(2004) 06 PAT CK 0022

In the Patna High Court

Case No : C.W.J.C. No. 5798 of 2004

Tripti Alcobrew Limited — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Citation : (2004) 06 PAT CK 0022

Judgement

1. The Petitioner, a limited company incorporated under the Indian Companies Act, 1956 and engaged in the manufacture and sale of beer under various brand names and holding licence in Form 19C-of the Bihar Excise Act (hereinafter referred to as the Act) has filed the present writ application challenging the notification dated 28.4.2004 (Annexure-1 to the writ application) issued by the Board of Revenue, Bihar, Patna in exercise of power u/s 90 of the Act making amendment in Rule 106C of the Rules framed under the Act enhancing the rate of import pass fees on import of beer with immediate effect on the ground that it was not published in the official Gazette in terms of Section 92 of the Act and as such it was inoperative and, accordingly, demand made in pursuance of the notification as contained in Annexure-3 is without authority.

2. Admitted position is that Rule 106C of the Rules imposes import pass fees on import of beer and the Petitioner was paying import pass fee in terms of the Rules. On 28.4.2004, the impugned notification was issued by the Secretary, Board of Revenue, enhancing the rate of import pass fee on import of beer. Thereafter, on the basis of the same demand has been made from the Petitioner for payment of enhanced import pass fee on beer with effect from 28.4.2004.

3. When the case was taken up, this Court asked the learned Counsel for the State to inform as to whether the notification has been published in the official Gazette or not in terms of Section 92 of the Act. In pursuance of that, a counter affidavit dated 20.5.2004 has been filed on behalf of Respondents No. 1 and 3 and statement has been made in paragraph 6 thereof that the notification to increase the import pass fee on beer has been sent by the Excise Department to

the Government Press for Gazette notification vide letter No. 1623 dated 28.4.2004 but the copy of the Gazette Notification has not been received in the department till date from the press. Thus, there was no affirmative reply on behalf of the State as to the publication of the notification in the official Gazette in terms of Section 92 of the Act.

4. During course of argument, learned Counsel appearing for the State informed that the notification in terms of Section 92 of the Act was first published on 5th May, 2004 but as there was mistake in the notification that was corrected/revised and published on 6th May, 2004. This Court asked the learned Counsel for the State to produce the relevant file for perusal and, accordingly, the file has been produced before us. From perusal of the same, it appears that the notification dated 5th May, 2004 was not correct one and that was revised on 6th May, 2004 and thereafter there was nothing on record to show that when the publication was made. The only document which is on record is an entry made in the relevant register kept for notification issued by the State Government which shows that 500 copies of the notifications were made available to the Department of Excise on 21st May, 2004. The notification which has been produced by the learned Counsel for the State shows that it was published on 5th May, 2004 but, as stated above, even according to the stand of the State, it was not finally published on 5th May, 2004, on the other hand, it was published on 6th May, 2004 after rectification/correction.

5. As the notification has been issued in terms of Section 92 of the Act, the only question that has to be considered is as to whether the date mentioned in the notification is the date when the publication was made or it was made on a subsequent date.

6. Section 92 of the Act provides inter alia that the notification issued under the Act shall be published in the official Gazette and, on such publication shall have effect as if enacted in this Act. In other words, after publication of the notification in the official Gazette it will come into operation. The legal point on this aspect is well settled and it requires no detail discussion.

7. When a mode is provided for publication of notification in the official Gazette and the notification has been published in terms of the mode framed under the relevant provision then the official notification is taken to have been published on the date mentioned in the official Gazette. The Apex Court in the case of Union of India and Others Vs. M/s. Ganesh Das Bhojraj, held that it is an established practice that the publication in the Official Gazette, that is, the Gazette of India (sic is an) ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. Individual service of a general notification on every member of the public is not required and the interested person can acquaint himself with the contents of the notification published in the Gazette. It was further held that once the notification has been made under the statutory provision, the notification will come into operation as soon as it is published in the official Gazette and no further publication is required. It was also held that

the Gazette is admissible being the official record evidencing public affairs and the Court is required to presume its contents as genuine under Sections 35 and 38 read with Section 81 of the Evidence Act, unless the contrary is proved.

8. In this case, admittedly the date mentioned in the notification is not the correct date of publication and, therefore, the presumption of correctness cannot be attached to the notification in question. The Court has to find out as to when the notification came into existence in terms of Section 92 of the Act. Publication means knowledge to the public and the mode has been provided under the Act by publication in the official Gazette. In this case, as stated above, as the date mentioned in the official Gazette defer not represent the correct state of affairs and the document which has been produced by the learned Counsel for the State show that the notification for the first time saw the light on 21st May, 2004 when its copies were received by the Department of Excise we are of the view that in this case 21st May, 2004, will be taken the date of publication of the notification specially when there is nothing on record which has been produced before us that as a matter of fact the publication was made on 6th May, 2004 as asserted by the learned Counsel for the State.

9. Accordingly, we hold that the notification was published on 21st May, 2004 and it will come into operation from that date. The State authorities have no authority to demand the enhanced import pass fee on the basis of the notification dated 28.4.2004 issued by the Board of Revenue, Bihar and the Petitioner is liable to pay enhanced import pass fee on import of beer from 21st May, 2004 and not from 28th April, 2004 and as such any demand Snide for the period prior to 21st May, 2004 unauthorised and accordingly, if any payment in pursuance of the demand prior |to 21st May 2004, having been held to be unauthorised or impermissible in law, is to I be refunded.

10. In the result, the writ application is allowed with the aforesaid direction/ observation.