

(1968) 07 PAT CK 0021
In the Patna High Court
Case No : Tax Case No. 24 of 1965

Basta Colla Colliery Co. (P) Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-07-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 13(3), 13(4), 8(1), 8(4), 8(4)

Citation : AIR 1969 Patna 42 : (1969) 23 STC 142

Hon'ble Judges : S. Wasiuddin, J; N.L. Untwalia, J

Bench : Division Bench

Advocate : Tarkeshwar Prasad and Rameshwar Prasad II, for the Appellant; S. Sarwar Ali, for the Respondent

Judgement

1. As directed by the High Court u/s 33(3) of the Bihar Sales Tax Act, 1959 (Bihar Act 1959) read with Section 9(3) of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and Rule 12 of the Central Sales Tax (Bihar) Rules, 1957, the Commercial Taxes Tribunal, Bihar. has stated a case and referred to this Court the following question, of, law:--

"Whether in the facts and circumstances of this case the denial of concessional rate of tax u/s 8 of the Central Sales Tax Act, 1956, on sales covered by declarations of C form and D form, if filed before the appellate authority is valid in law."

2. After stating the facts, it will be necessary to reframe the question of law to bring out the real controversy and points for determination in the case. We shall reframe it and answer it accordingly,

3. Messrs. Basta Colla Colliery Co, (P) Ltd., the assessee in this case, submitted returns to the proper assessing authority disclosing its gross turnover on account of inter-State sales as follows:--

Quarter ending Turnovers

30-6-59 ... Rs. 6,35,160.30 N. P.

30-9-59 ... Rs. 7,88,916.11 N. P.

31-12-59 ... Rs. 8,09,108.14 N. P.

31-3-80 Rs. 10,11,550.11 N. P.

Rs. 32,44,734.66 N. P.

The dealer was served with a notice to produce its account books in support of the returns submitted by it. The dealer's representative appeared on 31-10-60 before the Assessing authority but the examination could not be finalised on that date. The case was adjourned to 23-11-60. On that date, the dealer filed an application for time. The case was adjourned several times. Finally, on 10-5-61 it was taken up when the dealer appeared and produced its account books for the year 1958-59 in another case for which the date was also fixed in respect of this period, but it did not produce the account books for the year 1959-60, the period in question. It was stated by the dealer's representative that the account books were in audit. The time-petition was rejected and separate assessments were passed in the two separate cases, one under the Bihar Act (19 of 1959) and the other under the Central Act (74 of 1956). We are concerned in this case with the assessment under the Central Act. In this case, the assessing authority did not enhance the turnover of the dealer in respect of the inter-State sales, but rejected its claim to be taxed at the concessional rate of one per cent u/s 8(1) of the Central Act (74 of 1956) on the total turnover of Rs. 22,15,253.64 P. on account of the sales said to have been made to the Govt. and to registered dealers in the four quarters of 1959-60. The claim was rejected on the ground, to put it in the words of the assessing authority, that "the Central Sales Tax Act. 1956, clearly forbade application of concessional rate on any part of the dealer's turnover in respect of which declarations and certificates are not filed in the prescribed manner. The dealer was required to attach all the declarations in Form "C" and certificates in Form "D" in respect of his entire claim with the quarterly returns submitted by him. But he has conspicuously failed to submit them as yet"

4. The assessee went up in appeal u/s 30 of the Bihar Act (19 of 1959) before the Deputy Commissioner. It appears, before the Deputy Commissioner, the declarations and certificates were filed In respect of the sales of about rupees ten lacs, but even before the Deputy Commissioner declarations and certificates in respect of the sales of about rupees twelve lacs were not filed. The Deputy Commissioner dismissed the appeal. It is said that he had allowed the appeal filed from the ex parte order of assessment in respect of the imposition of tax under the Bihar Sales Tax Act and remanded the case to the assessing authority. Be that as it may, the appeal in this case was dismissed by the Deputy Commissioner on the ground that the dealer had failed to file the declarations and certificates along with the returns and since they were not filed in the prescribed form and in the prescribed manner, it lost the benefit of concessional rate of tax. While saying so, the Deputy Commissioner added-- "It is significant

to point out that "he did not care to file these declarations and certificates even after the expiry" of the year under assessment but before the completion of assessment". Lastly, he said -- "I do not think it is open to this court to excuse the delay in submission of the declarations and certificates."

