

(1977) 05 PAT CK 0018

In the Patna High Court

Case No : Tax Cases No's. 37, 38 and 39 of 1966

Budhram Kashiram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-05-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1978) 41 STC 201

Hon'ble Judges : Birendra Prasad Sinha, J;B.D. Singh, J

Bench : Division Bench

Advocate : K.D. Chatterjee, K.N. Jain, Rameshwar Prasad No. II, N.K. Agrawal and Krishna Mohan, for the Appellant; T.K. Jha, Advocate-General and G.S. Sharma, for the Respondent

Judgement

B.D. Singh, J.—These three tax cases came to this court u/s 25(2)(b) of the Bihar Sales Tax Act, 1947 (hereinafter referred to as "the Act"), on rejection by the Commercial Taxes Tribunal to refer these cases to this court. They relate to the assessment against the petitioner for the periods 1956-57 (broken period), 1957-58 and 1958-59. The original assessment for the period 1956-57 was dated (sic) 20th September, 1957, the original assessment for the period 1957-58 was dated 20th June, 1958 and the original assessment for the period 1958-59 was dated 29th February, 1960. The assessment orders dated 20th September, 1957 and 20th June, 1958, were, however, reopened and revised by the assessing officer by order dated 31st January, 1960- As against that order (31st January, 1960) as also against original assessment order dated 29th February, 1960, the petitioner preferred three separate appeals before the Deputy Commissioner of Sales Tax, Bihar, Ranchi. One of the questions to be decided was whether the credit sales to registered dealers should be deducted for the purpose of arriving at the taxable turnover under explanation to Section 5 of the Act irrespective of non-production of declaration under Rule 18 of the Bihar Sales Tax Rules, 1949 (as amended in 1956), hereinafter referred to as "the Rules". The Deputy Commissioner, while disposing of the three appeals by a

common judgment dated 26th August, 1961, observed that, in claiming deduction on account of sales made to registered dealers, the declarations were required to be produced in respect of cash or credit sales. In the case of credit sales also with effect from 7th April, 1956, declarations were required to be produced. The assessing officer had to be satisfied that the sales had been made to other dealers on credit. In the last paragraph, he further ordered thus:

The order of the court below is, therefore, set aside and proceedings remanded. The appellant should be given an opportunity to show to what extent he had made sales to other registered dealers on credit and to what extent it is permissible by law. In case he fails to appear as done by him previously, the learned assessing officer shall assess the appellant to the best of judgment.

2. Against the said remand order, the petitioner filed three separate revisions before the Member, Board of Revenue, before whom it was argued that Rule 18 of the said Rules did not require declaration in respect of credit sales. The learned Member, Board of Revenue, in his resolution, dated 6th February, 1962, has referred to the provisions of Rule 18 of the Rules, as amended in 1956, which read thus :

18. Conditions subject to which a dealer may claim deduction from gross turnover on account of sale of goods to registered dealers.-A dealer who wishes to deduct from his gross turnover the amount of a cash or credit sale to a registered dealer shall produce the copy of the relevant cash memo or bill according as the sale is a cash sale or a sale on credit and a true declaration in writing in form VIA by the purchasing dealer or by such responsible . person 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 or for use in packing or are taxable goods for resale.

He held, "this makes it obligatory to produce declarations even for credit sales for the period under assessment" and he was pleased to reject the three revision petitions.

3. After remand the three cases ultimately came up for reassessment before the assessing officer, who, by his orders dated 20th April, 1962 (exhibits F-1, F-2 and F-3), disallowed the claim of the petitioner and, while so doing, he observed that the dealer did not produce declarations in support of the alleged credit sales to registered dealers shown in his seized books of account. The point for consideration was whether the entire amount claimed to be representing such sales or any part thereof might be allowed to be deducted in the absence of the declarations as required under Rule 18 of the Bihar Sales Tax Rules, 1949, in the context of the observations contained in the appellate order. He further held that the appellate order read as a whole did not permit the assessing officer to overlook the provisions of Rule 18 of the Rules, which made it mandatory on the part of a dealer to produce declaration certificates in support of his claim of

credit sales to registered dealers and allow any amount in the absence of necessary declarations at his discretion. In that view of the matter, he came to the conclusion that the claim for the credit sales to registered dealers on the basis of the entries in the seized books did not seem admissible and, therefore, he disallowed it.

