(2003) 04 PAT CK 0134

In the Patna High Court

Case No : C.W.J.C. No. 4032 of 2003

United Breweries Ltd. — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:
Bihar Finance Act, 1981 — Section 17(5)

Citation : (2004) 3 PLJR 305 : (2006) 143 STC 106

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

Bench : Division Bench

Advocate : G.P. Bimal and Satyabir Bharti, for the Appellant; Rajnandan Prasad, Junior Counsel to Standing Counsel IV, for the Respondent

Judgement

1. Heard learned counsel for the parties.

2. The petitioner who is a registered dealer under the Bihar Finance Act, 1981 (for short, "the Finance Act") as well as under the Bihar Tax on Entry of Goods into Local Areas for Consumption, use or Sale Therein Act, 1993 (for short, as "the Act") has filed the present writ application for a direction to the Collector, Patna, respondent No. 3 and the Assistant Commissioner of Excise, Patna, respondent No. 4, to renew its licence in Excise Form No. 19-C (licence for distribution of duty paid IMFL and beer to wholesale licencee) as prescribed under the Bihar Excise Act for the financial year 2003-2004. Further prayer has been made to direct the Deputy Commissioner, Commercial Taxes, East Circle, Patna City, Patna, respondent No. 6 to issue sales tax clearance certificate for the financial year 2002-2003 and to supply necessary sales tax forms to the petitioner-company.

3. The petitioner is a company registered under the Indian Companies Act, 1956 and is engaged in the manufacture and sale of beer under the brand name of Kingfisher, Kalyani, Black Label beer, etc. The company was holding licence in form No. 19-C under the Bihar Excise Act. It is being renewed from year to year on payment of licence fee as prescribed under the Bihar Excise Act, 1915.

4. On March 7, 2003 the petitioner-company applied for renewal of the licence under the aforesaid form No. 19-C after payment of renewal fees. The petitioner-company was asked to file sales tax clearance certificate from the place where it is registered as a dealer. The petitioner-company made an application before the Deputy Commissioner of Commercial Taxes, East Circle, Patna City, Patna, respondent No. 6 for grant of sales tax clearance certificate but the same has not been granted on the ground that there is dues under the Act against the petitioner-company for the financial years 1999-2000, 2001-2002 and 2002-2003.

5. A counter-affidavit has been filed on behalf of the State and it is admitted that there is no dues against the petitioner under the Finance Act. The only dues against the petitioner is under the Act and the amount of dues mentioned in paragraph 5 is Rs. 6,11,526 for the period 1999-2000, Rs. 19,10,513 for the period 2000-2001 and Rs. 7,07,016 for the period 2001-2002 after assessment. It is also stated that the assessment proceeding is still pending u/s 17(5) of the Finance Act read with the Act with regard to period from March 11, 1994 to November 25, 1999.

6. Under the provisions of the Act the importer is liable to pay tax on the Scheduled goods and if he is also liable to pay tax under the Finance Act by virtue of sale of such scheduled goods then the tax under the Finance Act shall stand reduced to the extent of the tax paid under the Act. In other words, if the entry tax under the Act has been paid then liability to pay sales tax under the Bihar Finance Act, 1981 shall stand reduced to the extent of the tax paid under the Act provided the goods is taxable both under the Finance Act and the Act.

7. In this case the matter is vice versa. Admittedly the entire sales tax as per assessment has been paid and nothing is due and only entry tax is due under the Act. Under the provisions of the Act read with Rules the amount of tax under the Act with regard to Scheduled goods has to be deposited by the petitioner and thereafter he will claim reduction of the liability under the Finance Act to the extent of the tax paid under the Act. Admitted fact is that he has paid the amount of sales tax under the Finance Act and the rate of sales tax is more than the rate of tax under the Act. In case the direction is issued to pay tax under the Act then the amount already deposited under the Finance Act will have to be refunded. It appears from the counter-affidavit that earlier practice was that if the amount of tax has already been paid under the Finance Act then the amount of tax which the petitioner was liable to pay under the Act was used to be adjusted. Now that practice has been given a go-by after 1996.

8. Be that as it may, this Court cannot ignore the fact that the amount of sales tax under the Finance Act has already been deposited and that will cover the tax required to be paid under the Act also. In such a situation the proper course for the authority is to adjust the amount of tax demanded under the Act from the tax paid under the Finance Act. Technicality should not stand in the way of doing justice. After adjustment nothing more is required to be paid by the petitioner so

far the entry tax for the relevant years is concerned. If there is no other dues against the petitioner then the sales tax authority cannot refuse to grant clearance certificate to the petitioner on the aforesaid ground. The decision by the authority in terms of our direction regarding adjustment is to be taken within ten days from the date of receipt/production of a copy of this order. After the production of the clearance certificate the concerned authority will consider the question of grant of licence immediately.

9. With the aforesaid direction, the writ application stands disposed of.

