(1973) 02 CAL CK 0031

In the Calcutta High Court

Case No : Matter No. 436 of 1972

Chaudhury Iron Co. (P.) Ltd. APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 27-02-1973

Acts Referred:
Constitution of India, 1950 — Article 19, 226

Citation : (1974) 34 STC 21

Hon'ble Judges : S.C. Ghose, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Ghose, J.—This is an application under Article 226 of the Constitution for the issue of a writ in the nature of mandamus for directing the respondents to release the books of account seized by respondent No. 4 on 26th April, 1973, and also for the issue of "about 200 declaration forms" to the petitioner.

2. The petitioner is a private limited company registered under the Companies Act, 1956, and carries on business in the manufacture and distribution of, inter alia, M.S. rolling flats, channels, angles and similar goods. The petitioner-company was incorporated under the Companies Act, 1956, on 25th February, 1964, and commenced its business in or about April, 1964. The petitioner-company has to purchase steel and iron plates from, inter alia, M/s. Hindustan Steel Ltd., M/s. Tata Iron & Steel Co. Ltd., Indian Iron & Steel Co. Ltd., besides various other raw materials from other parties for the purpose of manufacturing goods. The petitioner-company also sells goods manufactured by it in the market. The petitioner is a "registered dealer" within the meaning of the Bengal Finance (Sales Tax) Act, 1941, as well as under the Central Sales Tax Act, 1956. The petitioner from time to time, according to the petitioner, applied for declaration forms from the Commercial Tax Officer, Jorasanko Charge, who is the officer for such purpose in regard to the petitioner and the said officer has from time to time furnished the petitioner with necessary declaration forms. The

petitioner has stated that some declaration forms were furnished to the petitioner for the last time in February, 1972, and since then the Commercial Tax Officer being respondent No. 5 has refused to furnish further declaration forms to the petitioner. The petitioner submitted applications for supply of declaration forms on 8th September, 1972, 14th September, 1972, and 25th September, 1972, but such declaration forms have not been supplied to the petitioner. The various parties from whom the petitioner purchased various goods have been insisting on the petitioner''s furnishing them with the sales tax declaration forms or in lieu thereof the amount of sales tax payable on the price of the goods purchased by the petitioner from them.

3. Besides the aforesaid, the petitioner''s books of account for the period from 1st April, 1967, to 31st March, 1972, had been seized by respondent No. 4. Respondent No. 4 has wrongfully continued to be in possession of the said books of account except nine books of account for the year 1971-72 which have been since the date of the seizure handed over to the petitioner. The petitioner has been suffering for such seizure and wrongful detention of its books of account. Hence, this application has been made by the petitioner for the reliefs mentioned hereinabove.

4. Mr. P. Das Gupta, learned Advocate appearing for the petitioner, has submitted: (1) Under Sub-clause (ii) to Clause (a) of Sub-section (2) to Section 5 of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter referred to as "the said Act"), read with Rule 27AA of the Bengal Sales Tax Rules, 1941 (hereinafter referred to as "the said Rules"), it is incumbent upon the respondents to issue declaration forms to the petitioner unless it is found that the petitioner has misused such declaration forms; (2) Rule 27AA of the said Rules is ultra vires Section 5(2)(a)(ii) which is the substantive statutory provision entitling a dealer to have declaration forms; (3) Rule 27AA is ultra vires the Constitution as it is tainted with the vice of excessive delegation; (4) Rule 71 of the said Rules also likewise suffers from the said vice; (5) u/s 14(3) of the said Act there can be seizure of books of account of a dealer only in the case when the officer concerned reasonably suspects that the dealer is evading payment of tax. In the instant case, there is no such fact or suspicion alleged by the respondents in the affidavit and thus the condition precedent to the seizure of the books of account of the petitioner did not exist at the time the impugned seizure was made.

5. In any event, Rule 70 of the Bengal Sales Tax Rules only authorises the retention of the seized books of account beyond 21 days or 42 days only with the sanction of the Assistant Commissioner or the Commissioner, as the case may be. No such sanction has been stated to have been obtained in the instant case by the respondents in the affidavit filed by and on their behalf and as such the respondents cannot continue to be in possession of the said books of account. Section 5(2)(a) and in particular Sub-clause (ii) thereto is relevant for the purpose of the instant application. The said Section is set out hereunder:

Section 5. (2) In this Act the expression ''taxable turnover'' means in the case of a dealer who is liable to pay tax u/s 4 or under Sub-section (3) of Section 8, that part of his gross turnover during any period which remains after deducting there from-

(a) his turnover during that period on--

(i) ...

