

(1997) 12 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3272 of 1997 (R)

Bihar Plastic Industries Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-1997

Acts Referred:

Bihar Finance Act, 1981 — Section 17(2), 19, 19(1)
Bihar Sales Tax Rules, 1983 — Rule 20
Constitution of India, 1950 — Article 226, 227

Citation : (1997) 12 PAT CK 0046

Hon'ble Judges : Prasun Kumar Deb, J; Bisheshwar Prasad Singh, J

Bench : Division Bench

Advocate : M.S. Mittal and Rajib Ranjan, for the Appellant; Inderani Sen Choudhary and Anil Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

Bisheshwar Prasad Singh, J.—The petitioner herein has prayed for issuance of an appropriate writ, order or direction in the nature of certiorari quashing the proceeding purported to have been initiated u/s 19 of the Bihar Finance Act, 1981 (hereinafter referred to as "the Act"), and also the notices, as contained in annexures 1 to 3 and the order of reassessment (annexure 5) passed on September 25, 1997. The case of the petitioner is that it was previously a partnership firm carrying on business of manufacturing plastic goods having its factory in the industrial area at Kokar in Ranchi. It was registered under the Bihar Finance Act, 1981 as also under the Central Sales Tax Act, 1956. The partnership firm was subsequently converted into a public limited company, and incorporated under the Companies Act, 1956.

2. For the year 1983-84 the petitioner had submitted quarterly return and deposited the requisite sales tax payable under the Act. Ultimately, a final order of assessment was made on August 5, 1987 and a demand notice was served on the petitioner directing it to pay the balance sales tax payable according to the

assessment order, which the petitioner did by depositing the balance amount on August 29, 1988. A copy of the assessment order has been annexed as annexure 4.

3. The petitioner received two notices dated April 21, 1989 and July 21, 1989 informing the petitioner that there was an audit objection and, therefore, the petitioner was required to appear on May 7, 1989 with his books of accounts relating to the years 1983-84 and 1984-85. A copy of the so-called audit objection report was not annexed to the notice nor the notice purported to have been issued under any provision of the Act. Even the details of the audit objection were not stated in the notice. According to the petitioner, they had requested the prescribed authority to supply a copy of the audit objection to enable it to file an effective reply. That, however, is disputed by the respondents, who state that the same was shown to them when the petitioner appeared through its representative, and this fact is mentioned in the show cause filed by them. It is not in dispute that the petitioner appeared before the prescribed authority, and filed a show cause on May 6, 1989. The order sheet of the case, which has been annexed to the counter-affidavit as annexure C discloses that the matter was adjourned on two or three dates, and by order dated 24th July, 1989 the next date fixed was August 22, 1989. Nothing appears to have happened thereafter, and it was only on August 19, 1997, almost eight years later that the matter was again revived and a notice was issued to the petitioner. The aforesaid notice is annexure 3 dated August 19, 1997, whereby the petitioner was again informed that in respect of the years 1983-84 and 1984-85, an audit objection had been raised by the office of the Accountant-General, Bihar. The petitioner was, therefore, informed that his show cause filed on May 6, 1989 was not found to be satisfactory and, therefore, the petitioner was required to appear on August 28, 1997, failing which ex parte order may be passed. This notice also does not refer to any particular provision of law under which it was issued. None of the notices purported to be notices u/s 19(1) of the Act and were not issued in the form prescribed for the purpose under the Rules. It appears that the prescribed authority purported to reassess the amount of tax for the year 1983-84 by reopening the proceeding u/s 19(1) of the Act. The petitioner appeared before the prescribed authority and after hearing the petitioner the impugned order of reassessment was passed on September 25, 1997 u/s 19(1) of the Act, and an order was made for issuance of notice of demand pursuant to the order of reassessment.

4. At the hearing of this writ petition counsel for the petitioner has urged before us five submissions, which are as follows :

Firstly, it was submitted that the notices issued to the petitioner (annexures 1 to 3) for reopening the concluded assessment were not in the proper and prescribed form, and also did not indicate as to under which section the notice was being given. In the absence of a proper notice, the proceeding u/s 19(1) of the Act was not a valid proceeding.

