
(1957) 08 PAT CK 0019

In the Patna High Court

Case No : Misc. Judicial Case No. 183 of 1956

Bharat Sugar Mills Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-08-1957

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 24(4), 24(6), 25(1)
Bihar Sales Tax Rules, 1959 — Rule 38

Citation : AIR 1958 Patna 76 : (1957) 5 BLJR 651 : (1957) 8 STC 832

Hon'ble Judges : Ramaswami, C.J; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : S.N. Datta, N.L. Untwalia, Narayan Prasad Agarwal and K.N. Jain, for the Appellant; Government Advocate, for the Respondent

Judgement

1. In this case the assessee is a limited company called Bharat Sugar Mills Limited. For the period from 1st of April, 1949 to 31st March, 1950, the company was assessed to sales tax on a taxable turnover of Rs. 68,53,068/- and odd. This amount included the value of sugar despatched to the Head Office at Calcutta for sale to the extent of Rs. 16,33,959/- and, odd and also value of sugar delivered outside the State of Bihar for consumption in other States after 26th of January, 1950, to the extent of Rs. 7,25,965/- and odd.

The Sales Tax Officer held that these two latter items should be included in the taxable turnover of the assessee. On appeal the Deputy Commissioner was of opinion that the amount of Rs. 7,25,965/- and odd representing the value of sugar delivered outside the State of Bihar for consumption was taxable, but the amount of Rs. 16,33,959/- was not taxable. The matter was taken in revision by the assessee to the Board of Revenue which accepted the argument of the assessee that the amount of Rs. 7,25,965/- and odd representing the value of sugar delivered outside the State of Bihar for consumption was not taxable. But the Board of Revenue considered that there was a patent mistake of law in the terms of the remand order of the Deputy Commissioner which was as follows :

The books of the appellant show that the despatch of above goods was made on consignment basis to his head office at Calcutta. The assessing officer seems to have held such despatches as sales within the extended definition of sale as amended on 1-10-48. But mere transfer of goods from one branch to another of a dealer does not appear to me to come under the definition of sale.

The assessing officer does not appear to have examined if such despatches were made in pursuance of any previous contract between the appellant and the purchaser or if the transfer was made as a matter of course without any such contract, in the hope of selling the goods from the Calcutta Office of the appellant to whomsoever it might be convenient to sell it. In the former case the despatch will be governed by the extended meaning of sale as amended on 1-10-48, but in the latter case I am afraid it will be not. The assessing officer will now examine this point and if necessary amend the assessment."

2. The Board of Revenue considered that the order of remand of the Deputy Commissioner was mistaken and observed as follows :

"In my opinion, the words "but in the latter case I am afraid it will be not" seems a patent misdirection, The learned Deputy Commissioner seems to have confined his attention only to Clause (i) of the second proviso to Section 2 (g) of the Act as inserted by the Amending Act (Bihar Act 6 of 1949) and even in regard to the application of this clause there would appear to be some ambiguity in his order, where he says : "The assessing officer does not appear to have examined if such despatches were made in pursuance of any previous contract between the appellant and the purchaser".

He has not made it clear that even if the despatches had been made as a result of such a contract they could not be taxed unless sales had taken place. Apparently this is what he meant. Under Clause (ii) of the second proviso "the sale of any goods which are produced or manufactured in Bihar by the producer or manufacturer thereof shall, wherever the delivery or contract of sale is made, be deemed for the purposes of this Act, to have taken place in Bihar".

The goods in this case, namely, sugar are indisputably produced or manufactured in Bihar by the petitioner who is the producer., Therefore, whether these goods were despatched in pursuance of a contract of sale or not and irrespective of where the delivery takes place, these goods are taxable to sales-tax in the year in question up to 26th January, 1950, so long as they are sold, in respect of sales taking place within this period under Clause (i) of the second proviso.

Therefore the direction of the learned Deputy Commissioner "but in the latter case I am afraid it will be not" amounts to a misdirection of law. I gave an opportunity to the learned advocates for the petitioner to meet this point and to make his submissions against my making observations on the above lines to correct this patent misdirection and ambiguity apparent in the learned Deputy Commissioner's order.

I must state, in this connection, that the learned advocate for the State of Bihar submitted that he had no instructions on this point, though he agrees that the orders of the learned Deputy Commissioner on this point are not in accordance with the decisions of the Board and that the order should have been worded on the lines of my observations above. Learned advocate for the petitioner contends that it is not open to the Board to raise this point suo motu at this stage, because this is not a point raised by the petitioner in his petition of revision before the Board. Learned advocate also refers to Rule 39 of the Statutory Rules 1949 and contends that this would amount to review of the order of the Deputy Commissioner beyond the period of one year. He also refers to Rule 38 of the Rules and contends that in terms of that rule a notice in Form XII should be issued to him."

3. Before the Board of Revenue an objection was raised on behalf of the assessee that the Board of Revenue was incompetent to decide a point of law which was not taken in the revision application. This objection was overruled by the Board of Revenue and it was held that under Sub-section (4) of Section 24 the Board had jurisdiction to revise any order passed by the Deputy Commissioner and all that Sub-section (6) of Section 24 required was that the petitioner should be given a reasonable opportunity of being heard on any point which was likely to affect him adversely.

