

(2003) 01 PAT CK 0126
In the Patna High Court
Case No : C.W.J.C. No. 11772 of 2002

Prithwinath Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Citation : (2003) 3 PLJR 860

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner has filed the present writ application for a direction to the State Government to refund the amount of Rs. 5,26,88,373/-, which has been deposited by him at Patna Circle in respect of sale of country liquor, which, admittedly, had taken place at Chapra, Siwan and Gopalganj. This case has a chequered career and as such it is necessary to state the facts in detail. The petitioner has been granted exclusive privilege to trade in country liquor from time to time. He filed an application for grant of consolidated registration under Rule 3 (4) of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as "the Rules"), which was rejected by the sales tax authority. The petitioner, thereafter, filed a writ application being C.W.J.C. No. 5354 of 1999 before this Court. The said writ application was dismissed on 21.6.2000. The petitioner filed Civil Appeal No. 1050 of 2001 before the Apex Court and the Apex Court, by order dated 5.2.2001, quashed the order of this court as well as that of the sales tax authority and directed the Joint Commissioner to reconsider the matter. A copy of the said order is appended as Annexure "A" to the counter-affidavit. Thereafter, the matter remained pending with the State Government.

2. The petitioner, in the meantime, was assessed by the sales tax authorities at Chapra and Gopalganj. It further appears that the petitioner filed a consolidated return as well as deposited the admitted tax at Patna Circle with regard to his business at the said three places and the assessment orders were passed.

Thereafter, the petitioner made a prayer to the sales tax authorities that as he has filed a consolidated return and also deposited the admitted tax at Patna Circle, no effect should be given to the assessment orders passed by the sales tax authorities of Gopalganj and Chapra. In other words, he is not liable to pay amount of tax as assessed at Gopalganj and Chapra. When the authorities did not pay any heed, the petitioner came to this court in C.W.J.C. No. 7457 of 2002 and the matter was finally disposed of on 12.9.2002 and the claim of the petitioner was rejected on the ground that unless a consolidated registration is granted under Rule 3(4) of the Rules, no consolidated return in regard to the business of the petitioner at the said three places can be accepted at Patna and no assessment can be made at Patna. This Court further directed that if the petitioner had deposited the sales tax at Patna with regard to the sales made in the aforesaid three districts, he might 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. Thereafter, the petitioner made a request to refund the amount. When no decision was taken, he filed the present writ application for refund as stated above.

3. The stand of the State in that case was also that as no consolidated registration has been granted by the authorities which is pending, the petitioner has to file return and deposit amount of sales tax assessed by the Assessing Officers at the places of his business i.e. Chapra, Siwan and Gopalganj.

4. During the pendency of the writ application, the application for grant of consolidated registration, which was directed by the Apex Court to be considered by the Joint Commissioner, was considered and the petitioner has been granted consolidated registration and permission to file consolidated return at Patna with regard to the aforesaid three places by order dated 18.12.2002. If further appears that the assessment orders at the aforesaid two places, namely, Gopalganj and Chapra have been set aside by the Commissioner in exercise of the power of revision under the provisions of the Bihar Finance Act.

5. The only question, on which the parties are at variance is as to whether, the order granting consolidated registration to the petitioner in regard to his business at the said three places is to remain or it shall also go in the same manner as the assessment orders of the two districts have been set aside by the Commissioner.

6. It is clear from the scheme that every dealer has to file a separate return with regard to his place of business and separate assessment order has to be passed and the sales tax authority has no power under the Rules to receive the return and pass an assessment order with regard to the business transacted in different circles unless an order granting consolidated registration is passed by the authorities concerned in exercise of the power under Rule 3 (4) of the Rules. Admittedly, when the assessment order was made, though it may be because of the filing of the consolidated return by the petitioner under wrong misconception, by the sales tax authority of North Circle, Patna, there was no order of consolidated registration under Rule 3(4) of the Rules.

7. In that view of the matter, the assessment order, in our view, is wholly illegal and impermissible in law. As stated above, in the earlier writ application the same was the stand of the State also as it was stated on its behalf that unless the place of business is located within the circle, the authority has no power to pass an order of assessment. Accordingly, the assessment order, passed by the sales tax authority of North Circle, Patna imposing penalty etc. upon the petitioner is set aside.

8. Now the sales tax authority of North Circle, Patna, will pass a fresh assessment order with regard to the relevant periods 1997-98, 1998-99 and 1999-2000 after giving an opportunity of hearing to the petitioner within three months from the date of appearance of the petitioner before him. The amount, which has already been deposited by the petitioner, will be adjusted towards the tax due in pursuance of the assessment order but in case the amount deposited by him is found to be in excess of the amount of tax due then the same should be refunded and in case of the amount of tax deposited by him being found less, appropriate steps should be taken according to law.

9. It is to be made clear that the petitioner has stated that he will not raise the objection with regard to limitation in cases of initiation of a fresh assessment proceeding. Even otherwise, in our view, the question of limitation does not arise because the assessment proceeding was initiated within time and in view of the different stands taken by the parties at different stages, the matter remained pending at one place or the other and because of that reason an occasion of fresh assessment proceeding has arisen in this case. In the result, this writ application is, accordingly, allowed and the impugned order is set aside.