5. The dealer went up in revision before the Board u/s 31 of the Bihar Act (19 of 1959). The Board has dismissed the revision holding on the basis of two decisions of the Madras High Court in Deputy Commissioner (Commercial Taxes), Coimbatore Division Vs. Parekutti Hajee Sons, and The Deputy Commissioner of Commercial Taxes, Madras Vs. Manohat Brothers, Madras, that non-observance of the rules by the assessee in the matter of production of declarations in Form C and the certificates in Form D which inevitably deprive it of the benefit of concessional tax u/s 8(1) of the Central Act. Reading the order of the Board, passed in revision, as a whole, it is clear that it also rejected the argument put forward on behalf of the assessee that opportunity ought to have been given and ought to be given to it for production of the declarations and the certificates even after the passing of the assessment order either by the Deputy Commissioner or by the Board not only by taking the view that the Deputy Commissioner or the Board had no such power but also on the ground that no case had been made out for giving such fresh opportunity or opportunities to the assessee.

6. The assessee's application u/s 33(1) of the Bihar Act (19 of 1959) filed before the Board eventually came to be disposed of by the Commercial Taxes Tribunal, Bihar. It was rejected by it. On being directed by the High Court, the Tribunal has now stated the case on the question of law mentioned above.

7. In our opinion, from the order of the Board passed in revision, the points which fall for determination are these -

(i) Whether Rules 9(2)(a) and 9-B(3)(a) of the Central Sales Tax (Bihar) Rules, 1957, requiring the registered dealer who claims to have made sales to another registered dealer or to Govt. to attach and file the declarations in Form C and the certificates in Form D with his return in Form I, is constitutionally valid?

(ii) If not, when the declarations and certificates should have been filed?

(iii) Whether the appellate authority or the revisional authority had, in the circumstances, power to accept the declarations and certificates if filed after the passing of the assessment order?

(iv) Whether on the facts and in the circumstances of this case the Board has committed any error of law in refusing to give such an opportunity to the assessee for the filing of the declarations and certificates at a late stage?

8. To bring about the real controversy and the points which do arise for determination in this case, we propose to reframe the question of law in the manner indicated below. We would add here that the learned counsel for the parties had no objection to the reframing of the question in that manner.

Question of law as refrained: Whether on the facts and in the circumstances of this case the assessee could be and ought to have been given an opportunity to furnish to the assessing authority declarations and certificates in the prescribed forms u/s 8(4) of the Central Sales Tax Act 19 of 1956 after the filing of the returns on the passing of the assessment order, to enable it to be taxed at the concessional rate u/s 8(1) on the turnover of Rs. 22,15,253.64 P. or any portion thereof?

9. It will be useful here first to read the relevant provisions of the Acts and the Rules. Section 8(1) of the Central Act (74 of 1956) says:--

"8. Rates of tax on sales in the course of inter-State trade or commerce. -- (1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goodsj or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3); shall be liable to pay tax under this Act, which shall be one per cent of his turnover."

But the liability to the Central Tax under the said provision of law at one per cent of his turnover in respect of the sales enumerated in Clauses (a) and (b) of Section 8(1) is conditioned upon the fulfilment of the requirement u/s 8(4) which provides:--

"8(4) The provisions of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner -

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

The thirteenth section of the Central Act confers the rule making power on the Central Govt. as also on the State Government, Sub-section (3) of the said section confers the general power on the State Govt. to make rules not inconsistent with the provisions of the Act and the rules made by the Central Govt. under Sub-section (1) to carry out the purposes of the Act. Without prejudice to the powers conferred by Sub-section (3), it is provided in Sub-section (4) of Section 13 that the State Government may make rules for all or any of the following purposes, namely:--

" * * * ** (g) the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer shall be furnished,"

Rules have been framed by the State of Bihar under Sub-sections (3) and (4) of Section 13 of the Central Act, called the Central Sales Tax (Bihar) Rules, 1957. Rule 9 (2) (a) of the said Rules requires -

"(2)(a). A registered dealer who claims to have made sale to another registered dealer shall, in respect of such claim, attach to his return in Form I the portion marked "original" of the declaration received by him from the purchasing dealer."

Rule 9-B(3) makes a similar provision requiring the registered dealer to attach to his return in Form I the portion marked "original" of the certificate received by him from the officer of the Government in respect of the sales made to it. Rule 8(1) of the Rules aforesaid says :--

"8. Returns :-- (1) Every registered dealer shall furnish to the Assistant Commissioner, Superintendent or Assistant Superintendent quarterly returns in Form I, and also an annual return, in the same Form, on the basis of the quarterly returns for the year. Such return shall be furnished in the manner and by the date prescribed in respect of returns under the Bihar Sales Tax Act, 1947 (Bihar Act XIX of 1947) and the rules framed thereunder."