As regards Rule 33 the Board of Revenue took the view that it did not apply to the case of a petition in revision and no notice in Form XII was required. Further the Board of Revenue held that the opportunity which it gave to the petitioner in the course of the hearing was adequate in terms of Sub-section (6) of Section 24. After thus overruling the objections of Counsel for the assessee the Board of Revenue passed the following order :

"I would, accordingly, direct the learned Sales Tax Superintendent, Chapra, while making the enquiry in terms of the remand order of the learned Deputy Commissioner, and in modification of the directions contained in paragraph 2 of his order, to examine and ascertain the actual sales made within the period in question, i.e. from 1st April, 1949 to 26th January, 1950, out of the despatches outside Bihar made in that period, regardless of whether these despatches were made in pursuance of any previous contract or not and include the sum so determined in the turnover for assessment to sales tax.

Subject to the above observations, contained in paragraph 5 above, the petition is allowed."

4. At the instance of the assessee the Board of Revenue has stated a case u/s 25 (1) of the Bihar Sales Tax Act on the following questions of law :

""1. Whether in dealing with a revision petition, the Board of Revenue is competent in law to make any suo motu revision of any point not raised in the petition? If so, whether a special notice, intimating to the persons concerned the intention to make such suo motu revision should be issued?

2. Whether, in view of the circumstances of the case, the petitioner is entitled to exemption from Sales Tax in respect of sugar manufactured in Bihar, but despatched outside Bihar after the Constitution came into force?"

5. As regards the second question, it was submitted by learned Counsel for the assessee that this question has been referred by the Board of Revenue under a misapprehension and misreading of the order of the Board of Revenue in revision dated 5th of June, 1954. It was submitted that this question of law does not arise out of the order of the Board of Revenue in revision and it is not necessary for this Court to answer this question. We consider that the argument of learned counsel is right and that this question of law does not really arise out of the order of the Board of Revenue in revision dated 5th of June, 1954, For these reasons we do not propose to answer this question.

6. As regards the first question, the argument put forward by learned Counsel for the assessee is that no reasonable opportunity was given to the assessee and so the Board of Revenue has erred in law in revising the order of remand made by the Deputy Commissioner, Sales Tax, with regard to the amount of Rs. 16,33,959/- and odd, said to be the value of sugar sent to the Head Office at Calcutta for sale.

It was submitted by learned counsel that the Board of Revenue should have given an adjournment to the assessee and then heard arguments with regard to this point. It was further contended on behalf of the assessee that a notice in Form XII was necessary before the Board of Revenue could exercise the power of revision suo motu and a proceeding as required by the proviso to Sub-section (4) of Section 24 should have been started.

Learned Counsel also referred to Rule 38 in this connection. In our opinion the argument addressed by learned Counsel for the assessee cannot be accepted as correct. It is obvious that Section 24 (4) must be read along with Rule 38 and, in our opinion, Rule 38 does not apply to a case where the person, affected is actually present in Court when the application in revision was being heard. That is, we think, the true interpretation of Rule 38, which reads as follows :

"38. Notice to the person likely to be affected adversely : Before any person empowered u/s 24 passes any order in appeal, revision or review likely to affect any person adversely, he shall send to such person a notice in Form XII (unless such person is the appellant or applicant for revision or review, as the case may be), and allow him a reasonable opportunity of being heard."

We, therefore, reject the contention made on behalf of the assessee that it was necessary for the Board of Revenue to start a proceeding and send, a notice in Form XII to the assessee before proceeding to exercise the powers of, revision suo motu with regard to the order of the Deputy Commissioner of Sales Tax.

7. The next point taken on behalf of the assessee is that no reasonable opportunity was given to Counsel for the assessee to make his submission on the

question of law which was in dispute. On this point the Board of Revenue has observed that the opportunity which it gave to the petitioner in the course of hearing was an adequate opportunity in terms of Sub-section (6) of Section 24.

The question whether the opportunity given is a reasonable opportunity or not is manifestly a question of fact and it is not open to the High Court to interfere in reference unless it is shown that some legal principle is involved. It was pointed out by the learned Government Advocate in the course of the hearing of the reference that Counsel for the assessee did not ask for any adjournment of the case when the revision application was heard before the Board of Revenue.

The only objection taken by Counsel for the assessee before the Board of Revenue was that it was not competent for the Board of Revenue to take up the question of law suo motu at that stage. In other words, the jurisdiction of the Board of Revenue to revise the order of the Deputy Commissioner suo motu was challenged and the question of reasonable opportunity was not raised before the Board of Revenue on behalf of the assessee and no prayer for adjournment was made before the Board of Revenue for arguing the question of law.

As we have already stated, the question of reasonableness of the opportunity is a question of fact and in the present case the Board of Revenue has said that the opportunity given was reasonable and adequate in terms of Section 24, Sub-section (6). In the circumstances of the case we do not think that the opportunity given to the petitioner was not a reasonable opportunity or that the terms of Sub-section (6) of Section 24 have in any way been infringed.

8. For these reasons we hold that the first question of law referred by the Board of Revenue to the High Court should be answered in favour of the State of Bihar and against the assessee. The State of Bihar is entitled to costs of this reference. Hearing fee Rs. 250/-.