(2000) 08 PAT CK 0046

In the Patna High Court

Case No : C.W.J.C. No''s. 877, 882 , 884 and 889 of 2000 (R)

B.T. Hirani APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 30-08-2000

Acts Referred:

Bihar Finance Act, 1981 — Section 25A, 25A(1)
Bihar Sales Tax Rules, 1983 — Rule 26, 26A

Citation : (2001) 1 BLJR 121 : (2001) 1 PLJR 62

Hon'ble Judges : M.Y. Eqbal, J;A.K. Prasad, J

Bench : Division Bench

Judgement

1. In all these writ applications since common question of law and facts are involved and similar relief has been claimed, the same are heard together and are being disposed of by this common judgment.

2. In all these writ applications filed by M/s. B.T. Hirani, a partnership firm prayer has been made for issuance of an appropriate writ directing the respondents, Central Coalfield Ltd. and its officers to supply quadruplicate portion of treasury challan for the financial years, 1984-85, 1986-87, 1987-88 and 1989-90 to the petitioner as required to be given under the provisions of Bihar Sales Tax Rules, 1983 by which the petitioner deposited the amount of tax which was deducted from the petitioner''s running bills under the provisions of Section 25-A of the Bihar Finance Act, 1981 with respect to works contract executed by the petitioner during the aforesaid period. In the alternative, the petitioner has prayed for direction, upon respondents 1 to 6, the Sales Tax authorities to accept the tax deduction certificates obtained from the respondent-CCL and file along with the returns.

3. Petitioner''s case is that it is a registered dealer as works contractor under the Bihar Finance Act (hereinafter referred to as the Act) and has been executing civil works at different collieries of respondent-CCL. During the aforementioned financial years, the petitioner is said to have executed works contract and

different amounts were deducted by the respondent concerned under the provisions of Section 25-A of the Act. Petitioner is said to have filed several petitions before the respondent-concerned-CCL for issuance of tax deduction certificates in the prescribed form but the same were not issued as a result of which the Assessing Officer of the Commercial Tax Department, did not adjust the tax already deducted at source towards final assessment and issued demand notice against the petitioner. However, after obtaining the tax deduction certificate from the respondent-CCL, the same was filed before the Assessing Authority but the Assessing Authority refused to accept the tax deduction certificate without filing of quadruplicate portion of challans by which respondent Nos. 7 and 8 deposited the tax deducted from the petitioner in the Government Treasury.

4. The respondent-CCL appeared and filed counter affidavit stating, inter alia, that it is difficult and impracticable for the CCL, to deposit the tax deducted separately for each contractors in each month. It is stated that a consolidated cheque including the tax deducted for all the contractors during a month along with a detailed statement Showing, the tax deducted in each month for all the contractors is concerned deposited to the Deputy Commissioner of Commercial Taxes. The authorities, thereafter, deposit the amount in the Treasury by filling up challans but the copies of the challans are never supplied to the respondent-CCL.

5. The respondent-Sales Tax authorities filed their counter-affidavit and took a stand that they are not in a position to state as to whether deduction at source u/s 25-A of the Act is being regularly made by the CCL. It is stated that the question whether tax was deducted or not, is a matter between the petitioner and CCL and no information in this regard is given by the CCL to the Sales Tax authorities. It is further stated that the Sales Tax authorities cannot accept the tax deduction certificate filed by the petitioner without quadruplicate portion of the Treasury Challans as the same will be in violation of Rule 26 of the Bihar Sales Tax Rules, 1983.

6. For better appreciation of the rival contentions of the parties, it would be useful first to look into the relevant provisions of the Act and the Rules. Section 25-A of the Act makes a provision for advance recovery of tax from the works contractors in execution of works contract. It provides that every person responsible for making any payment of sale price or any amount or sale price in respect of transfer of property and goods involved in the execution of works contract, shall be lawfully competent to deduct an amount at the rate prescribed by the State Government from every bill or invoice raised by the works contractor. The amount deducted, as aforesaid, shall be adjusted against the amount of tax finally assessed or determined as being payable by the works contractor concerned. It further provides that such deduction shall be made in the manner prescribed and the person making the deduction shall deposit the amount deducted into the Government Treasury in the manner prescribed. This

section further provides that the person making deduction shall issue deduction certificate in the prescribed manner to the works contractors or persons from whose bill or invoice such deduction has been made.