Sub-section (1) of Section 14 of the Bihar Act (19 of 1959) runs thus :--

"14. Returns:-- (1) Every registered dealer shall furnish such returns within such period and to such authority as may be prescribed;

Provided that the prescribed authority may require any dealer by notice in writing, to furnish such returns within such period as may be fixed by the said authority."

Sub-section (3) of the 14th Section empowers the prescribed authority to extend the period for submission of the return only if the period has been fixed by the notice issued under the proviso to Sub-section (1) and not where the registered dealer is required to furnish, ordinarily and generally as is the case, voluntarily returns within such period as may be prescribed. The rules framed under the Bihar Act are called the Bihar Sales Tax Rules, 1959. Rule 10 of these Rules requires every registered dealer, unless otherwise required under the proviso to Sub-section (1) of Section 14, to furnish to the prescribed authority quarterly returns and also an annual return in Form XII. Sub-rule (2) of this rule says that the returns under Sub-rule (1) have to be filed within one calendar month of the expiry of the period to which the returns relate. In other words, the quarterly returns or the annual return, as the case may be, have got to be filed within a fixed period of time, i. e., one calendar month of the expiry of the quarter or the year.

That being so, it is manifest that the requirement of Rules 9(2)(a) and 9-B(3) (a) of the Central Sales Tax (Bihar) Rules, 1957, for attachment of the declarations and the certificates with the returns imposes a time-limit or fixes the; period within which such declarations and certificates have got to be filed. The Central Act did not empower the Government to frame a rule fixing a rigid time for the

purpose of furnishing declarations and certificates to carry out the purposes of the Act in accordance with Sub-section (4) of Section 8 of the Central Act. The expression "in the prescribed manner" was not wide enough to embrace within its ambit the power to prescribe the time-limit for furnishing the declarations and the certificates. As argued by the learned Additional Government Pleader, the requirement of filing such declarations and certificates with the return per se is undoubtedly prescribing the manner to file them. But since the returns, as discussed above, have got to be filed within the rigid time-limit of one calendar month of the expiry of the period to which it relates the requirement of furnishing the declarations and the certificates a fortiori imports that time-limit.

Section 8(4) of the Central Act did not authorise the framing of rules and prescribing of any rigid time-limit. Hence, in absence of any specific and clear provision either in Sub-section (3) or subsection (4) of Section 13 of the Central Act, the State Government was not authorised to frame the rule to bring home the rigour of time-limit for the submission of the declarations and the certificates. In contrast, the language of Clause (g) of Sub-section (4) of Section 13 extracted above, is noteworthy, where the two phrases, viz., "the time within which" and "the manner in which", have been used to empower the State Government to frame the rules distinctly for the two purposes, as the latter phrase was not enough to cover the former. In that view of the matter, we would hold that the declarations and the certificates in Forms C and D as required by the Central Sales Tax (Bihar) Rules could be furnished after the filing of the returns and none of the authorities, the assessing, the Deputy Commissioner or the Board, was right in its view of limiting the time for the filing of the declarations and the certificates with the return. The requirement of the rules 9 (2) (a) and 9-B(3)(a) in so far as it imposes a time-limit by necessary implication is ultra vires the rule making power of the State Government.

10. It may, however, be stated here that it appears from the order of the Board that the Bihar Government had Issued a circular order No. C. S. T. 38/61-9808, dated the 28th July, 1961, taking note of delays in assessee's obtaining the required declarations and that they should be given reasonable opportunity for submitting the C and D Forms before the actual completion of the assessment. Although in July 1961 the issuing of such a circular was against the requirement of the Central Sales Tax (Bihar) Rules, on a correct position of law as discussed by us, the instruction was quite reasonable and fair. It may also be added that that rule now stands amended retrospectively with effect from the 4th December, 1961. I may only quote one of the amended rules. Rule 9 (2)(a) which now reads as follows:--

"9(2)(a) A registered dealer who claims to have made a sale to another registered dealer shall, "in respect of such claim, attach to his return in Form I the portion marked "original" of the declaration received by him from the purchasing dealer or shall submit the said declaration at any time before final assessment, if the assessing authority BO permits; *****

Explanation :-- For the purposes of this clause, the expression "final assessment" shall be deemed to include any fresh assessment made by the assessing authority as a result of such direction by the appellate authority.

