

(2006) 01 PAT CK 0083

In the Patna High Court

Case No : Letters Patent Appeal Nos. 1100 and 1101 of 1996

Bharat Agriculture and Mechanical Engineering Company

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Citation : (2006) 01 PAT CK 0083

Judgement

Aftab Alam, J.—The two appeals are directed against a common judgment passed by a learned single Judge of this Court dismissing two writ petitions filed by the appellant and upholding the reassessment orders passed by the Deputy Commissioner of Commercial Taxes in exercise of powers u/s 19(1) of the Bihar Finance Act, 1981 ("the Act", hereinafter).

2. L. P. A. No. 1100 of 1996 arising out of C. W. J. C. No. 847 of 1986 relates to assessment period 1982-83. L. P. A. No. 1101 of 1996 arising out of C. W. J. C. No. 846 of 1986 relates to assessment period 1983-84. Apart from the difference in the periods of assessment, the two cases are identical on all issues of facts and law. These appeals were accordingly heard together and are being disposed of by this order.

3. The relevant facts are brief and simple and can be stated thus : The appellant is the manufacturer and seller of implements which are used in agricultural operations for spraying insecticides and pesticides, etc. The sprayers manufactured and sold by the appellant are of various types, e.g. foot sprayers, knap-sack sprayers and hand-compressor sprayers, rocking sprayers, etc. According to the appellant during the two assessment periods those implements were sold only or at least mostly to the Government Departments and the Government too taking them as agricultural implements did not pay any sales tax on their purchase. The appellant submitted its returns for the two assessment periods showing its sales tax liability as nil. The competent authority issued notice u/s 17(2)(a) of the Act and proceeded to pass the assessment orders. The assessment orders for the two assessment periods were finally

passed in which the competent authority accepted the appellant's position and held that the appellant was not liable to pay any sales tax for the two assessment periods.

4. It appears that later on there was an audit objection in which it was pointed out that the implements (sprayers) manufactured and sold by the appellant were not entitled to exemption from payment of sales tax for the reason that those were not agricultural implements since sprayers were not included in the list of agricultural implements in the notification, dated December 26, 1977 issued by the State Government.

5. On the basis of the auditor's objection the competent authority (the Deputy Commissioner, Sales Tax) initiated a reassessment proceeding u/s 19(1) of the Act and issued notices to the appellant. In response to the notice the appellant submitted its show cause questioning the initiation of the reassessment proceeding and also taking the plea that the sprayers manufactured by it were agricultural implements entitled to exemption from sales tax, notwithstanding the fact that those were not separately included in the notification. It appears that after filing the objections the appellant did not appear before the Deputy Commissioner on the date fixed in the proceeding and in that circumstance the Deputy Commissioner passed ex parte orders levying taxes on the sale of sprayers by the appellant at eight per cent. The two reassessment orders for the periods 1982-83 and 1983-84 were challenged by the appellant before this Court in C. W. J. C. Nos. 847 and 846 of 1986 respectively.

6. Before the writ court the appellant assailed the reassessment orders on two grounds : one that the reassessment proceeding was wholly without jurisdiction inasmuch as the audit objection did not satisfy the statutory requirement of the prescribed authority coming into possession of an information and the other that the sprayers manufactured and sold by it were in any case entitled to exemption being agricultural implements even though those were not separately included in the list under the notification.

7. In support of the first ground the appellant relied upon, amongst others, a Supreme Court decision in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, , and a Full Bench decision of this Court in *Bhimraj Madanlal v. State of Bihar* [1984] 56 STC 273 : *Bhimraj Madanlal Vs. State of Bihar and Another*, . The learned single Judge, however, found and held that the reference to the exemption notice in the reassessment order satisfied the requirement of an information coming into the possession of the prescribed authority for the purpose of Section 19(1) of the Act and further held that since the list of agricultural implements under the notification was preceded by the expression "agricultural implement worked by human or animal power, namely", any implement or article not included in the list was not an agricultural implement entitled to exemption from sales tax.

8. The two appeals are preferred against the aforesaid judgment.

9. At the outset we may note that the appeal was canvassed only on the first ground and Mr. Agrawal, learned Counsel appearing for the appellant, gave up the second point urged before the writ court.

10. Mr. Agrawal submitted before us that a mere reference to the exemption notification in the reassessment order could by no means satisfy the stringent pre-condition for initiation of a reassessment proceeding u/s 19(1) of the Act since the prescribed authority was in any case supposed to know the notifications issued by the department and a mere reference to the notification cannot be construed as a fresh or new information coming into the possession of the prescribed authority. In support of his submission he relied upon the decisions in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, and *Bhimraj Madanlal Vs. State of Bihar and Another*,

11. We have carefully gone through the judgment of the writ court coming under appeal, the assessment orders originally passed by the prescribed authority and the reassessment orders impugned in the writ petitions. We find that the learned single Judge in para 8 of the judgment coming under appeal noticed the Supreme Court decision in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, but in para 11 of the judgment proceeded to observe as follows:

In the said order, the Deputy Commissioner allowed the exemption on mere claim being raised by the petitioner. Thus, obviously, the Deputy Commissioner, while passing the reassessment order, taking into consideration the list of the exempted items relating to agricultural implement contained in the aforementioned notification dated December 26, 1977 which, in my opinion, will be an "information" within the meaning of Section 19(1) of the Act.

