(1971) 07 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeals Nos. 572 To 574 Of 1967

Budhram Kashiram — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 29-07-1971

Acts Referred:
Bihar Sales Tax Act, 1947 — Section 25(2), 5

Citation : (1972) 4 SCC 429 : (1971) 28 STC 336

Hon'ble Judges : K. S. Hegde, J;A. N. Grover, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Hegde, J.—These are assessee's appeals by special leave, directed against the summary dismissal of its applications u/s 25(2) of the Bihar Sales Tax Act, 1947 (to be hereinafter referred to as the Act). The question of law that the assessee wanted the High Court to direct the Tribunal to state for its opinion is:

Whether the refusal of the Tribunal to allow the claim for deduction from the gross turnover on account of aggregate sales to registered dealers for reasons given by it is legally valid.

2. The assessee-appellant is a registered dealer under the Act. The assessments with which we are concerned in these cases relate to the periods November 2, 1956, to March 31, 1957, 1957-58 and 1958-59. The assessee was assessed to tax for the first two periods on September 20, 1957, and June 19, 1958, respectively. Subsequently on June 24, 1959, some of its books were seized and on the basis of the information got from those books, reassessment proceedings commenced for the periods it was assessed. At. the same time assessment proceedings for the period 1958-59 were taken against it. In all those proceedings the assessee claimed deduction from its taxable turnover, the turnover relating to its sales to registered dealers. This it claimed under the explanation to Section 5 of the Act. The assessing authority rejected its

contention holding that as those sales did not comply with the requirements of Rule 18 of the Rules framed under the Act, the assessee was not entitled to the deduction claimed by it.

3. Explanation to Section 5 reads thus:

The expression 'taxable turnover', for the purposes of this section, means that part of a dealer's gross turnover on sales which have taken place in Bihar during any period, which remains after deducting therefrom-

(a) * * * * (ii) sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him or for use by him in the execution of any contract and on sales to a registered dealer of containers and other materials for the packing of such goods:

Provided that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for resale by him or for use by him in the execution of a contract, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

4. Rule 18 of the Rules framed under the Act reads :

A dealer who wishes to deduct from his gross turnover the amount of a cash sale to registered dealers shall produce, in respect of such a sale, the copy of the relevant cash memo., and a true declaration in writing by the purchasing dealer or by such responsible officer as may be authorised in writing in this behalf by such dealer that the goods in question are specified in the certificate of registration of such dealer and are required by such dealer either for use in the execution of any contract or for resale.

5. There is no dispute that the sales in question did not comply with the requirements of Rule 18. But the assessee's contention is that the noncompliance of that rule does not disentitle him to have the benefit of explanation to Section 5. That contention was rejected by the assessing authority but on appeal the Deputy Commissioner of Commercial Taxes remanded the proceedings to the Assistant Commissioner of Commercial Taxes to rehear and decide on some of the contentions raised by the assessee. As against those orders of the Deputy Commissioner, Commercial Taxes, the assessee took up the matter in revision to the Board of Revenue. The Board of Revenue came to the conclusion that the compliance with the requirements of Rule 18 is mandatory and the assessee's failure to comply with those requirements disentitled it to have the benefit of explanation to Section 5. But on certain other matters with which we are not concerned now, it directed the Assistant Commissioner of Commercial Taxes to enquire into the grievances of the assessee. Before the Assistant Commissioner of Commercial Taxes, the assessee again took up the plea that the turnover relating to the sales made by it to the registered dealers should be excluded in

computing its taxable turnover. The Assistant Commissioner rejected that contention on the ground that the same was concluded by the order of the Board of Revenue. The assessee's appeal to the Deputy Commissioner, Commercial Taxes, was unsuccessful. Thereafter he took up the matter in revision to the Sales Tax Tribunal which by the time had taken over the revisional powers of the Board of Revenue. The Tribunal rejected the plea of the assessee solely on the ground that the matter was concluded by the decision of the Board of Revenue referred to earlier. In that view the Tribunal did not take into consideration the decision of this Court in State of Orissa Vs. M.A. Tulloch and Co., . The Appellate Tribunal also rejected the application of the assessee to refer the question mentioned earlier to the High Court for its opinion. As mentioned earlier the assessee's application u/s 25(2) of the Act was summarily dismissed by the High Court.

6. There can be hardly any doubt that the question whether the assessee is entitled to deduct under the provisions of the Act from his total turnover, the turnover relating to the sales to the registered dealers is a question of law. But the High Court before deciding that question, may have to decide whether the decision on that question is barred in view of the decision of the Board of Revenue referred to earlier. The question of law formulated by the assessee is broad enough to include that question also. But, if the High Court so decides it can split the question into two questions, i.e., (1) whether in view of the decision of the Board of Revenue in the revision petition filed by the assessee, it is open to the assessee to claim the deduction asked for and (2) if that decision does not bar the assessee's plea, is the assessee in law entitled to claim the deduction in question.

7. For the reasons mentioned above we allow these appeals, set aside the order of the High Court and direct the High Court to readmit the tax cases from which these appeals arise and dispose of the same in accordance with law. Costs in these appeals will be costs in the cause. Hearing fee one set.