Secondly, the original order of assessment, as contained in annexure 4, was perfectly justified and valid, and as such there was no need for any reassessment pursuant to the audit objection.

Thirdly, the audit objection does not amount to an "information" within the meaning of Section 19(1) of the Act, and such information is a condition precedent to the initiation of a proceeding under that provision. In the absence of such information the proceeding u/s 19(1) was not justified.

Fourthly, mere change of opinion by the prescribed authority on the same set of facts and materials on record would not constitute information for the purpose of reassessment u/s 19(1) of the Act.

Lastly, even if the proceeding is deemed to be a review u/s 47 of the Act, the same was not competent in the absence of sanction, as required by that provision.

5. We shall deal with the first submission after noticing the submissions urged in support of other submissions. It was submitted that the earlier order of assessment was a perfectly valid and legal order. Reference was made to Section 13(l)(b) of the Act, as it existed prior to August 1, 1985, and as it stood after its amendment, and it was submitted that the section, as it stood prior to its amendment provided a special rate of tax on certain sales and purchases, which included sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale in Bihar, or in course of inter-State trade or commerce. It was submitted relying upon a decision of the Supreme Court, reported *Onkarlal Nandlal Vs. State of Rajasthan and Another*, that having regard to the language of the unamended section it was not a requirement of the unamended section that the goods sold in course of inter-State trade or commerce should have moved from Bihar. It was enough to show that the goods were sold in course of inter-State trade or commerce, even though such inter-State sales were effected by the petitioner from its offices located at Asansole or Calcutta. It was, therefore, that the section was amended and after its amendment the special rate of tax was applicable only to sales to or purchases by a registered dealer of goods required by him directly for the use in the manufacture or processing of any goods for sale. The words "in course of inter-State trade or commerce" were deleted. It was, therefore, submitted relying upon the aforesaid judgment of the Supreme Court that there was no justification for reading the words "from Bihar" in the unamended section. The order of assessment originally made was sought to be justified since it had taken a correct view of the law and applied the special rate of tax to goods sold by the petitioner in course of inter-State trade or commerce, though the sales were effected from its offices at Asansole and Calcutta.

6. The third submission that audit objection cannot be considered to be an "information" within the meaning of Section 19(1) of the Act, was sought to be supported by a decision of the Supreme Court, reported in *Indian and Eastern*

7. The fourth submission that a mere change of opinion by prescribed authority on the same set of facts and materials could not constitute information for the purpose of reassessment was sought to be supported by judgments, reported in Bhimraj Madanlal Vs. State of Bihar and Another, and Shree Bihariji Mills Ltd. and Another Vs. The State of Bihar and Another, . It was contended that the fact that the sales took place through the offices of the petitioner located in the State of West Bengal was not concealed from the authorities. Those facts were disclosed and the assessing authority took note of those facts, and treated them as sales in course of inter-State trade or commerce on which special rate of tax was payable u/s 13(l)(b) of the Act. All that the authorities now wish to do is to change their opinion and treat such sales as sales not in course of inter-State trade or commerce, since there is an audit objection to this effect. On the same set of facts, merely because of change of opinion a proceeding u/s 19(1) was not justified.

The submission that the impugned reassessment order cannot be an order passed u/s 47 of the Act, as there was no sanction as required by law, is not disputed by the respondents, because their clear case is that the impugned order of reassessment was passed u/s 19(1) of the Act.