7. The manner and procedures for deduction of such sales tax has been prescribed under Rule 26-A of the Sales Tax Rules. Sub-rule (1) of Rule 26-A provides that deduction of tax u/s 25-A of the Act shall be made at the rate notified in this behalf from time to time by the Government. Sub-rule (2) of Rule 26-A says that such deduction shall be made from all payments after 1st April, 1984 provided the total value of works contract exceeds Rs. 25,000/-. Sub-rule (3) provides that the person making such deduction shall deposit the amount by 25th of the following month in the Government Treasury by separate Treasury Challans. Sub-rule (3) and Sub-rule (4) of Rule 26-A read as under:

(3)(i)The person making such deduction under Sub-section (1) of Section 25-A and responsible for depositing under Sub-section (3) of the said section shall deposit it by 25th of the following month in the Government Treasury by separate Treasury challans in Form XVII in Quadruplicate in respect of each works contractor:

Provided that if the Commercial Taxes Officer in-charge of the sub-circle or the Deputy Commissioner Commercial Taxes Officer in-charge of the circle within whose jurisdiction the officer of the person making deduction u/s 25-A is situated is satisfied that the said person has been and is maintaining adequate funds in his bank account, may permit that person to pay the amount so deducted, where such amount exceeds Rs. 500 (Rs. five hundred) through a crossed cheque or crossed Bank Draft on a bank functioning at the place where the Government Treasury is situated. Such permission may, at any time, be revoked without assigning any reason:

Provided further that where the said person is permitted to pay the amount so deducted by a crossed cheque or a crossed bank draft, such cheque or draft shall be drawn in favour of and be forwarded to the Commercial Taxes Officer incharge of the sub-circle or the Deputy Commissioner/Assistant Commissioner/ Commercial Taxes Officer incharge of the circle, as the case may be, within whose jurisdiction the office of the person making the deduction is situated. Where the cheque or draft is on a bank other than a branch of Reserve Bank or State Bank of India, it shall also include an additional amount equal to the actual collection charge. The cheque or bank draft shall be accompanied by a statement in Form ''A'' in duplicate separately in respect of each sub-circle or circle. If the cheque or draft is not accompanied by Form ''A'' the officer incharge of the sub-circle or the circle shall refuse to accept the cheque or the bank draft and it shall be treated as if the said person has failed to make payment as provided in Sub-section (3) of Section 25-A.

(ii) If the amount deducted is deposited by a challan the portionof the challan marked "quadruplicate" shall be sent to the Commercial Taxes Officer incharge of a sub-circle or the Deputy Commissioner/Assistant Commissioner/ Commercial Taxes Officer incharge of the Circle, as the case may be under whose jurisdiction the works contractor concerned is registered.

(iii) In case a works contractor is not registered in any circle or sub-circle the challan mentioned in Clause (ii) shall be sent to the incharge of the sub-circle or circle within whose jurisdiction the works contract concerned is being executed.

(iv) The portion of challan marked "Triplicate" shall be retained by the person making the deduction and depositing the amount in Treasury.

(v) Notwithstanding anything contained in these rules, if the amount of Sales Tax deducted u/s 25-A is paid by a cheque or draft as prescribed in the first and second proviso to Clause (i) of Sub-rule (3), the Commercial Taxes Officer, incharge of sub-circle or the Deputy Commissioner/ Assistant Commissioner/ Commercial Taxes Officer incharge of the circle shall be responsible for depositing the cheque of draft into the Government Treasury on the basis of statement in Form A'' and collecting the "Original" "Triplicate" and "Quadruplicate" portion of the Treasury Challans concerned duly receipted from the Government Treasury. He shall send the ''original'' portion to the officer-in-charge of sub-circle or the circle concerned within whose jurisdiction the works contractor from whose bill deduction of tax has been made, is registered along with one copy of the statement in form ''A'' received with the cheque or draft.

(vi) The Triplicate'' and "Quadruplicate" portion shall be handed over to the person making the payment by cheque or draft who shall retain the ''triplicate'' portion with himself as evidence of payment and hand over the quadruplicate portion to the works contractor concerned for production as evidence of payments before the Assessing Authority.

(4)(i) Every person deducting tax in accordance with Sub-section (1) of Section 25-A, at the time of payment in cash or by cheque or draft, shall issue to the person from whom such deduction is made, a certificate in Form A-1 and furnish fully and correctly all such particulars as are prescribed therein.

(ii) The certificate mentioned in Clause (i) shall be quadruplicate.

(iii) The portion marked "Original" and "Duplicate" shall be handed over to the works contractor, from whose payment deduction has been made, the "Original'' shall be furnished to the Prescribed Authority as evidence of payment of tax by deduction at source along with the return to be filed u/s 16 and the "Duplicate" shall be retained by the contractor.

(iv) The Triplicate'' portion shall be sent to the Commercial Taxes Officer incharge of the sub-circle or to the Deputy Commissioner/Assistant Commissioner/ Commercial Taxes Officer incharge of the circle along with the Treasury Challan concerned if the amount deducted was deposited by a challan and the quarterly return prescribed under Sub-rule (5).