11. It is, however, obvious that the required declarations and certificates, generally and ordinarily, have got and should be furnished before the assessment is made by the assessing authority. After all, the assessing authority has got to be satisfied about the claim of the assessee to give him the benefit of the concessional tax in accordance with Section 8(1) of the Central Act. There is no time-limit fixed by the law for the passing of the assessment order in respect of any period in relation to which return has been filed. That being so, it is manifest that the declarations and the certificates when required to be filed before the completion of the assessment are not bringing about the imposition of any time-limit, but are necessary to be so filed in order to enable the authority to complete the assessment and to allow or reject the claim of the assessee for imposition of a concessional rate of Central Sales Tax.

12. If, however, the assessee is not able, for sufficient cause, to furnish the requisite declarations and the certificates in Forms C and D before the passing of the assessment order before the assessing authority, he may prefer an appeal to the appellate authority which exercising the powers u/s 30(5) of the Bihar Act (19 of 1959). will be competent to set aside the assessment and direct the assessing authority which made the assessment to pass a fresh order after further enquiry on giving a fresh opportunity to the assessee to furnish the declarations and the certificates. Similar will be the power of the revisional authority u/s 31 of the Bihar Act. In our opinion, therefore, to the extent views have been expressed by the Deputy Commissioner or the Board against the ones we have taken, they are wrong.

13. The view taken by the Madras High Court in the two decisions mentioned in the judgment of the Board, viz. (Deputy Commissioner (Commercial Taxes), Coimbatore Division Vs. Parekutti Hajee Sons,) & (The Deputy Commissioner of Commercial Taxes, Madras Vs. Manohat Brothers, Madras,) is we say so with respect not good law. The point has been well considered, and if we may say so with respect, proper law has been enunciated by the Full Bench of the Kerala High Court in K.I. Abraham Vs. Sales Tax Officer, Ponkunnam and Another, . To the same effect is the view taken by a learned single Judge of the Allahabad High Court in Murli Dhar Dharampal Vs. The Sales Tax Officer, following the Full Bench decision of the Kerala High Court. The Kerala decision has been upheld by the Supreme Court in Sales Tax Officer. Ponkunnam V. K. I. Abraham. (1967) 20 STC 367 : AIR 1967 SC 1823. After the Full Bench decision of the Kerala High Court, the Madras High Court has also revised its opinion and fallen in line with the view expressed by the Kerala High Court, in two decisions in the The Tirukoilur Oil Mills Ltd., Arakandanallur Vs. State of Madras, and Gordon Woodreffe and Co. (Madras) Private Ltd. v. State of Madras (1968) 21 STC 120

In the Kerala case which went upto the Supreme Court, Rule 6 of the Central

Sales Tax (Kerala) Rules, 1957, required the dealer to submit a return of all his transactions in Form II together with the connected declaration forms so as to reach the assessing authority on or before the 20th of each month showing the turnover for the preceding month. To this requirement of the main Sub-rule (1) of Rule 6, a proviso was inserted by a notification, dated the 3rd January, 1958; but the Government in its wisdom thought that that proviso which enabled the dealer in cases of delayed receipt of declaration forms to submit them at any time before the assessment is made, was giving them too wide a gap of time. Therefore, it was sought to be curtailed by insertion of a second proviso by notification dated the 26th April 1960, stating in the second proviso that the delay in submitting the declaration forms shall not exceed three months from the date of sale in question. But then it was found that any declaration forms by various dealers could, not be filed within the time limited by the second proviso as the time had already expired and, therefore, a third proviso was added by notification dated the 16th January, 1961, saying that all declarations pending submission by the dealers on the 2nd May, 1960, shall be submitted not later than the 16th February, 1961. The assessee in Abraham's case of the Kerala High Court had submitted his declarations not by the 16th February, 1961, but by the 8th March, 1961, before the completion of the assessment. The question before the Kerala High Court arose under the circumstances stated above. It was answered in favour of the assessee by holding that the time-limit fixed by the third proviso was ultra vires the rule making power of the State Government. The Supreme Court affirmed his view and Ramaswamy, J., speaking for the Court, said --

"It follows therefore that "the assessee was not bound to furnish declarations in Form "C" before February 16, 1961, in the present case."

His Lordship was pleased to observe further:--

"In the absence of any such time-limit it was the duty of the assessee to furnish the declarations in Form "C" within a reasonable time, and in the present case it is the admitted position that the assessee did furnish the declarations on March 8, 1961, before the order of assessment was made by the Sales Tax Officer. We are accordingly of the opinion that the assessee has furnished the declarations in Form "C" in the present case within, a reasonable time and there has been a compliance with the requirements of Section 8(4)(a) of the Act."

