(1988) 03 PAT CK 0024

In the Patna High Court

Case No : Tax Case No''s. 2, 3 and 4 of 1978

Card Board Products APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 29-03-1988

Acts Referred:
Bihar Sales Tax Act, 1959 — Section 33(2)(b), 5

Citation : (1989) 73 STC 438

Hon'ble Judges : S.K. Jha, Acting C.J.;S.H.S. Abidi, J

Bench : Division Bench

Advocate : Debi Pal and Pawan Kumar and L.K. Tiwary, for the Appellant; J.N.P. Sinha, Government Advocate and S.K. Singh, Government Pleader IV, Alakh Niranjan, Junior Counsel to Government Advocate and S.S. Sahi, Junior Counsel to Government Pleader IV, for the Respondent

Judgement

S.K. Jha, Ag. C.J.

1. Statement of the case u/s 33(2)(b) of the Bihar Sales Tax Act, 1959 (hereinafter to be referred to as "the Act") has been submitted by the Commercial Taxes Tribunal, Bihar, Patna, (hereinafter to be referred to as "the Tribunal") in Reference Nos. 277, 278 and 279 of 1976. The aforementioned cases arise out of the Tribunal''s order dated 8th July, 1976 in Revision Cases Nos. 31, 32 and 33 of 1976 inithe matter of assessment of Messrs. Card Board Products (in short, "the assessee") for the periods 1968-69, 1969-70 and 1970-71, respectively. Since the point involved is the same, this judgment shall govern all the three cases.

2. Messrs. Card Board Products was assessed to pay sales tax under the Act by three separate assessment orders dated 14th March, 1970, 23rd March, 1971 and 31st January, 1973 for the periods 1968-69, 1969-70 and 1970-71 (annexures A, A/1 and A/2) by the Assistant Commissioner of Commercial Taxes, Hazaribagh. The assessment records of the assessee were subsequently transferred to Giridih Circle, where the Assistant Commissioner of Commercial

Taxes, Giridih, after perusal of the assessment proceedings for the periods, referred to above, came to the conclusion that the assessee had been allowed exemption of tax on the basis of form IX, though the goods sold by it were leviable to tax at source. In the circumstances, the Assistant Commissioner of Commercial Taxes, Giridih, issued notice to the assessee u/s 18(1) of the Act and after hearing the assessee reassessed it to pay sales tax for the periods mentioned above by three separate orders, all dated 5th March, 1975, which have been marked annexures B, B/1 and B/2 to the statement of the case. Being aggrieved by the assessment orders aforementioned the assessee moved the Assistant Commissioner of Commercial Taxes, Giridih, for review of the assessment orders. The applications were rejected. Thereafter it preferred appeals before the Deputy Commissioner of Commercial Taxes, Chotanagpur Division-2, Dhanbad, against the aforesaid assessment orders. The Deputy Commissioner of Commercial Taxes (Appeals) came to the conclusion that the appeals were without merit and, accordingly, dismissed the same by an analogous order dated 31st October, 1975 (annexure C) for all the three periods. Against that order of the Deputy Commissioner of Commercial Taxes (annexure C) the assessee went to the Commercial Taxes Tribunal and filed applications for revision (annexures D to D/2) u/s 31 of the Act. The Tribunal held the assessee liable to pay special sales tax on the sales of packing materials, specially card board boxes, effected by the assessee to the registered dealers and also the jurisdiction of the Assistant Commissioner of Commercial Taxes, Giridih, with regard to the assessment made by him under the provisions of Section 18(1) of the Act. The Tribunal ultimately upheld the decision of the Deputy Commissioner of Commercial Taxes. The appellate order of the Tribunal is marked annexure E to the statement of the case. Thereafter, the assessee filed applications u/s 33(1) of the Act for referring 10 questions of law to this Court out of which they were cut down by the assessee itself to five in course of hearing before the Tribunal. The Tribunal, however dismissed the applications for reference.

3. Being aggrieved by the order dated 2nd December, 1978 of the Tribunal (annexure G) refusing to make reference, the petitioner moved this Court for a direction to the Tribunal to state the case to it. The prayer of the assessee having been accepted by this Court the Tribunal, as already stated above, has submitted the statement of the case u/s 33(2)(b) of the Act and referred the only question of law for its opinion in these terms :

Whether, on the facts and in the circumstances of the case, the sale by the assessee of the card board boxes is subject to special sales tax u/s 5 of the Bihar Sales Tax Act read with the notification dated 12th February, 1966, issued under the proviso to Section 5 of the said Act.

4. Before embarking upon any discussion on the point as to whether the Tribunal''s appellate decisions were correct or not, we shall start from scratch which necessitates reproduction of the provisions of Section 5 of the Act with its proviso. It reads thus :

The special sales tax shall be levied only at that point in the series of sales at which the goods are sold to a person other than a registered dealer in whose registration certificate such goods or class or description of goods are specified as being required for resale by him or for use by him in the packing of goods which he sells :

Provided that the State Government may, in respect of any goods or class or description of goods or any class of dealers notified in this behalf, direct that the said tax shall, subject to such conditions and restrictions as may be specified in the notification, be paid at any other point.