8. The above points urged before us are no doubt attractive but in the view that we have taken on the first submission urged before us, it is not necessary to consider those submissions because we are of the opinion that the initiation of the proceeding u/s 19(1) of the Act was itself not in accordance with law. The relevant part of Section 19 of the Act reads as follows :

"19. 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 or a dealer to whom grant of registration certificate has been refused under the third proviso to Sub-section (2) of Section 14, 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 17 has been under-assessed or assessed at a rate lower than that which was correctly applicable or any deductions therefrom has been wrongly made, the prescribed authority may, subject to such rules as may be made by the State Government under this part, and--

(a) within eight years from the date of the order of the assessment or reassessment where the said authority has reasons to believe that the dealer has concealed, omitted or failed to disclose wilfully the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the real amount,

(b) within eight years from the date of the order of the assessment or reassessment in any other case,

serve on the dealer a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 17 and proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover, and the provisions of this part shall, so far as may be, apply accordingly as if the notice under this Sub-Section was a notice under Sub-section (2) of Section 17 :"

Section 17(2) provides that the prescribed authority shall serve on such dealer a notice in the prescribed manner requiring him on a date and at a time and place to be specified therein, either to attend in person or through an authorised representative or to produce or to cause to be produced any accounts and other evidence on which such dealer may rely in support of such returns. Rule 20 of the Bihar Sales Tax Rules, 1983 provides that the notice of hearing for the purposes of sections enumerated therein including Sub-section (1) of Section 19 shall be in form XIV. The authority described in Rule 18 shall fix a date, ordinarily not less than one calendar month from the date of issue of the notice, for producing such accounts and other evidence, as it may require and for considering any objection which the dealer or the person concerned may prefer.

Form XIV in so far it relates to Section 19 of the Act is required to be in the following form :

"Whereas upon information which has come into my possession, I am satisfied that reasonable grounds exist to believe that your turnover for the period mentioned below has escaped assessment/has been under-assessed/has been assessed at a rate lower than that which was correctly applicable/has been subjected to wrong deduction ;

I, therefore, propose to assess/reassess the amount of tax due in respect of the said turnover and for that purpose I hereby require you to attend in person or through an authorised representative to produce or to cause to be produced accounts, registers, documents and other evidence mentioned hereunder at the following place and time, according to the provisions of Section 19(1) read with Section 17(2) of the Act."

9. It would thus to be seen that the notice prescribed under the rules mentions the purpose for which the notice has been issued, i.e., to assess/reassess the amount of tax due in respect of the said turnover and also refers to Section 19(1) read with Section 17(2) of the Act. The notice also mentions that the prescribed authority is satisfied that reasonable grounds exist to believe that the turnover for the period mentioned in the notice has escaped assessment/has been underassessed/has been assessed at a rate lower than that which was correctly applicable/has been subjected to wrong deduction. It would thus appear from a reading of Section 19(1), 17(2), Rule 20 and the prescribed form XIV that for the initiation of a proceeding u/s 19(1) of the Act notice in the prescribed form must be served upon the dealer. The notice must also record the satisfaction of the prescribed authority that reasonable grounds exist to believe

that his turnover for the period mentioned has escaped assessment or has been under-assessed, etc. The notice must also disclose that the prescribed authority proposes to assess/ reassess the amount of tax having regard to the provisions of Section 19(1) read with Section 17(2) of the Act. Before a proceeding can be initiated u/s 19(1) of the Act, such a notice in the prescribed form must be served upon the dealer. The absence of such a notice will obviously vitiate the proceeding. The issuance of notice is not a mere formality, because no proceeding can be initiated unless the prescribed authority is satisfied that reasonable grounds exist justifying reassessment proceeding u/s 19(1) of the Act. The notice must also inform the dealer that the authority proposes to act u/s 19(1) of the Act.

10. The three notices issued to the petitioner do not make any reference to Section 19 of the Act. They do not even give notice to the petitioner that a proceeding u/s 19(1) is proposed to be taken, and that the prescribed authority was satisfied that there were reasonable grounds to initiate such a proceeding. All that the three notices mention is that there is an audit objection and, therefore, the petitioner must appear with his books of account for the relevant years. Admittedly, the notices have not been issued in prescribed form XIV.