4. Aggrieved by those orders the petitioner preferred three separate appeals and the Deputy Commissioner of Sales Tax, who by a common order dated 31st October, 1964, dismissed the appeals (vide exhibit H). Regarding allowance of claim for deduction for sales to the registered dealers, he held that the Board had already given direction that it was obligatory to produce declarations even for credit sales for the period under assessment according to Rule 18 read with the amendment. Under the circumstances, it was obligatory for the petitioner to produce declarations even for credit sales for which he was claiming deduction according to the figures revealed by the seized books of account. That obligation for production of the declarations in support of the claim had not been discharged by the petitioner. Therefore, he observed that the Assistant Commissioner was fully justified in rejecting the claims for which no declarations were produced from the purchasing dealers. Thereafter, the petitioner went in revision before the Commercial Taxes Tribunal, since, by that time, it was so constituted in place of the Board of Revenue. The Tribunal by a common order dated 10th August, 1965 (exhibit J), dismissed the revision applications filed by the petitioner. While dealing with the question as to whether deductions on account of credit sales to the registered dealers should be allowed to the petitioner even though he had not been able to produce any declaration in support of such sales, it held that, in view of the finding of the Board of Revenue that the production of declaration even for credit sales to registered dealers was obligatory under Rule 18 of the Rules, the assessing officer had no option to allow any deduction on that account, unless it was supported by a valid and true declaration. It further held that the assessing officer had acted accordingly and it was rightly confirmed by the appellate court in its order dated 31st October, 1964 (exhibit H). The Tribunal emphasised that the Board's finding was conclusive in that regard between the parties and if the petitioner had any grievance against that order it was open to him to move higher court for redress of the grievance. It was also observed that the assessing officer, while taking up the reassessment on remand, had to confine himself within the four walls of the directions given by the Deputy Commissioner of Sales Tax and the Member, Board of Revenue. Ultimately, the Tribunal held that the matter, which had been concluded by the decision of the Board of Revenue dated 6th February, 1962, could not be reopened by it. Thus, as stated above, it dismissed the revision applications of the petitioner.

5. Subsequently, the petitioner made applications before the Tribunal for referring the case to this court. The Tribunal, however, by its common order dated 3rd June, 1966 (exhibit L), dismissed those applications. Thereafter, the petitioner filed three applications u/s 25(2)(b) of the Bihar Sales Tax Act, 1947,

before this court, which were numbered as Tax Cases Nos. 37, 38 and 39 of 1966. By separate orders dated 22nd November, 1966, in these cases, this court dismissed the applications of the petitioner. Thereafter, the petitioner went to the Supreme Court in Civil Appeals Nos. 572 to 574 of 1967 *Budhram Kashiram Vs. State of Bihar*, By a consolidated order dated 29th July, 1971, the Supreme Court was pleased to allow the appeals, set aside the orders of the High Court and directed the High Court to readmit the tax cases and to dispose them of in accordance with law. The relevant portion of the said judgment reads thus :

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 formulaeted 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.

6. After remand of the matter by the Supreme Court, a Bench of this Court, constituted by S.P. Singh and S.P. Sinha, JJ., by separate orders (in all the three cases) dated 13th January, 1972, directed the Tribunal to state a case and refer the following questions to this court for its opinion.

(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 from the gross turnover on account of aggregate sales to registered dealers ?

(2) Whether, if the decision of the Board of Revenue in the revision petition filed by the assessee does not bar the assessee's plea, is the assessee entitled in law to claim deduction asked for from the gross turnover on account of aggregate sales to registered dealers ?

In consonance with the orders of this court, the Tribunal stated the case on 30th March, 1972.

7. It will be convenient to answer question No. (1) first. Mr. K.D. Chatterjee, appearing on behalf of the petitioner, submitted that all the authorities, including the Member, Board of Revenue and the Tribunal, have erred in holding that the provisions contained in Section 5 of the Act read with Rule 18 of the Rules were mandatory. He submitted that it was mere directory and the assessing officer ought to have given opportunity to the petitioner to produce secondary evidence in the absence of the petitioner being unable to produce declaration as required under Rule 18. On the contrary, the assessing officer, as mentioned above, had

held that the petitioner's claim for credit sales to the registered dealers on the basis of the entries in the seized book did not seem admissible and, on that ground, it was disallowed. In order to find support to his submission, he has relied on State of Orissa Vs. M.A. Tulloch and Co., , where their Lordships, K. Subba Rao, J. C. Shah and S.M. Sikri, JJ., of the Supreme Court, were considering a similar question while dealing with Section 5(2)(a)(ii) of the Orissa Sales Tax Act (14 of 1947) read with Rule 27(2) of the Orissa Sales Tax Rules, 1947. The provisions contained in that section and the rule are more or less similar to the provisions contained in Section 5 of the Bihar Act and Rule 18 of the Rules. In that case also, it was argued on behalf of the State that Rule 27(2) was mandatory and, if there was breach of it, the selling dealer was not entitled to deduction. On behalf of the assessee, however, it was urged that the contents of Rule 27(2) were directory. It was also pointed out that the word "shall" should be read as "may" in the context. It was further urged that supposing the selling dealer brought the original certificate of registration of a buying dealer and produced it before the Sales Tax Officer, according to the appellant, that would not be enough but that could never have been intended. Sikri, J., speaking for the court, observed :