(ii) sales to a registered dealer of goods referred to in Section 14 of the Central Sales Tax Act, 1956, and goods included in Schedule II, specified in the certificate of registration of such dealer as being intended for resale by him in West Bengal, and of containers and other materials for the packing of such specified goods.

6. Section 4 of the said Act is the charging section and imposes the liability to pay sales tax upon sellers. Section 5 of the Act deals with the rate of tax. Sub-section (1) of Section 5 of the Act lays down the rate of tax payable by such dealers at the rates and on the goods mentioned in the several clauses to the said Sub-section. Sub-section (2) of the said section defines "taxable turnover" and lays down the formula by which the said "taxable turnover" has to be ascertained in a particular case. Proviso to Sub-section (2) lays down that the deduction to taxable turnover on account of sales mentioned in Sub-clause (ii) of Sub-section (2) of the said section would be allowed to a dealer who sells goods only when he can furnish in the prescribed manner a declaration containing particulars prescribed in the prescribed form filled up and signed by the registered dealer who is purchasing the goods.

7. It appears from a perusal of Section 5 and its different Sub-sections and clauses to such Sub-sections that such declaration forms have to be furnished by the registered purchaser only at the time when the tax payable by him under the Act is ascertained or assessed and for the purpose of ascertaining his taxable turnover. The relevant portions of Rules 27A and 27AA are set out hereunder :

Rule 27A. (1) A dealer who wishes to claim the benefit of lower rate of tax in respect of sales referred to in Clause (aa) of Sub-section (1) of Section 5 or who wishes to deduct from his gross turnover the amount in respect of sale on the ground that he is entitled to make such deduction under the provision of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 shall, on demand, produce in respect of such sale the relevant particulars and evidence including the copy of the relevant cash memo, or bill, according as the sale is a cash sale or a sale on credit, and a declaration in form XXIV obtainable, subject to the provisions of Rule 27AA, by the purchasing dealer on application from the appropriate Commercial Tax Officer and duly filled in and signed by the purchasing dealer or by a person duly authorised in this behalf by such dealer, stating inter alia,--

(a) in the case of a sale referred to in the said Clause (aa) of Sub-section (2) of Section 5 or in the said Sub-clause (ii) of Clause (a) of Sub-section (2) of Section

5, that the goods in question are of the class or classes specified in the certificate of registration of the purchasing dealer and are intended for resale by such dealer in West Bengal or are containers and other materials for the packing of goods of the class or classes so specified....

Rule 27AA. (1) For obtaining declaration forms referred to in the first proviso to Clause (30) of Rule 3 or Sub-rule (1) or Sub-rule (1a) of Rule 27A, a registered dealer or the owner or representative of an undertaking, as the case may be, shall apply in writing to the appropriate Commercial Tax Officer stating separately his requirements for each kind of such forms and shall furnish such other particulars, statements and information and produce such other documents as the Commercial Tax Officer may require for the purpose of satisfying himself about the bona fide use of such forms of all kinds issued to the applicant on previous occasions and the bona fide nature of the applicant''s requirement of such forms applied for on the present occasion.

(2) (a) If for reasons to be recorded in writing--

(i) the Commercial Tax Officer is not satisfied that the applicant for declaration forms made bona fide use of such forms of all kinds previously issued to him or that he bona fide requires such forms applied for, the Commercial Tax Officer may reject the application;

(ii) the Commercial Tax Officer is not satisfied that the applicant bona fide requires such forms in such numbers as he has applied for, the Commercial Tax Officer may issue such forms in such lesser numbers as, in his opinion, would satisfy the reasonable requirement of the applicant.

(b) If the applicant for declaration forms has at the time of making the application failed to comply with an order demanding security from him under Sub-section (4a) of Section 7, the Commercial Tax Officer shall reject the application.

