioner of Commercial Taxes not to renew the grant of exclusive privileges for dealing in country liquor as there are sales tax dues against him.

2. The necessary facts for disposal of the present writ application are that the Petitioner was granted exclusive privilege to trade in country liquor for a period of three years from 1st April, 1999 to 31st March, 2002 for the districts of Siwan, Chapra and Gopalganj. Its place of business is at Patna and it has been registered at Patna u/s 14 of the Bihar Finance Act, hereinafter referred to as the ''Act'', though it is stated that the place of business at Chapra, Siwan and Gopalganj have also been included in the registrator certificate but the same is not borne from the registration certificate which has been annexed as Annexure-4 to the writ application. According to the Petitioner, he has paid admitted tax at Patna Treasury over for the business carried out in the aforesaid three districts.

3. The authorities were insisting that as the Petitioner is carrying on business at Chapra, Siwan and Gopalganj, he has to be registered and filed return separately with regard to the business at those places.

4. The Petitioner filed an application for consolidated registration at one place under the provisions of Rule 3(4) of the Bihar Sales Tax Rules, hereinafter referred to as the ''Rules''. The said application was dismissed by the Joint Commissioner of Commercial Taxes and the Petitioner filed a writ petition being C.W.J.C. No. 5354 of 1999 before this Court wherein he challenged the aforesaid order as well as notice issued u/s 17(5) of the Act. The writ application was dismissed on 21.6.2000 by this Court. The Petitioner filed Civil Appeal No. 1050 of 2001 before the Apex Court and the Apex Court has set aside the order of the Joint Commissioner and remitted the matter to him to consider the application under Rule 3(4) of the Rules by giving reasoned order.

5. According to the Petitioner, he has been assessed at Patna with regard to the business transaction at the aforesaid three districts even then! the assessment proceedings were initiated by the Sales Tax authorities of Chapra and Gopalganj and best judgment and order has been passed u/s 17(5) of the Act, -according to which huge amount of sales tax has been shown due against the Petitioner. Further assertion of the Petitioner is that alter the period for grant of exclusive privilege came to an end on 31st March, 2002, no fresh settlement has been made and exclusive privilege has been extended upto 31st July, 2002. However, in pursuance of the said order showing huge amount of sales tax due on the basis of the assessment order u/s 17(5) of the Act, grant of exclusive privilege is not being renewed, hence the present writ application.

6. The submission advanced on be half of the Petitioner is that as the principal place of business is at Patna and he has been assessed with regard to the business at the aforesaid three places at Patna and has paid sales, tax, no sales tax can be said to be due on the basis of the assessment orders passed by the authorities of Gopalganj and Chapra, specially when his application for consolidated registration and return la pending before the authorities concerned in pursuance of remand order passed by the Apex Court.

7. Learned Counsel appearing for the State, on the other hand, submitted that under the Scheme of the Act and the Rules, a dealer has to be registered at every place where he carries on business. Similarly, he has to file separate return for each place of business unless an order is passed by the competent authority for consolidated registration and return.

8. Admittedly, no such order has been passed in favour of the Petitioner and in that view of the matter, the assessment orders passed u/s 17(5) of the Act against the Petitioner are valid orders and unless the said orders are set aside or the amount of sales tax as determined is paid, the Petitioner is not entitled to renewal of grant of fresh exclusive privilege.

9. According to the case of the Petitioner, grant of exclusive privilege to trade in

country liquor was granted for the districts of Chapra, Gopalganj and Siwan and he was carrying on business. It is not in dispute that the Petitioner is liable to pay sales tax and as such he is required to be registered u/s 14 of the Act. Section 14(2) of the Act provides that every dealer shall make an application in the prescribed manner to the prescribed authority for grant of registration. Rule 3 of the Rules deals with registration of a dealer which provides that an application for registration under Sub-section (2) of Section 14 of the Act shall be made separately in form in respect of every place of business where goods are purchased or sold. Sub-rule (4) of Rule 3 provides that the Commissioner has power in the interest of revenue to pass an order for consolidated registration in case the place of business is at more than ore place. Rule 7 of the Rules contains the provisions of filing of the returns and Sub-rule (10) of Rule 7 of the Rules empowers the Commissioner to accept consolidated return if the dealer has place of business at more than one place. Admittedly, no order has been passed by the Commissioner for consolidated registration and filing consolidated return in the case of the Petitioner.

10. It is also admitted position that the Petitioner sells goods at the aforesaid three places i.e. Chapra, Siwan and Gopalganj. In that view of the matter, he has to be registered at each place where he is selling goods apart from the principal place i.e. Patna. He has to be registered under the. provisions of the Act and the Rules at Chapra, Siwan and Gopalganj. Similarly, he has to be assessed at aforesaid three places and file return separately. According to the own saying of the Petitioner, he has not filed return at the aforesaid three places. The Sales Tax authorities of Chapra, Siwan and Gopalganj having taken note of the fact that the Petitioner is carrying on business in their circle, has passed best judgment and orders u/s 17(5) of the Act.

11. From perusal of Annexure-1, it appears that total dues against the Petitioner is Rs. 4,57,93,533.00. Unless the said amount is paid by the Petitioner, he is not entitled to extension or renewal of grant of exclusive privilege to deal in country liquor. So far the fact that the Petitioner has also deposited sa|es tax at Patna with regard to the sales made in the aforesaid three districts at Patna is concerned, that will not make any difference in absence of any order for consolidated registration and for filing consolidated return and assessment at Patna.

12. Accordingly, no case for quashing the order, as contained in Annexure-1, is made out. However, it is made clear that if the Petitioner has paid sales tax at Patna with regard to the sales made at the aforesaid three districts, he may take appropriate remedy for the refund of the amount of sales tax to the extent of the sales or business having been transacted in the aforesaid three districts.

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