12. The J.C. to Government Pleader No. I, representing the State, tried to defend the order passed by the writ court and submitted that a mere reference to the exemption notification that did not find any mention in the original assessment order would indicate that the prescribed authority had come into possession of some information and that would justify the initiation of the reassessment proceeding.

13. We find that the reason assigned for upholding the validity of the reassessment proceeding and the argument that a mere reference to the exemption notification would mean that the prescribed authority came into possession of some information, are not legally sound. The reasoning adopted by the writ court appears to be in teeth of the observations made in the Supreme Court decision in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, In paragraph 15 (at page 1005 of ITR) of the Supreme Court judgment it is observed and held as follows:

15. A further submission raised by the Revenue on Section 147(b) of the Act may be considered at this stage. It is urged that the expression "information" in Section 147(b) refers to the realisation by the Income Tax Officer that he has

committed an error when making the original assessment. It is said that, when upon receipt of the audit note the Income Tax Officer discovers or realises that a mistake has been committed in the original assessment, the discovery of the mistake would be "information" within the meaning of Section 147(b). The submission appears to us inconsistent with the terms of Section 147(b). Plainly, the statutory provision envisages that the Income Tax Officer must first have information in his possession, and then in consequence of such information he must have reason to believe that income has escaped assessment. The realisation that income has escaped assessment is covered by the words "reason to believe", and it follows from the "information" received by the Income Tax Officer. The information is not the realisation, the information gives birth to the realisation.

14. But apart from this, on going through the assessment orders passed originally and the impugned reassessment orders we find that the latter suffer from a very basic infirmity inasmuch as the reassessment orders appear to have been passed completely mechanically and without any independent application of mind by the prescribed authority.

15. From the original assessment order passed for the period 1982-83 it appears that both the assessee (the appellant/writ petitioner) and the prescribed authority proceeded on the premise that the sprayers manufactured and sold by the appellant were agricultural implements, exempted from payment of any sales tax. The appellant-assessee in its return had shown sale of only agricultural implements (sprayers) during the assessment period. Not satisfied by the return filed by the appellant-assessee the prescribed authority decided to make an inspection of the assessee's unit and he actually made an inspection of the assessee's commercial premises. In course of enquiry he found that apart from the articles exempted from payment of sales tax the assessee also dealt in articles on the sale of which sales tax was leviable. But he found that for the period in question only such articles were sold that were exempted from payment of tax. He concluded the order by observing that on the basis of the enquiry made by him he was finally satisfied that the return filed by the assessee was correct and the assessee was not liable to pay any sales tax for the period in question.

16. As against this the relevant portion of the reassessment order, loosely translated into English, reads as follows:

A perusal of the audit objection reveals that the assessee had manufactured and sold foot-sprayers, compressor-sprayers knapsack-sprayers and hands-sprayers, etc., which were exempted from sales tax taking them to be agricultural implements. According to the auditor, the aforesaid articles do not come in the list of agricultural implements as mentioned under Notification No. 14547, dated December 26, 1977. Hence, the auditor has recommended for levying tax on those articles at eight per cent taking them as unspecified goods.

The order concludes by saying that keeping the aforesaid materials in mind and on account of the assessee being absent at the time of hearing, on the basis of the audit objection the assessment order was modified in terms of Section 19(1) of the Act and the following tax liabilities were imposed upon the assessee.

17. The two orders pertaining to the following assessment period are quite same.

18. From a reading of the reassessment orders one fails to find the slightest application of mind by the prescribed authority himself and he appears to be simply following and giving effect to the objection raised by the internal auditors.

19. We are, therefore, of the opinion that even without going into the question whether a reference to the exemption notification would satisfy the requirement of Section 19(1) of the Act, the two assessment orders are liable to be struck down and the writ petitions filed by the petitioner are fit to be allowed on the simple ground that the impugned orders were passed without any independent application of mind by the prescribed authority.

20. In this regard we may once again refer to the decision of the Supreme Court in *Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi*, of which it is stated as follows:

13. In the present case, an internal audit party of the Income Tax department expressed the view that the receipts from the occupation of the conference hall and rooms did not attract Section 10 of the Act and that the assessment should have been made u/s 9. While Sections 9 and 10 can be described as law, the opinion of the audit party in regard to their application is not law. It is not a declaration by a body authorised to declare the law. That part alone of the note of an audit party which mentions the law which escaped the notice of the Income Tax Officer constitutes "information" within the meaning of Section 147(b); the part which embodies the opinion of the audit party in regard to the application or interpretation of the law cannot be taken into account by the Income Tax Officer. In every case, the Income Tax Officer must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. In short, the true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income Tax Officer.

21. The impugned reassessment orders, thus, do not come up to the test of an independent application of mind by the statutory authority and on that ground alone those are liable to be struck down.

22. In the result the order of the writ court coming under appeal is set aside. The two appeals and the two writ petitions from which the appeals arise are allowed and the reassessment orders, dated October 29, 1985 for assessment periods

1982-83 and 1983-84 and the consequent demand notices are set aside.