The relevant portion of the Notification No. STG L.J. 24/65-1611-F.T., dated the 12th February, 1966, reads thus :

In exercise of the powers conferred by the proviso to Section 5 of the Bihar Sales Tax Act, 1959 (Bihar Act 19 of 1959) and in supersession of all the previous notifications on the subject the Governor of Bihar is pleased to direct that the special sales tax leviable under the said Act on the sale of the goods specified in the second column of the Schedule hereto annexed shall be levied at the stage specified in the third column of the Schedule, subject to the conditions and restrictions set out in the fourth column thereof.

Schedule

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_ SI. Description of Stage at which Conditions and rest- No. goods special sales rictions subject to tax which exemption shall be levied. shall be allowed at subsequent stages. ____

____________________ 2. Paper including (a) If the goods If the selling dealer all kinds of pas- are imported from at thesubsequent stage teboard, mill- a place outside produces before the board, straw Bihar, at the assessing authority board, card board, point of sale by purchase orders, if any, blotting paper, the importer; the original copy of the newsprint, cartr- and (b) if the cash memoranda or bills idge paper, pack- goods are manufa- issued to him by the ing paper, paper ctured in Bihar, dealerfrom whom he purc- bags, cartons, at the point of hasedthe goods and a cards and blank sale by the true decalration in wri-registers, manufacturer. ting in form IX-C appen- note books, ded to theBihar Sales exercise books, Tax Rules,1959 from such envelopes, dealer or his manager labels, letter declared under Section pads, writing 10 of the Bihar Sales tablets and flat Tax Act, 1959. files made out of paper. * * * There are thus, in our opinion, two points to be considered in this case-one is as to whether a card board box such as is being manufactured by the assessee for the purpose of its exclusive sale to the Indian Explosives situated at Gomia is at all subjected to special sales tax by virtue of the notification aforementioned and, secondly, as to whether it can be said that there has been a series of sales out of which special sales tax can be levied at any particular point as notified by the State Government.

5. I now propose to deal with the first point. Dr. Pal argued that in so far as card board boxes are concerned, which were to be supplied to Messrs. Indian Explosives, Ltd. at Gomia, the assessee could not be held to be manufacturer of the card board but boxes therefrom specially designed to contain explosives in the Gomia factory of the Indian Explosives Ltd. It was further argued that a card board is not synonymous with the card board boxes. They have distinct connotations. I think there is substance in this submission. An article of merchandise whenever used in taxation statutes or penal one must always be understood in common parlance and must be given its popular sense, meaning that sense with which people are conversant and while dealing with the article would attribute to it. Reference to the case laws in this connection is not necessitated as the principle is well settled and the decisions are legion on the point. The word "card board box" is not the term of an art. It is a commercial article to be understood in the sense that people dealing with such an article can understand it and would attribute to it in the common parlance. The dictionary meaning in such case may not be quite apt. To illustrate an aptness of what I have said in the last sentence the proper test is to take a concrete example. If a purchaser goes to a shop to purchase card board could the dealer-be it a wholesaler or retailer- supply him card board box and if one goes to buy a card board box will the shopkeeper give him a mere sheet of card board, the answer must be clearly in the negative.

6. Learned Government Advocate invited our attention to one of the dictionary meanings by showing that against the term "carton", as used in the description of goods, item No. 2, it is stated : "paper including all kinds of paste board, mill board, straw board, card board,...

cartons...", which means that by legal fiction of the statute or statutory instrument it has roped in the meaning of the word "paper" even "carton". One of the meanings of it, as given in the dictionary is "card board box". The meaning of the word "carton" has been given in the Shorter Oxford English Dictionary, Volume I, as "a light paste board or card board box or case for holding goods". It will be seen that the card board box being read with this meaning would include the term "card board" but card board box to be sold for the purpose of containing explosives to the Indian Explosives Limited, Gomia, is not a light paste board or card board box but a strong card board box. By the nature of the object, which is to be contained therein one can take judicial notice of the fact that the explosives cannot be allowed to be contained in a light or flimsy card board box entailing risk to all concerned who are handling the goods. As a matter of fact, Indian Standard Glossary of Terms Relating to Paper and Pulp Board Packing Materials, published by the Indian Standards Institution, makes a clear distinction between carton and box. A carton is said to mean-,

A form of package used as interior packing made from bending grade of paper board, corrugated or solid fibre board having a thickness between 0.30 and 2.00 mm. A carton is never used as an exterior container for transportation.

A box means-

A rigid container having closed faces used mainly as an exterior container for transportation. It can also be a set up box, three dimensional and rigid in construction having a base and a lid and delivered in a finished form.

This is how people are conversant with card board box for the purpose of being used as container of explosives understanding to mean and attribute to the term "card board box".

7. As a matter of fact, the Explosives Rules, 1940 and those of 1983 prescribe certain inhibition with regard to containers of explosives. Rules 8 and 9 of the Explosives Rules, 1940, in this regard ought to be noticed. Rule 8 provides that-

No explosive shall be imported, tendered for transport, transported, possessed or sold unless it is packed in the manner laid down in Schedule II and the package is marked in accordance with Rule 9...