...In our opinion, Rule 27(2) must be reconciled with the section and the rule can be reconciled by treating it as directory. But the rule must be substantially complied with in every case. It is for the Sales Tax Officer to be satisfied that, in fact, the certificate of registration of the buying dealer contains the requisite statement and if he has any doubts about it, the selling dealer must satisfy his doubts. But if he is satisfied from other facts on the record, it is not necessary that the selling dealer should produce a declaration in the form required in Rule 27(2), before being entitled to a deduction.

8. In my view, the contention of the learned counsel for the petitioner is well-founded. It has got to be held that the provisions contained under Rule 18 of the Rules are directory. Therefore, it was wrongly held by the Member, Board of Revenue and the Tribunal and the other taxing authorities that the said rule was mandatory. Mr. Tara Kant Jha, the learned Advocate-General, appearing on behalf of the State, also fairly conceded in this regard, in view of the judgment of the Supreme Court in the case of State of Orissa Vs. M.A. Tulloch and Co., , referred to above, that the provision contained in Rule 18 was mere directory.

9. In that view of the matter, I hold that the resolution of the Member, Board of Revenue, as well as the judgments of the Tribunal and the other taxing authorities to the extent that the provisions contained under the said rule were mandatory, is bad and, thus, I answer the first part of question No. (1) in favour of the petitioner, namely, the assessee. The other part of the question as to whether he was entitled to claim deduction will be dealt with while answering question No. (2), where we have to decide as to whether the claim of the assessee was barred due to the decision of the Member, Board of Revenue.

10. Mr. K.D. Chatterjee, appearing on behalf of the petitioner, submitted that,

besides interpretation of Rule 18, there were other questions involved. Therefore, the Member, Board of Revenue, in his resolution, after deciding that the provisions contained under Rule 18 were mandatory, had remanded the three cases to the assessment officer as ordered by the appellate authority. He urged that the said order of remand was an interlocutory order and the point decided in that resolution could be challenged by the petitioner after the final order passed by the assessing officer in those proceedings. Therefore, according to him, there was no question of applying the principle of *res judicata* in the instant case. He urged that the said resolution of the Member, Board of Revenue, did not bar the petitioner's claim and he was entitled to claim deduction relating to the sales to the registered dealers under the terms of Rule 18, even if the petitioner was not able to produce declaration, provided the assessing officer was satisfied on merit on the other secondary evidence available to the petitioner. In order to find support to his contention he has relied on *The United Provinces Electric Supply Co. Ltd., Allahabad Vs. Their Workmen*, and he drew our attention to paragraph 15 of the judgment at pages 1209 to 1210.

11. Learned counsel pointed out that the real test is whether the order in fact finally terminated the proceedings or not. In the present case, the resolution of the Board of Revenue did not finally terminate the proceedings. They were merely remanded with certain observations. The proceedings were terminated only after the final disposal of the three cases on all the points by the assessing officer. He made special emphasis upon paragraph 15 of the aforesaid judgment² of the Supreme Court, which reads thus:

That order in fact did not finally terminate any proceedings at all. The proceedings were terminated only by the award against which the present appeal has been brought by special leave. We are unable to see how the decision in the aforesaid case can afford any assistance to the respondents before us. Indeed the case which is more apposite is *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, . There an order of remand had been made by the High Court while exercising powers u/s 115 of the Code of Civil Procedure. It was observed, after referring to the various decisions of the Privy Council, that the order of remand was interlocutory and did not purport to dispose of the case. A party is not bound to appeal against every interlocutory order which is a step in the procedure that leads up to a final decision or award. The following observations from this case may be reproduced with advantage:

Interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between parties by way of a decree or a final order.

We are unable, therefore, to accede to the contention that the Rule of *res judicata* could be invoked by the respondent in the present case.