14. It is no doubt true that in Abraham's case the time-limit fixed for the filing of the declarations and the certificates in pursuance of the fixation of the time for the filing of the returns in Sub-rule (1) of Rule 6 of the Kerala Rules did not fall for consideration of the Supreme Court. But, on a parity of reasoning we do not find any escape from the position that the time-limit fixed under the Bihar Rules in the garb of prescribing the manner of filing the declarations and certificates along with the returns is not valid. The argument of the learned Additional Government Pleader to the contrary is not sound and must be rejected. The Madras High Court in the latter cases referred to above have taken the identical

view under similar circumstances.

15. On a careful consideration of the matter, therefore, we are of the opinion that the assessee, undoubtedly, could be and ought to have been given an opportunity to furnish to the assessing authority the declarations and certificates in the prescribed forms after the filing of the returns and before the passing of the assessment order. It could also be given an opportunity to furnish them even after the passing of the order if the appellate authority or the revisional authority could be satisfied that sufficient cause had been made out for giving such an opportunity. The difficulty, however, in the way of the assessee in this case is that whether in a particular state of facts and circumstances a case has been made out for the grant of such an opportunity by the appellate authority or the revisional authority is a question of fact. In a given circumstance, one authority may take one view and the other authority may record or take another view, yet the question remains, generally and ordinarily, a question of fact. It has been held in numerous decisions including a recent one by the Supreme Court that what is sufficient cause is a question of fact.

16. In the instant case although the assessing officer felt obliged to stick to the letter of the rule, he, however, was conscious of the fact that the assessee had not submitted the declarations and the certificates even on the 10th May, 1961, when he was going to make the assessment. To the same effect was the fact noted by the Deputy Commissioner in his appellate order although at the end he committed an error of law in saying that it was not open to him to excuse the delay in submission of the declarations and the certificates. The Board, however, discussed the question of fact elaborately with reference to the case of the assessee at the various stages. It gave several reasons for coming to the conclusion that the assessing authority had given the assessee sufficient opportunity to submit the declarations and the certificates before making the assessment. In the order of revision, the Board has pointed out that the declarations and the certificates covering the full amount had not been filed before the Deputy Commissioner as was apparent from the statement filed before the Board. Even the declarations and the certificates which covered the sales of about rupees ten lacs, which had been received by the assessee before the date of assessment, were not filed before the assessing authority.

No ground was disclosed before the assessing authority as to why they were not filed. The contention of the assessee that they were not so filed because they were before the auditors was rejected by the Board on the ground that the duplicate copies could have been sent to the auditors and the originals could be filed before the assessing authority. It may be stated here that the declarations and the certificates are prepared in triplicate. The original and the duplicates are given to the dealer who sells the commodity and the triplicate is retained by the purchaser who gives the declaration or the certificate. It is no doubt true that at one place in its order the Board observed that it was unnecessary to go into the question whether the assessee had sufficient cause for non-compliance with the

prescribed rules in view of the decisions of the Madras High Court, which, as we have said above with respect, are not good laws. In the alternative, reading the order of the Board as a whole, it is clear to us that it did consider as to whether this was a case where fresh opportunities should have been and could be given either by the Deputy Commissioner or by the Board for production of the required certificates and declarations in the case. It did not feel satisfied to say so. In our opinion, there is no error of law in this regard in the order of the Board and, therefore, the last part of the question which we have framed has got to be answered against the assessee. As a matter of law, we cannot hold that, on the facts and in the circumstances of this case, the assessee ought to have been given an opportunity to furnish to the assessing authority declarations and certificates in the prescribed forms after the passing of the assessment order in question.

17. Lastly, it was submitted by Mr. Tarkeshwar Prasad, learned Counsel for the assessee, that in any view of the matter in regard to the sales of rupees ten lacs, in respect of which the declarations and the certificates had been filed before the Deputy Commissioner, the Board ought to have directed him to accept them, or the assessing authority to accept them, and make a fresh assessment. We are not prepared to accept this argument because according to the order of the Board, as we read it, no case in its opinion was made for acceptance of any declaration or certificate filed after the order of assessment was made by the assessing authority.

18. For the reasons stated above, we answer the question of law refrained by us partly in favour of the assessee but finally and effectually against it in the manner indicated above. In the circumstances, there will be no order as to costs.