(v) The "Quadruplicate" portion shall be retained by the person issuing this certificate.

8. From bare perusal of the aforesaid rules, it is manifest that the person making such deduction of tax can deposit the amount to the Commercial Taxes authorities by a crossed cheque or a crossed bank draft which shall be accompanied by a statement in Form ''A'', It is further clear that if the amount of sales-tax deducted is paid by a cheque or draft, then the authorities of the Commercial Taxes shall be responsible for depositing the cheque or the draft into the Government Treasury on the basis of the statement in Form ''A'' by Treasury challans. After such deposit, the authorities shall hand over the ''triplicate'' and ''quadruplicate'' portion of the challan to the works contractor concerned for production as evidence of payment before the Assessing Authority.

9. When all these writ petitions were heard on 7.7.2000, the Counsel for the respondent-CCL has drawn our attention to the stand taken by them in the counter-affidavit wherein it was specifically stated that the amount deducted on account of works contract was deposited with the Sales Tax department by a crossed cheque together with the details of such deductions made against the different works contractors.

10. From perusal of the counter-affidavit filed by the Sales Tax authorities, it appears that the Sales Tax authorities have not denied that the respondent-CCL used to deposit the amount of tax deducted from the bills of different works contractors by a crossed cheque nor it has been disputed that those cheques have not been deposited by the Sales Tax authorities in Treasury.

11. This Court having come across several cases where the assessees come with a grievance that the Assessing Authorities insist them that unless the tax deduction certificate furnished by the assessee is not supported by quadruplicate challan showing deposit of the amount in Government Treasury, such tax deduction certificate cannot be accepted and due adjustment cannot be granted to the assessee, this Court, in order to resolve the dispute called upon the Commissioner, Commercial Taxes and the Joint Commissioner. Commercial Taxes to appear in person to explain why the Assessing Authority insists for production of a copy of the challan along with the tax deduction certificate when such copy of challan is not supplied to the assessee by the Taxing Authorities who deposit the amount by Treasury challan.

12. In the meantime, the respondent-CCL by filing a supplementary counter-affidavit produced the entire documents showing the amount deducted on account of works contract from the bills of different contractors including the petitioner and the amount deposited with the Sales Tax Department concerned which has been acknowledged by the authority concerned of the Sales Tax department.

13. It is worth to mention here that pursuant to the aforesaid order, a supplementary counter-affidavit was filed on behalf of the Commissioner,

Commercial Taxes stating, inter alia, that he has issued a letter dated 3.8.2000 to all the Joint Commissioners and Administration of the Deputy Commissioner of Commercial Taxes and all other authorities for taking specific steps for compliance of the direction contained in the said letter.

14. A second supplementary counter-affidavit was filed by the Commissioner, Commercial Taxes stating, inter alia, that he has issued guidelines and instructions to the Assessing Authorities to strictly comply with the provisions of Sales Tax Rules in the matter of deposit of taxes received from the persons and deposited in Government Treasury.

15. Having regard to the contentions made by the parties in their respective affidavits and the submissions made by the learned Counsel, this Court issues the following directions:

(i) The respondent-CCL, and their authorities, while remitting the amount of tax deducted from the bills and invoice of the works contractor by cheque or bank draft to the officers concerned of the Sales Tax department, shall furnish full details and particulars of the am6unt of tax deducted from each and every contractor and shall forthwith issue tax deduction certificate to the works contractors concerned.

(ii) The respondent-Sales Tax Authorities if once accept such cheques/drafts from the respondent-CCL and deposit the same in the Government Treasury, then the Sales Tax authorities must follow the procedures prescribed in Rule 26-A of the Rules and forthwith supply quadruplicate portion of the challan to the works contractors concerned to enable them to furnish it before the Assessing Authority at the time of assessment.

(iii) If the Sales Tax Authorities fail to supply the copies of the challans, then it shall not insist upon the assessee for the production of the copy of the challan along with the tax deduction certificate at the time of assessment.

16. So far as the relief claimed by the petitioner in these writ applications is concerned, the concerned respondents-Sales tax authorities, in their counter-affidavit and particularly the Commissioner, Commercial Taxes in the second supplementary counter-affidavit, has admitted the case of the petitioner and have stated in para 10 that within 15 days the refund adjustment vouchers will be made available to the petitioner.

In view of this fair stand taken by the Commissioner, Commercial Taxes, these writ applications are disposed of with a direction to the authorities concerned of the Sales Tax department to make available to the petitioner the refund adjustment vouchers within the specified time, as aforesaid.

A.K. Prasad, J.

17. I Agree.