

(1984) 04 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 1505, 1506 and 1507 of 1973

Bhimraj Madan Lal

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 14-04-1984

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 4(1)(a), 4(b)

Citation : (1984) PLJR 875 : (1985) 58 STC 119

Hon'ble Judges : S. Sarwar Ali, J;B.P. Jha, J

Bench : Division Bench

Advocate : G.C. Bharuka and Navniti Prasad Singh, for the Appellant; R.B. Mahto, Additional Advocate-General, Rameshwar Prasad, Government Pleader VI and S.K.P. Sinha, Junior Counsel to the Additional Advocate-General in C.W.J.C. No. 1505 of 1973, Amarnath Singh, Junior Counsel to the Additional Advocate-General, in C.W.J.C. No. 1506 of 1973 and Mahesh Prasad, Junior Counsel to the Additional Advocate-General in C.W.J.C. No. 1507 of 1973, for the Respondent

Judgement

B.P. Jha, J.—I shall dispose of these three writ petitions, i.e., C.W.J.C. No. 1505 of 1973, C.W.J.C. No. 1506 of 1973 and C.W.J.C. No. 1507 of 1973 by a common judgment, as a common point of law arises for consideration in these writ petitions.

2. The relevant facts are these :

In C.W.J.C. No. 1505 of 1973, the petitioners, M/s. Bhimraj Madan Lal, sold pulses worth Rs. 10,09,040.71 outside the State of Bihar through its arhatia during the period 1968-69. Similarly in C.W.J.C. No. 1506 of 1973, the petitioners", M/s. Bhimraj Madan Lal, during the period 1970-71 sold pulses worth Rs. 22,77,666.44 outside the State of Bihar through its arhatia. In C.W.J.C. No. 1507 of 1973, the petitioners, M/s. Bhimraj Madan Lal, had, during the period 1969-70, sold pulses worth Rs. 16,17,876.85 outside the State of Bihar through its arhatia.

3. The short point for consideration is :

Whether the sales tax authorities can reopen the case in respect of the materials which were already available at their earlier assessment order simply for changing or revising their opinion ? The answer must be given in the negative.

4. These petitioners claimed deduction or exemption on account of sales outside the State of Bihar under the Bihar Sales Tax Act, 1959 (hereinafter referred to as the Act). Such sales are exempted from the purview of the Act. It is relevant to quote Section 4(1)(a) and (b) of the Act which run as follows :

4. (1) No tax shall be payable under this Act on sales or purchases of goods which have taken place-

(a) in the course of inter-State trade or commerce;

(b) outside the State;

* * *

On a perusal of Section 4(1)(b) of the Act, it is clear that no tax shall be paid under the Act on sales or purchases of goods which have taken place outside the State of Bihar. In this case it is an admitted position that the manufactured pulses have been sent to the arhatia for selling them outside the State of Bihar.

5. In these writ petitions, the petitioners have prayed for quashing annexure 3. Annexure 3 is common in all the writ petitions. Annexure 3 is a notice issued by the Superintendent of Commercial Taxes, Patna, upon these petitioners. On a perusal of annexure 3, it is clear that by virtue of annexure 3, the sales tax authorities reopened the assessments u/s 18(1) of the Act. It is relevant to quote Section 18(1) of the Act, which runs as follows :

18. Turnover of registered dealer escaping assessment.-(1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under Sub-section (5) of Section 16 has been under-assessed or assessed at a rate lower than that which was correctly applicable or any deductions therefrom have been wrongly made, the prescribed authority may, subject to such rules as may be made by the State Government under this Act, and,

* * *

6. Annexure 3 has been issued by the sales tax authorities in order to reopen the earlier assessment orders on the ground that the sales tax authorities erred in giving deductions on account of the sales outside the State of Bihar. In other words, the sales tax authorities are of opinion that the authority ought not to have granted deduction on the basis of form IX. As such the petitioners ought to have shown in their turnover such sales on the basis of second proviso to Section 7(2)(b) of the Act.