11. It has been held by a Division Bench of this Court in [1985] 58 STC 217 [Usha Sales (Pvt.) Limited v. State of Bihar] that the notice prescribed u/s 18(1) [now Section 19(1)] of the Act for the purpose of initiating reassessment proceeding is not a mere procedural requirement. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken without a notice or in pursuance of a invalid notice stand on the same footing and would be illegal and invalid. In that case one of the questions referred for the opinion of the court was as follows :

"(1) Whether memo No. 3115 dated 25th October, 1965 which reads "please refer to your sales tax cases for the period from 1st July, 1959 to 31st March, 1963. You are, hereby, requested to produce your books of accounts for the above periods on 13th December, 1965", is a notice as required u/s 18(1) of the Bihar Sales Tax Act, 1959 ?"

Their Lordships held :

"16. The notice prescribed u/s 18(1) of the Act for the purpose of initiating reassessment proceeding is not a mere procedural requirement. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken over without a notice or in pursuance of invalid notice stand on the same footing and would be illegal and invalid. The words "reasonable grounds" in Section 18 of the Act mean only this that it must be reason or in other words it must be based on reasons which are relevant and material. The belief entertained by the assessing authority must not be arbitrary or irrational. It must be subjected to objective test. It is true that the court, of course, would not investigate into the adequacy or sufficiency of the reasons which have weighed with the assessing

authority in coming to the belief but, the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s 18(1) of the Act. If there is no rational or intelligible nexus between the reasons and the belief (so that on such reasons, no one properly instructed on fact and law could reasonably entertain the belief) the conclusion would be inescapable that the assessing authority could not have reason to believe that any part of the income of the assessee (dealer) had escaped assessment and that such escapement was by reason of the omission or failure on the part of the assessee (dealer) to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.

17. This being the position in law, it has to be seen whether the memo in question, referred to above, taken to be a notice u/s 18 of the Act was a notice in the eye of law. The Tribunal's finding is already quoted above and the Tribunal has held that the aforesaid memo was issued merely on suspicion. In other words, the prerequisites, as referred to above, are completely lacking in the instant cases. Suspicion cannot take place of the "reasonable ground". That being the position, I hold that the prerequisites for the issuance of notice u/s 18 of the Act are completely lacking in the instant cases and therefore, the assessing officer had no jurisdiction to initiate proceedings for reassessment for the periods in question. Prerequisites for the issuance of notice u/s 18 of the Act being lacking, there was complete lack of jurisdiction with the assessing officer."

It was also held that even though the assessee did not object to the lack of jurisdiction with the assessing authority initially, such a concession could not vest the authority with the jurisdiction to initiate the proceeding and to pass the order.

12. We notice the similarity between the notices issued in the instant case and the memo issued in *Usha Sales (Pvt.)* which is quoted in the said reported decision. Neither the satisfaction of the prescribed authority was recorded nor was any section of the Act mentioned, nor did the notice clarify for what purpose books of accounts were required to be produced. The principle laid down in the aforesaid division Bench decision is binding upon us. We are therefore, satisfied that the notices issued to the petitioner were not notices validly issued, as was required to be issued u/s 19(1) of the Act read with Section 17(2) and Rule 20 of the Rules. Admittedly, the notices were not even issued in the prescribed form. Even if strictly the notice was not issued in form XIV, but in substance it contained the matters which such a notice must contain, we may not have taken the view that we have taken, because in that event it would have been merely a matter of form and not of substance. Since the notices issued to the petitioner did not contain the matters which ought to be contained in a valid notice, such as the satisfaction of the prescribed authority, the purpose for which the notice is issued, the provision of law under which the action is contemplated, it is not possible for us to hold that the notices served upon the petitioner were valid notices. In the absence of a valid notice, a proceeding u/s 19(1) of the Act could

not be initiated.

13. In the result, the notices (annexures 1, 2 and 3) are quashed. Consequently, the proceeding initiated under Section. 19(1) as also the reassessment order dated September 25, 1997, which is annexure 5, is also quashed.

14. This writ petition is, accordingly, allowed.