(c) If the applicant for declaration forms has at the time of making the application defaulted in furnishing any return or returns, together with the receipted challan or challans showing payment of the tax due from him according to such return or returns, for the furnishing of which the prescribed date or dates, or the extended date or dates, if any, have already expired, the Commercial Tax Officer shall withhold the issue of declaration forms to him until such time as he furnishes--

(i) such return or returns, together with such receipted challan or challans, and (ii) any other return or returns, together with the receipted challan or challans showing payment of the tax due according to such return or returns, for the furnishing of which the prescribed date or dates or the extended date or dates, if any, may have expired after the date of the application:

Provided that in a case coming under this clause the Commercial Tax Officer may, instead of withholding declaration forms, issue such forms in such numbers and subject to such conditions and restrictions as he may consider reasonable, to an applicant, if in the opinion of the Commercial Tax Officer it is desirable in the interest of the collection of sales tax revenue to grant time to the applicant to pay up the arrears of tax in one lump or in instalments.

(d) Where the Commercial Tax Officer does not proceed under Clause (a), Clause (b) or Clause (c), he shall issue the requisite number of declaration forms to the applicant.

8. Rule 27AA lays down that a registered dealer in order to obtain declaration forms under the Act must apply in writing to the appropriate Commercial Tax Officer stating (i) his requirements for each kind of such forms, (ii) furnishing other particulars, statements and information and (iii) producing such documents as the Commercial Tax Officer may require for the purpose of satisfying that the requirement of dealer was genuine and bona fide in regard to the forms previously furnished to the dealer and also in regard to the forms required to be furnished on that occasion. For the eventualities mentioned in Clause (a) and sub-clauses therein, Clause (b) and Clause (c), the Commercial Tax Officer would reject the application for furnishing declaration forms. Reasons for such rejection in case the same was made under Sub-clause (i) or (ii) of Clause (a) of Sub-rule (2) of Rule 27AA had to be recorded in writing by the Commercial Tax Officer. In other cases not covered by Clause (a) or (b) or (c) of Sub-rule (2) of Rule 27AA, it is incumbent upon the appropriate Commercial Tax Officer to issue the requisite number of declaration forms to the registered dealer who had applied for the same. Mr. Das Gupta contended that Rule 27A(1) of the Rules made it imperative upon the Commercial Tax Officer to furnish the registered dealer with declaration forms "on demand" by such dealer. I am, however, unable to accept the said contention of Mr. Das Gupta. The nominative in the sentence which contains the words "on demand" in the said Sub-rule is a dealer who wishes to claim the benefit of lower rate of tax...or who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5. The said words clearly show that the person who had to furnish such declaration forms on demand was the registered dealer who sold goods and claimed a deduction from his gross turnover in accordance with the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5. Such dealer had to produce such declaration forms duly filled in and signed by the purchasing dealer to the appropriate Commercial Tax Officer.

9. The provisions for furnishing declaration forms to the registered dealer have been laid down in Rule 27AA of the Rules. From a perusal of the said Rules it is apparent that in a case not falling within Clause (a) or (b) or (c) of Sub-rule (2) of the said Rule 27AA, the appropriate Commercial Tax Officer must furnish the applicant-registered dealer with the requisite number of declaration forms. In the instant case, the petitioner has not stated in his petition as to how many sales tax declaration forms he applied for.

10. In the way as I have read with the aforesaid rules, vis-a-vis the said Section 5 and in particular different clauses of Sub-section (2) of the said Section 5 of the said Act, I do not find any repugnancy or inconsistency between the said rules and the main Section 5 of the Act. In that view of the matter, I am unable to accept the contention raised by Mr. Das Gupta that the said rules are ultra vires the said section.