7. In C.W.J.C. No. 1506 of 1973, annexure 3 does not mention about form IX, nor about the proviso to Section 7(2)(b) of the Act. It simply states that these petitioners purchased raw pulses and they sent the manufactured pulses to outside the State of Bihar. In C.W.J.C. Nos. 1505 and 1507 of 1973, annexure 3 disclosed that the sales tax authorities ought not to have granted exemption on the basis of form IX (declaration form) as such purchase amount was taxable in view of the second proviso to Section 7(2)(b) of the Act.

8. According to the sales tax authorities, such sales outside the State of Bihar ought not to have been deducted from the turnover of these petitioners in view of the second proviso to Section 7(2)(b) of the Act. In this circumstance the Superintendent of Sales Tax decided to reopen the case u/s 18(1) of the Act.

9. Section 18(1) of the Act has been interpreted by the Full Bench in these cases by a judgment dated 23rd January, 1984 Reported as Bhimraj Madan Lal v. State of Bihar [1984] 56 STC 273 . In these cases it has been held that the word "information" means information from external sources which were not in earlier possession of the sales tax authorities. In other words, the Full Bench has held that if any information has come into the possession of the sales tax authorities from the external sources and the sales tax authorities are satisfied that reasonable grounds exist to believe that any turnover of a dealer has escaped assessment, then only the case can be reopened. The Full Bench has further held that information can also be gathered from the record as well. In the present case the admitted position is that the sales tax authorities did not receive any information from the external sources nor from the record. According to annexure 3 the sales tax authorities reopened the matter simply on the basis of second proviso to Section 7(2)(b) of the Act.

10. It is relevant at this stage to quote Section 7(2) and 7(2)(b) of the Act and the second proviso thereto :

7. For the purposes of this Act, the "taxable turnover" of a dealer shall be-

* * * (2) in respect of special sales tax, that part of the gross turnover which remains after deducting therefrom-

* * * (b) sale prices on account of sales to a registered dealer other than a dealer liable to pay tax under Sub-section (8) of Section 3, of goods specified in his registration certificate as being required-

(i) for resale by him inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India, or

(ii) for use by him in the packing of goods which he sells inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India :

* * *

Provided further that where any goods exempted from the levy of tax by a notification issued by the State Government in this behalf under Sub-section (3)

of Section 4 are purchased by a dealer after furnishing declaration mentioned in the, notification or where any goods, specified in the certificate of registration of a dealer, are purchased by him after furnishing a declaration as provided in the first proviso of Clause (2) but are utilised by him for any purpose other than those specified in such a notification or specified in item (i) or (ii) of Sub-clause (b) of Clause (2), as the case may be, the sale price of the goods so purchased shall, without prejudice to any action which is or may be taken u/s 38, be deducted from the gross turnover of selling dealer but shall be included in the taxable turnover of the purchasing dealer."

11. The second proviso to Section 7(2)(b) of the Act provides that if the purchaser does not fulfil the conditions as laid down in Section 7(2)(b)(i) and (ii) of the Act, then in that case the purchasing amount shall be included in the taxable turnover of the purchasing dealer. In other words, the State counsel contends that the petitioners-purchasers purchased these goods for manufacturing pulses. The purchasers, according to learned State counsel, purchased the goods for resale inside Bihar or in course of inter-State trade or commerce or export out of the territory of India and as the purchasers-petitioners did not fulfil the conditions as laid down u/s 7(2)(b)(i) and (ii) of the Act; and as such, according to the second proviso to Section 7(2)(b) of the Act the amount of purchase shall be included in the taxable turnover of the purchasing dealers (the petitioners).

12. Even if this argument of the State counsel is correct, it cannot be said that the sales tax authorities have any authority to reopen the case on the facts and in the circumstances of the case. It has been held in *Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad*, that since all material facts were before the officer when he made the original assessments, the authorities cannot reopen the assessment orders for giving second thought on the same material or for changing the opinion. On this point see also (1) *Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others*, , (2) *Bankipur Club Ltd., Patna Vs. The Commissioner of Income Tax , Bihar and Orissa, Patna*, . It has been held specifically by the Supreme Court that having second thoughts on the same material did not warrant the initiation of the proceedings for reopening a case. This also is the opinion of the Full Bench in these cases.