Reference was also made to *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, . In that case, their Lordships were considering, *inter alia*, the

provisions of Section 11 of the CPC and the principles laid thereunder. In paragraph 13, at pages 945 and 946, their Lordships observed :

There can be little doubt about the salutary effect of the rule as laid down in the above cases on the administration of justice. The very fact that in future litigation it will not be open to either of the parties to challenge the correctness of the decision on a matter finally decided in a past litigation makes it important that in the earlier litigation the decision must be final in the strict sense of the term. When a court has decided the matter, it is certainly final as regards that court. Should it always be treated as final in later stages of the proceeding in a higher court which had not considered it at all merely on the ground that no appeal lay or no appeal was preferred ? As was pointed out by the Privy Council in Moheshur Singh's case (1865) 7 I.A. 283, the effect of the rule that at every stage of the litigation a decision not appealed from must be held to be finally decided even in respect of the superior courts, will put on every litigant against whom an interlocutory order is decided, the burden of running to the higher courts for redress of the grievances, even though it may very well be that though the interlocutory order is against him, the final order will be in his favour and so it may not be necessary for him to go to the appeal court at all. Apart from the inevitable delay in the progress of the litigation that such a rule would cause, the interests of the other party to the litigation would also generally suffer by such repeated recourse to the higher courts in respect of every interlocutory order alleged to have been wrongly made. It is in recognition of the importance of preventing this mischief that the legislature included in the CPC from the very beginning a provision that in an appeal from a decree it will be open to a party to challenge the correctness of any interlocutory order which had not been appealed from but which has affected the decision of the case.

Finally, on this point in paragraph 22, the learned counsel pointed out that it was held that the order of remand was an interlocutory order and did not terminate the proceedings and so the correctness thereof could be challenged in any appeal from the final order. He submitted that, in this connection, it will also be relevant to refer to Pragash Singh and Others Vs. Madan Mohan Prasad Singh and Others, . One of the questions for decision in that case was as to whether the validity of the remand could be challenged after the final order even if no revision was filed against the remand order. In that case, Mr. Lalnarayan Sinha was arguing on behalf of the respondent. As it appears from paragraph 9 of the judgment, he took up the point that the appellants did not move the High Court in revision against the order of remand passed by the lower appellate court and took part in the proceedings relating to the evidence of the handwriting expert. He, therefore, contended that the appellants were not entitled to raise that point in second appeal against the decree passed after remand. R.K. Choudhary, J., after reviewing various decisions on the point in paragraph 12, observed that the illegality of the remand order could be taken as a ground in the appeal against the decree passed after remand.

12. Mr. Chatterjee submitted that, in the instant case, due to the observations of the Member, Board of Revenue, in his resolution, the final orders of the assessing officer have affected the right of the petitioner to claim deduction. In the revised assessment orders dated 20th February, 1962, the dealer's claim on the basis of entries in the seized books of account was held not admissible and, therefore, there was no question of producing any other evidence by the petitioner for consideration, because, according to them, they were not admissible at all.

13. In my opinion, the contention of Mr. Chatterjee to the effect that the order of remand was an interlocutory order and it did not terminate the proceeding and so the correctness thereof could have been challenged in appeal after final order having been passed, is well-founded : vide also *Jasraj Inder Singh Vs. Hemraj Multanchand*, . But, on the facts and circumstances of the instant case, the petitioner was not entitled to claim deduction asked for from the gross turnover on account of aggregate sales to registered dealers, as contended by the Advocate-General. Our attention was invited to *Budhram Kashiram v. State of Bihar* 1970 B.L.J.R. 135. It may be noticed that the petitioners of the instant case were also the petitioners of that case and, in that case also, the sales tax was assessed for the period 2nd November, 1956, to 31st March, 1957 and 1957-58. But, on a subsequent inspection of the business premises of the dealer on 24th June, 1959, several books of account of the dealer were seized and with reference to such books of account, assessment for those periods were reviewed and fresh order of assessment was passed. Assessment for the third period from 1958 to 1959 was also made. According to the petitioner, the books of account seized disclosed a considerable amount of credit sales to registered dealers and such sales had been deducted out of the total turnover of the assessee in terms of explanation (a)(ii) below Section 5 of the Bihar Sales Tax Act, 1947. The assessee's contention was, however, rejected by the assessing officer on the ground that the declaration as required under Rule 18 of the Bihar Sales Tax Rules, 1949, was not produced in support of the claim. The appeal preferred by the assessee was dismissed and when the matter was taken to the Board of Revenue, the Board also by its order dated 8th February, 1962, accepted the view expressed by the authorities below that it was necessary for the dealer to produce the declaration even for credit sales in order to justify the deduction which the dealer sought out of his total turnover. The dealer filed an application for reviewing the Board's order on the ground that the Board was not right in taking the view that it was necessary to produce the declaration in respect of credit sales to registered dealers as the petitioners had contended in the instant case. The Commercial Taxes Tribunal, which ultimately dealt with this petition by the dealer u/s 24(5)(a) of the Act, rejected the contention of the dealer. Application was accordingly filed u/s 25(1) of the Act before the Tribunal with a prayer that the two questions formulated on its behalf should be referred to the High Court, but the Tribunal rejected the prayer on the ground that no case was made out for making the reference as submitted on behalf of the dealer, after which this court was moved u/s 25(2) of the Act. Direction was issued by this

