(2001) 03 PAT CK 0071

In the Patna High Court

Case No : C.W.J.C. No. 2101 of 2000 28 March 2001

State of Bihar APPELLANT

Vs

Central Board of Direct Taxes RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Citation : (2001) 03 PAT CK 0071

Hon'ble Judges : Ravi S. Dhavan, C.J;Shashank Kumar Singh, J

Bench : Division Bench

Judgement

Yesterday when this matter was called, one aspect was clear that the State of Bihar, was moving this writ petition through the Department of Excise and Prohibition but without the State making itself a party. The party respondent is the Unions of India and its constituents. The issue is whether the State of Bihar is amenable to answer the notice on the payment of Income Tax of certain relevant years of a turnover which may have been generated as income consequentially, and, thus, attracting tax under the Income Tax Act, 1961 (hereinafter referred to as ''the Act) liquor in the State of Bihar is sold through a licensee, selected after a public auction.

2. In effect, the case was between the State of Bihar and the Union of India. Yesterday a request was made to the court by the learned counsel for the petitioner that the Advocate General would appear in the matter, on behalf of the State of Bihar, and the matter to adjourned. An adjournment was granted.

3. On behalf of the Union of India, i.e., the CBDT, the court was intimated that in a similar situation, the issue has been the subject matter of a decision of the High Court in State of Bihar and Another Vs. Commissioner of Income Tax and Others The decision was rendered by S.B. Sinha and I.P. Singh, JJ., in the case of State of Bihar (supra).

4. The learned counsel, appearing on behalf of the Union of India, informed the court that the decision of the Patna High Court became the subject matter of a

SLP filed by the State of Bihar, being SLP No. 1522 of 1994. It was dismissed by the Supreme Court on 7-11-1994.

5. The court has seen the decision of the Patna High Court and has received information that the SLP has been rejected and regard being had to the controversy raised or re-raised, was the filing of this writ petition, as another round to reagitate settled matters appropriate ?

6. Today the matter appears to have taken a rather unusual turn. The court was awaiting the appearance of the Advocate General, Bihar. It was acknowledged by the counsel, who filed this writ petition as a special engagement by the Excise Commissioner, Government of Bihar, that the Advocate General indicated to him that he has no instructions to appear in this matter and the question of addressing the court does not arise unless there is an invitation to the Advocate General on behalf of the court or specific instructions by the government to appear. Perhaps the Advocate General had indicated rightly that unsolicited when the government had already put its foot in court, avoiding the normal procedures, in presentation of the case through designated State counsel and not indicated a request to appear he is not obliged to appear.

7. The petition has not been filed by the Excise Commissioner, Government of Bihar. The case has been filed through an authorised signatory one Shri Mahendra Kumar, Secretary to the Commissioner, the Department of Excise and Prohibition. The affidavit to the petition has also been affirmed not by the Commissioner of Excise but by his secretary. This is an unusual circumstance and discourtesy to the court.

8. While the court was looking into this matter, as of now, the Registry has sent to the court an affidavit, which was filed yesterday on 27-3-2001. The present affidavit has been sworn by the Deputy Secretary, Excise department. It is not understood why the secretary to the government or the Commissioner of Excise did not take the responsibility in filing this petition and affirming an affidavit in a matter so important in which in effect and in fact the State of Bihar and the Union of India are at issues. Instead the secretary to the State of Bihar of the Excise Commissioner has elected to send his secretary to be his authorised signatory. It appears that no responsibility has been taken by the Excise Commissioner in making the averments before the court. This is an unusual circumstance in which a special counsel, avoiding the notified designated and gazetted State counsel, has been engaged. A statement, before the court was made that the Advocate General was appearing and now it has been indicated that the Advocate General will not appear unless he is instructed appropriately. There is something wrong somewhere.

Further, it appears from the facts that there is no reference at all in the writ petition that the issues between the parties were the subject matter of a decision of the High Court, in which SLP was filed by the State of Bihar before the Supreme Court and it has been rejected. The court expects that all material facts will be stated in the statement of facts, that be the narrative on the petition. Avoiding to mention a Supreme Court order. In the same controversy an aspect germane to the issue, is material suppression of facts.

9. In the circumstances, the State of Bihar is answerable to the High Court under what circumstances it avoided the designated State counsel and a special counsel has been engaged why it suppressed the fact of a SLP being filed at the Supreme Court and of its being rejected ?

10. Let notice be issued to the Commissioner, Excise department, why the court ought not to take out proceedings on material suppression of facts and action under Chapter XI of the Indian Penal Code, 1860 and consequential proceeding for not stating the truth.