Rule 9 deals with marking of packages and it provides that-

Marking of packages.-(1) The outermost package shall be marked in conspicuous characters by means of either branding, stamping, embossing or painting or by affixing a securely attached label, with -

(a) the word ''explosive'',

(b) the name of the explosive,

(c) the number of the class and of the division to which it belongs and

(d) the name of the consignor or manufacturer :

Provided that in the case of safety fuses or gun powder, the word ''explosive'' and the number of the class and division may be omitted.

* * * (3) Where an outer package contains more than one explosives, which shall be marked separately in accordance with Sub-rules (1) and (2) in respect of each explosive so contained.

Clause (4) of Schedule II of the Rules prescribes that-

A package when actually used for the packing of one explosive shall not be used for the packing of any other explosive or of any other article or substance :

Provided that nothing in this clause shall be deemed to prohibit-

(a) the packing in the same outer package of inner packages containing a propellant together with inner packages containing gun-powder or another propellant; or

(b) the packing in the same package of any article which is not of an inflammable or explosive nature; or liable to cause fire or explosion, together with an explosive of the 1st Division of the 6th (Ammunition) Class.

Certain other statutory requirements at the pain of penalty are prescribed to be followed in the handling and use and the purpose for which containers are to be used.

8. Similarly in the Explosives Rules, 1983, it has been laid down in Rule 8 that-

(1) No person shall import, tender for transport, cause to be transported, possess or sell any explosives unless it is packed.-

(a) in the manner laid down in Schedule II ;

(b) a sample of the container or package for each explosive has been tested and approved by the Chief Controller ;

(c) the container or package is marked in accordance with Rule 9 of these Rules;

* * *

Again in Rule 9 with regard to marking of packages it has been laid down that-

(1) The outer package shall be marked in conspicuous indelible characters by means of a stamping, embossing or painting with-

(a) the word ''explosives'';

* * *

In Schedule II in 1983 Rules again it is laid down, after defining "outer package" and "inner package", in paragraph (4) thereof that a package when actually used for the packing of one explosive shall not be used for the packing of any other explosive or of any other article or substance, subject to certain provisos with which we are not concerned for the purpose of this case. Clause (11) of Schedule II is very specific in its inhibition by laying down that-

(a) The outer package shall be used only once for packing and transport of explosives.

(b) When the explosive contained in outer package are removed therefrom, the outer package shall be destroyed or disposed of in such a manner that it cannot be reused for any purpose.

9. I think that any question of multi-point sale or series of sales will depend not only on the nature of the container sold but also on its susceptibility of non transference after one use by some statutory prohibition in that regard which is to be found by virtue of the statutes in so far as explosives are concerned to which I have given reference hereinbefore.

10. In so far as the second point is concerned, it needs no argument on the plain language of the statute that there must be multi-point sale which alone can justify use of the term "series of sales". That "series of sales" includes multi-point sale has well been explained by the Allahabad High Court in the case of Gurna Mal v. State of Uttar Pradesh [1970] 26 STC 270 cal and the decision of

the learned single Judge of the Calcutta High Court in the case of Indian Explosives Limited v. Assistant Commissioner of Commercial Taxes [1986] 63 STC 404 All. In our considered opinion these two decisions of the Allahabad and Calcutta High Courts gave, with great respect, a correct guideline for the purpose of determining as to whether there has been series of sales within the meaning of sales tax statutes or not. Furthermore, the highest Court of the land has already put a seal of approval on the meaning of "successive dealers" in the series of sales, as contemplated by Section 3-A of the U.P. Sales Tax Act, 1948 and it has laid down in the case of Kanpur Vanaspati Stores, Kanpur Vs. The Commissioner of Sales Tax, U.P., Lucknow, that "the chain of successive dealers begins from the first dealer and it goes up to the last dealer. Any one of the dealers in this chain can be considered as a ''successive dealer''. The series do not begin in the middle. It must necessarily begin at the very beginning". Applying this test the first point of sale, will mark the beginning of the transaction of the card board box, the transaction of sale effected by the assessee, namely, M/s. Card Board Products, Gornia, when it sells or supplies the card board boxes to the Indian Explosives Ltd. at Gomia. After that there cannot arise any question of any sale in the series of sales, if any, because, as I have pointed out above, the card board container once used for containing explosives is, according to the mandate of the law, not to be transferred by sale or used again once the explosives are taken out of it. They have, as per statutory force, to be destroyed.

11. Having considered the question in all their ramifications I am constrained to hold that on the facts and in the circumstances of the case sale by the assessee of the card board boxes was not subject to special sales tax u/s 5 of the Bihar Sales Tax Act read with the notification dated 12th February, 1966, issued under the proviso to Section 5 of the said Act. The question referred to us must be answered in the negative in favour of the assessee and against the department. The references are allowed in favour of the assessee. Consolidated hearing fee is assessed at Rs. 1,000 only.

S.H.S. Abidi, J.

12. I agree.