13. The sales tax authorities are reopening the case on the ground that the sales tax authority did not apply his mind in respect of the second proviso to Section 7(2)(b) of the Act. In this connection the sales tax authorities are relying upon form IX (declaration form). If a sale is made by a registered dealer to another registered dealer, the purchasing dealer is exempted from payment of sales tax u/s 5(1) of the Act, provided he produces form IX. Registration certificate is granted by the sales tax authorities in respect of the goods in which he will deal in.

14. In the present case, the registration certificates disclose that these

petitioners will deal in manufactured pulses. It is for this reason that the petitioners are entitled to be exempted from the payment of sales tax to the registered dealer in respect of the goods mentioned in the registration certificate. It is for this reason that the petitioners can purchase raw pulses for manufacturing pulses from a registered dealer without payment of tax. In order to get exemption, the petitioners will have to produce form IX to show that they deal in goods mentioned in the registration certificate. It is an admitted position that the petitioners purchased the goods mentioned in the registration certificates for manufacturing pulses. The only question is that the sales tax authorities granted exemption without following the second proviso to Section 7(2)(b) of the Act.

15. It appears from annexure 3 that all the materials, on which the sales tax authorities want to reopen the case, were available before the assessing authorities. In other words, these documents were available before the assessing authorities and they applied their mind to the following documents:

- (1) that the manufactured pulses were sent to the arhatia for selling them outside the State;
- (2) that the petitioners were registered dealers. Their registration certificates mentioned the fact that these petitioners are dealing in manufactured pulses; and
- (3) that the petitioners produced form IX in order to show that the petitioners are entitled to purchase raw pulses from registered dealers without paying any sales tax.

On these materials which were available at the time of original assessments, the sales tax authorities want to reopen the case. In my opinion that cannot be done. It will amount to revising the opinion or to give second thought on the materials which existed at the time of the passing of the original assessment orders. The assessment orders clearly suggest that these materials were available on the record. In view of the decisions of the Supreme Court, the sales tax authorities cannot give a second thought or revise opinion in respect of the materials which already existed. On the same materials which were available "at the time of the original assessment orders, the sales tax authorities are reopening the case for bringing the case within the purview of the second proviso to Section 7(2)(b) of the Act. Can they do so ? The answer must be given in the negative. Since all the materials were available at the time of original assessments, the sales tax authorities cannot reopen the case u/s 18(1) of the Act.

16. The word "information" contemplated u/s 18(1) of the Act is an "information" which is available from the external source after the passing of the assessment orders. No such information is available on the record. The Full Bench has held that the word "information" contemplates "the information" from the record as well. No such information is available from the record of the case.

17. Annexure 3 in all the petitions do not disclose that the sales tax authorities were satisfied that reasonable grounds exist to believe on the basis of the information which has come into their possession to the effect that these petitioners have escaped assessments. Therefore, the condition precedent for reopening the case does not exist at all. Hence, I hold that the sales tax authorities have no authority to reopen the case, as the condition precedent, as laid down in Section 18(1) of the Act, has not been fulfilled.

18. The condition precedent for reopening a case u/s 18(1) of the Act are these :

(1) That there must be an information either from external source or from the record which has come into possession of the sales tax authority subsequent to the assessment order; and

(2) That the sales tax authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer has escaped assessment.

19. In the result these petitions are allowed and the order contained in annexure 3 are hereby quashed. The parties will bear their own costs.

S. Sarwar Ali, J.

I agree that annexure 3 in all the writ applications be quashed. My learned brother, if I say so with respect, has rightly formulated the question for consideration in paragraph 3 of the judgment. For the reasons given by him, I am also of the clear opinion that what the assessing authority is purporting to do in these cases is to reopen the assessment orders for giving second thought on the same materials or in other words for changing the opinion on the materials which have already been considered.