court to the Tribunal to refer the following question and reference has been made accordingly. The question was :

Whether, in the circumstances of this case, the Tribunal was justified in refusing to rectify the order of the Board of Revenue, Bihar, dated 6th February, 1962, u/s 24(5)(a) of the Bihar Sales Tax Act, 1947 ?

14. In that case also, *State of Orissa Vs. M.A. Tulloch and Co.*, was referred to. In that case, Misra, C.J., speaking for the court, in paragraph 4, observed that the Tribunal had distinguished the Orissa case¹ on merits also on the ground that their Lordships of the Supreme Court had only ruled that even without the production of the declaration form, the assessee could be granted exemption in respect of the credit sales if the Sales Tax Officer is satisfied from other materials on record that such a sale had been made. It was not always obligatory on the part of the selling dealer to produce the declaration. If, however, the assessing authority was not so satisfied from other materials on record, the assessee could not get the benefit of exemption of credit sales without producing the required declaration. Misra, C.J., further observed in the very paragraph that there was nothing on the record to show that any attempt was made on behalf of the dealer to satisfy the taxing authority that there was any other material on the record to show that the goods were purchased by the purchasing dealer for use in the execution of any contract or for resale or for use in packing of taxable goods for resale as was required under Rule 18. In the absence of such material produced before the taxing authority, the view expressed by the Tribunal must be accepted as correct and the question must be answered against the assessee.

15. It may further be observed that the petitioners had withheld the facts and the observations made in *Budhram Kashiram v. State of Bihar* 1970 B.L.J.R. 135 before this court, while the matter of the petitioners in the instant case was pending for direction to the Tribunal to state the case before this court or when it was pending before the Supreme Court in Civil Appeals Nos. 572 to 574 of 1967 *Budhram Kashiram Vs. State of Bihar*, . Since there has already been a finding by a Bench of this Court that no attempt was made on behalf of the petitioners to satisfy the taxing authority by reference to any other materials on the record, as referred to above, in my view, the said finding is binding on the petitioners. Against the said finding the petitioner has not preferred any appeal to the Supreme Court and, therefore, the said finding has become conclusive. Reference may also be made to *Ballabhdas Agarwal Vs. The State of Bihar*, and he has drawn our attention to para 3 at page 816, where it was observed thus:

...In a later judgment in *Chandi Prasad Chokhani Vs. The State of Bihar*, , a similar view was taken that, as the assessee had not obtained special leave in respect of any of the orders passed by the High Court u/s 25, those orders became final and binding and the assessee could not be allowed to bypass or go behind the orders of the High Court and such exercise would be particularly inadvisable in a case where the result may be a conflict of the decision of two courts of competent jurisdiction, which was contrary to the object of Sections 23,

24 and 25 of the Act. In this view of the law, the appellant is not entitled to agitate the correctness or otherwise of the decision given by the Tribunal in regard to the questions which were agitated before the High Court and were decided against the appellant and against which no appeal has been brought.

In the light of the above decision, in my view, the petitioner is not entitled to claim deduction asked for from the gross turnover on account of aggregate sales to registered dealers.

16. To sum up, I hold that the Tribunal as well as the Member, Board of Revenue and the taxing authorities in the appellate orders as well as in the assessment orders have committed an error of law in holding that the provisions contained under Rule 18 were mandatory. Those provisions, as held by me, are mere directory. The petitioners could have on that ground claimed deduction from the gross turnover on account of aggregate sales to the registered dealers and there was no bar on them, but, in view of the findings by this court in *Budhram Kashiram v. State of Bihar* 1970 B.L.J.R. 135, they are not entitled to claim now such deduction.

17. In the result, question No. (1) and earlier part of question No. (2) are answered in favour of the assessee, but the latter part of question No. (2) is answered against the assessee.

Birendra Prasad Sinha, J.

I agree with the order proposed.