11. Section 26 of the said Act confers the power to make rules upon the State Government for "carrying out the purposes of this Act". The said section reads as follows:

26. Power to make rules.--(1) The State Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe--

(a) the portion referred to in Sub-clause (i) of Clause (h) of Section 2; (aa) the authority referred to in the proviso to Clause (j) of Section 2;

(b) the further period after the date of expiry of three consecutive years referred to in Sub-section (3) of Section 4;

(bb) the particulars to be contained in a declaration referred to in the provisos to clauses (aa) and (bb) of Sub-section (1) of Section 5 and in a declaration referred to in the proviso to Clause (a) of Sub-section (2) of that section, the forms of such declarations, the manner in which, the conditions and restrictions subject to which and the authority from which such form shall be obtainable, and the manner in which such declarations are to be furnished;

(c) the taxable quantum for particular classes of dealers under Clause (b) of Sub-section (5) of Section 4;

(d) the other sales, turnover in respect of which may be deducted from a dealer''s gross turnover in computing his taxable turnover as defined in Section 5;

(e) the authority to which application for registration u/s 7 or Section 8, or for special certificate u/s 7A shall be made;

(f) the procedure for, and other matters incidental to, the registration of dealers and the granting of certificates of registration, and the form of such certificates u/s 7 or Section 8;

(ff) the procedure for and other matters incidental to the granting of special certificates u/s 7A and the form of such certificates;

(g) the intervals at which, and the manner in which, the tax under this Act shall be payable u/s 10;

(h) the returns to be furnished under Sub-section (2) of Section 10, and dates by which, and the authority to which, such returns shall be furnished;

(i) the date by which returns for any period are to be furnished and the procedure to be followed for assessment u/s 11;

(j) the manner in which refunds u/s 12 shall be made;

(k) the accounts and forms thereof required by Section 13;

(l) the conditions under which the production of accounts or documents or the furnishing of information may be required under Sub-section (1) of Section 14;

(m) the restrictions and the conditions subject to which the Commissioner may delegate his powers u/s 15;

(n) the authority to which information shall be furnished u/s 16;

(o) the manner in which, and the authority to which, appeals against assessment may be preferred u/s 20;

(p) the procedure for, and other matters (including fees) incidental to, the disposal of appeals and applications for revisions and reviews u/s 20;

(q) the conditions under which offences may be compounded u/s 23;

(r) the manner in which, and the time within which, applications shall be made, information furnished and notices served, under this Act;

(s) the sacred books referred to in item 21 in the first column of Schedule I;

(t) any other matter required to be prescribed.

(3) In making any rule the State Government may direct that a breach thereof shall be punishable with fine not exceeding five hundred rupees, and when the offence is a continuing one, with a daily fine not exceeding twenty-five rupees during the continuance of the offence.

12. The said section has been attacked by Mr. Das Gupta as unconstitutional on the ground of being tainted with the vice of excessive delegation inasmuch as according to Mr. Das Gupta no principle or guideline has been laid down in the section itself for the rules to be framed under the section by the executive authority.

13. A perusal of the section as quoted above would show that not only principles or guidelines for the rules to be framed under the section have been laid down by the section itself, but details have been mentioned and stated in the section which the rules framed under the section would govern. In the present age of complicated administration it is not unconstitutional for the Legislature to leave it to the executive to determine the details in regard to the working of laws relating to tax, as was observed by the Supreme Court in the case of Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, . The Bengal Finance (Sales Tax) Act is a taxing statute and only the details for working out the laws of the

said Act in regard to the matters mentioned in Section 26 of the Act has been left to the executive authority to be determined by framing the rules.

14. The said section or any of the rules framed under the said section, therefore, cannot be said to be ultra vires the Constitution on account of excessive delegation.

15. Mr. Das Gupta contended that the conditions laid down in Clauses (a), (b) and (c) of Sub-rule (2) of Rule 27AA are stringent, unreasonable and restrictive of the petitioner''s right to trade guaranteed under the Constitution. In support of his contention Mr. Das Gupta relied on the case of Rustom Cavasjee Cooper Vs. Union of India (UOI), . Mr. Das Gupta relied in particular on paragraphs 76 and 77 of the judgment of Shah, J., appearing at page 602 of the said Reports. It must be noted that in the aforesaid case restriction was imposed upon the right of the named banks to carry on even non-banking business although theoretically the right of the said banks to carry on the said non-banking business was declared by the impugned provisions. It was held by the Supreme Court that the said total restriction, in the facts and circumstances of the said case, amounted to unreasonable restriction and violation of the right guaranteed by Article 19(1)(f) of the Constitution to the petitioners in the said case.

