(1965) 11 PAT CK 0001

In the Patna High Court

Case No : Misc. Judicial Case No. 931 of 1962

S. Bhattacharya and Co. and Others APPELLANT

Vs

Superintendent of Excise and Others RESPONDENT

Date of Decision : 05-11-1965

Acts Referred:

Bihar and Orissa Excise Act, 1915 — Section 90, 93(1)
Bihar and Orissa Excise Rules, 1919 — Rule 33(2)
Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3

Citation : AIR 1966 Patna 351

Hon'ble Judges : R.L. Narasimham, C.J;S.N.P. Singh, J

Bench : Division Bench

Advocate : N.K. Chatterji and Ras Behari Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application to quash the certificate proceedings in Case No. 57/Misc. of 1960-61 pending against the petitioners in the Court of the S. D. O., Saran, for realization of certain amount of penal duty said to be pay able by them in respect of the mortgage during, transit of rectified spirit sent from Marhowrah distillery in Saran to the petitioners'' factory in Serampore, West Bengal. The petitioners applied for and obtained permission from the Commissioner of Excise, Bihar (Annexure A) in September, 1958 for export of thirty thousand bulk gallons of rectified spirit duty free from Marhowrah distillery provided that sufficient bond was given. The bond was duly furnished by the petitioners (Annexure B) and one of the conditions of the bond was that the petitioners undertook to pay the amount of duty payable on the excisable article as may be prescribed for the same u/s 27 of the Bihar and Orissa Excise Act and any other law for the time being, in force. It was found by the Excise authorities that during transit there was shortage, far in excess of the permissible limit allowed by Rule 33 of the rules made by the Board of Revenue under the provisions of Section 90 of the Bihar and Orissa Excise Act. Sub-rule (2) of the said Rule 33 empowers the

appropriate authority to charge duty at the highest rate for the time being in force on so much of the deficiency as was in excess of the, permissible allowance. The petitioners were, therefore, called upon to pay penal duty. After some correspondence, a certificate was issued against the petitioners by the Certificate Officer, Saran, for realisation of the penal duty levied.

Mr. Chatterji for the petitioners has contended that penal duty is not a "public demand" and that consequently the Certificate Officer had no jurisdiction to proceed with the certificate case against him. A "public demand" as defined in Section 3 of the Public Demands Recovery Act, 1914, includes moneys due as specified in Schedule I of that Act. Item 9 of the Schedule says that any money payable to Government in respect of which the person liable to pay the same has agreed, by agreement in writing duly registered, that it shall be recoverable as a public demand shall be a public demand. Mr. Chatterji relied very much on this item and urged that inasmuch as in the bond (Annexure B) executed by the petitioners the latter did not agree that any duty payable by them shall be recoverable as public demand, the Certificate Officer had no jurisdiction to treat the sum due as a public demand and continue the certificate proceedings. This argument would undoubtedly have great force if the present case came within the scope of Item 9 of Schedule I of the Public Demands Recovery Act. But the learned Standing Counsel quite properly invited our attention to Item 3 of Schedule I, which says that any money which is declared by any law for the time being in force to be recoverable or realisable as an arrear of revenue, or land-revenue, is a public demand. The Bihar and Orissa Excise Act is undoubtedly a law for the time being in force and in Section 93 of that Act in Clause (c) of Sub-section (1) it is clearly stated that all amounts due to the State Government by any person on account of any contract relating to the excise revenue shall be recoverable as if it were an arrear of revenue, that is, as a public demand.

Here, the liability of the petitioners arises by virtue of the contract entered into by them the terms of which are given in the bond (Annexure B). It is not denied that the penal duty is in the nature of excise revenue. Hence, Clause (c) of Sub-section (1) of Section 93 of the Bihar and Orissa Excise Act will apply with full force. It is not necessary for the purpose of applying the provisions of Item 3 of Schedule I of the Public Demands Recovery Act to the present case that the contract should further state that the money shall be recoverable as a public demand. It is sufficient if the contract refers to any provision of the Excise law which is an enactment for the time being in force. In other words, the provisions of item on which Mr. Chatterji has relied are independent of the provisions of Item 3 and they do not control the provisions of Item 3 of the schedule. This is made quite clear by the explanation attached to Item 9 to the effect that the said item shall not apply to any money or demand specified in Items 3, 4 and 7. We must, therefore, hold on the admitted facts that the penal duty levied on the petitioners is realisable as an arrear of revenue and is, therefore, a public demand recoverable under the provisions of the Public Demands Recovery Act.

2. Mr. Chatterji then contended that the Certificate Officer has failed to serve notice on him as required by Section 7 of the Public Demands Recovery Act. This is a pure question of fact which we are not inclined to consider at this stage in exercise of our extraordinary jurisdiction. If there has been any irregularity in the initiation or continuance of the certificate proceedings against the petitioners, it is open to them to exhaust the remedies provided under the said Act by way o? application before the officer concerned, or by appeal or revision, as the case may be, for the redress of their grievances. It was also urged that there was an apprehension that the certificate may be transferred to the Court of the S. D. O., Serampore, for the purpose of execution as provided by Section 13 of the Public Demands Recovery Act. Mr. Chatterji wanted to challenge the validity of the order of such a transfer, but it will be premature to consider this question here. Neither party has admitted that the transfer u/s 13 of the Act has actually taken place. It is open to the petitioners to seek appropriate remedy if such a transfer has taken place and if they consider that the transfer will be against the provisions of any law for the time being in force.

3. In this petition we have confined ourselves merely to the question if the demand is a public demand and once we are satisfied that it is a public demand, there is no want of jurisdiction on the part of the Certificate Officer in either initiating or continuing the proceeding. All other questions are left open.

4. The petition is accordingly dismissed with costs. Hearing fee: Rs. 100.