16. In the instant case, it does not seem to me however that the restrictions laid down in Clauses (a), (b) or (c) of Sub-rule (2) of Rule 27AA of the said Rules are in any way unreasonable. The said Rules have been framed for the safeguard of the interest of the State and to thwart the abuse or misuse of the declaration forms by dishonest traders. An honest trader upon production of sufficient evidence as to his requirement of the declaration forms cannot be deprived of the forms, in my opinion, under the provisions of the Act by any officer.

17. Mr. Das Gupta next contended that it is not the case of the respondent that his case falls under any of the Clauses (a), (b) or (c). The respondents also have not alleged that. Thus, Mr. Das Gupta states that he is entitled to the forms.

18. It has been stated in the affidavit of Nitindra Chandra Sen affirmed on 29th January, 1973, used in opposition to the present petition that the declaration forms were issued to the petitioner on 9th October, 1972, and 27th November, 1972, and that there has been no refusal to issue the declaration forms in favour of the petitioner. It has been further stated in the said affidavit that no application for further declaration forms were received by the respondents after 27th November, 1972. Prior to September, 1972, the dealer, it has been stated in the said affidavit, failed to produce the relevant records in support of the declaration forms used by it. On 14th September, 1972, the petitioner failed to produce the purchase vouchers or any purchase list for which declaration forms were stated to be required by it and that is why the declaration forms on 8th September or 14th September, 1972, were not issued to the petitioner. Thereafter on the basis of the records and list of purchases produced by the petitioner, the declaration forms were issued to him on 9th October, 1972, and

27th November, 1972. After the said dates, it appears, the petitioner did not apply for the supply of any declaration forms. The petitioner has not stated in the petition as to how many declaration forms he applied for and out of which how many were issued to him and how many were withheld. In that state of affairs, I am unable to accept the said contention of Mr. Das Gupta as well.

19. Section 14 of the Act confers power upon the Commissioner of Commercial Taxes to have documents produced before him for the purpose of inspection. Sub-section (3) to the said section confers also the power to seize documents in the hands of traders. The said Sub-section reads as follows:

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution.

20. For the aforesaid purpose the power to enter and search place of business of any dealer or any other place where the Commissioner may have reason to believe that the dealer keeps or is for the time being keeping any accounts, registers or documents of his business. It appears from the said Sub-section (3) to Section 14 that the condition precedent to the exercise of the right of seizure of the books and documents mentioned in the said subsection is that the Commissioner "has reason to suspect that any dealer is attempting to evade payment of any tax under this Act".

21. It appears, however, from the records in the instant case that there is no allegation, far less even prima facie proof, that the Commissioner suspected that the petitioner was attempting to evade the payment of tax payable by him under the Act. In that view of the matter I am of the opinion that the conditions precedent to the exercise of the power of seizure conferred by the said Sub-section did not exist at the time when the said books of account were seized by respondent No. 4.

22. In any event, the said question, it seems to me, is now only of academic interest, for the reasons stated below :

This application is for the issue of a writ of mandamus or writ in the nature of mandamus. Rule 19 of the Rules of this Court relating to application under Article 226 of the Constitution framed by this Court provides as follows:

All petitions for a writ in the nature of mandamus shall contain a statement as to whether a demand for justice has been made and specify the particulars of such demand including the date and service thereof. A copy of such demand, where the demand is in writing, shall be set out in the annexure to the petition.

23. In the instant case, a bald statement only has been made in the petition in paragraph 21 that the petitioner has demanded justice and the same has been denied to him. No particulars of such demand in terms of the said rule have been

set out. Mr. Das Gupta relied on a copy of a letter dated 27th September, 1972, being annexure B to the petition, and submitted that that may also be treated to be a demand for justice. But it seems that the said letter was addressed to the Assistant Commissioner of Commercial Taxes, North Circle, whereas the officers alleged to be delinquent in the instant case are respondents Nos. 4 and 5. The said letter cannot in that view of the matter be treated to be a notice of demand of justice. In fact, it seems that there has been no demand of justice made by the petitioner either to respondent No. 4 or respondent No. 5. There is not even an averment in the petition to that effect.

24. In that view of the matter, this application must fail and is dismissed. The rule nisi is discharged. All interim orders shall stand vacated. In the facts and circumstances of this case, I direct that each party shall pay and bear his or its own costs of, and incidental to, this application.