(1971) 09 DEL CK 0029

In the Delhi High Court

Case No : Sales Tax Reference No. 10 of 1969

Chhabra Electric Store APPELLANT

Vs

The Chief Commissioner RESPONDENT

Date of Decision : 14-09-1971

Acts Referred:

Citation : (1971) ILR Delhi 362 : (1972) 30 STC 85

Hon'ble Judges : H.R. Khanna, C.J;S.I. Rangarajan, J

Bench : Division Bench

Advocate : B.B. Kishore and J.P. Gupta, for the Appellant;

Judgement

H.R. Khanna, C.J.

(1) The following question has been referred to this Court u/s 21(3) of the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi (hereinafter referred to as "the Act") at the instance of Chhabra Electric Stores (hereinafter referred to as "the dealers"):

"WHETHER on the facts and in the circumstances of this case the order cancelling the registration of M/s. Jai Hind Stores in November, 1956 could be enforced with retrospective effect against the present assessed so as to deprive it of its right to claim exemption of the sales amounting to Rs. 62. 859-11-3 made during the period from 1st April. 1956 to 30th June. 1956 from being included in its taxable turnover for the year 1956-57."

(2) The dealer dealt in the re-sale of all kinds of electric goods during the period 1956-57. The dealer sold goods worth Rs. 62,859-11-3 to M/s Jai Hind Stores, a registered dealer. The registration certificate of Jai Hind Stores was cancelled under sub-section (7) of section 7 of the Act as per order made towards the end of November. 1956. The order was made effective from April 1, 1956. The cancellation of the registration certificate was notified in the official gazette u/s 9 of the Act in March, 1957. The dealer claimed exemption in respect of the goods sold to Jai Hind'' Stores till November. 1956. The Sales-tax Officer declined to

grant the exemption on the ground that the certificate of registration of the purchasing dealer, Jai Hind Stores, had been cancelled with effect from April 1, 1956. The order of the Sales-Tax Officer was affirmed in appeal by the Assistant Commissioner as well as in the first and second revisions. The contention of the dealer that the cancellation of the registration certificate of Jai Hind Stores could not have retrospective effect was repelled. At the instance of the dealer, the question reproduced'' above was thereafter referred to this Court.

(3) We have heard Mr. Brij Bans Kishore on behalf of the department. No one has appeared on behalf of the dealer. After giving the matter our consideration, we are of the opinion that the question referred to this Court should be answered in the negative and against the department. According to Section 5(2) of the Act. in arriving at the figure of taxable turnover the sale made by a dealer to a registered dealer in respect of the goods of the class or classes specified in the certificate of registration of such registered dealer, as being intended for re-sale by him, or for use by him as raw material in the manufacture of goods for sale, shall be deducted. It appears to have been assumed, and was not disputed, that the goods sold to Jai Hind Stores were of the category specified in the certificate of registration of that concern. The dealer was not allowed deduction because the sales-tax authority took the view that the cancellation of the registration certificate of Jai Hind Stores had a retrospective effect. In this respect we find that the cancellation of the registration certificate of Jai Hind Stores was under sub-section (7) of Section 7 of the Act. According to that sub-section, the Commissioner may at any time for reasons to be recorded in writing and after giving the dealer an opportunity of being heard, cancel any certificate of registration. Such cancellation has to be notified u/s 9 of the Act in the official gazette. According to clause (d) of rule 12(1) of the Rules framed under the Act, when the appropriate authority is satisfied for any reason other than that referred to in clause (c), with which we are not concerned in the present case, the certificate of registration of any dealer requires cancellation, he shall forward to the Commissioner or the Assistant Commissioner Sales Tax so authorised'' by him, the registration certificate of the dealer and the cancellation shall come into effect from such date as may be specified in the order and the liability of the dealer to pay sales-tax shall cease with effect from the said date. The second'' proviso to the above clause prescribes that every such order of cancellation shall as soon as possible after it is made, be published in the official gazette.

(4) The different provisions referred to above, in our opinion, underline the importance of publicizing the cancellation of the registration certificate of a registered dealer soon after the. order of cancellation. The apparent object appears to be that the other dealers dealing with the registered dealer may be informed of the cancellation of the registration certificate of the registered dealer so that in case they choose to deal with him after such cancellation they may realise the sales-tax from such registered dealer. The words in clause (d) of rule 12(1) "from such date as may be specified in the order", in our opinion, should be construed to mean either the date of the order or a date subsequent to the

date of the order and not a date prior to the date of the order. The scheme of the Act, in our view, does not warrant the giving of retrospective effect to the order of cancellation of a registration certificate. In the present case, as would appear from the resume of facts given above, the certificate of registration, which had been granted to Jai Hind Stores was cancelled in November, 1956. Chhabra Electric Stores, the dealer, claimed exemption with respect to the goods sold to Jai Hind Stores turn the period prior to the date of the recorded of cancellation of the registration certificate. At the time those sales were made in favor of Jai Hind Stores, the registration certificate of the concern was still subsisting and the dealer could not have any knowledge that the registration certificate of Jai Hind Stores would be cancelled with retrospective effect. Consequently we fail to understand as to how the dealer can be deprived of the benefit of the deduction contemplated by sub-section (2) of Section 5 of the Act in respect of the above-mentioned sales. As the deduction claimed by the dealer was in respect of sales made prior to the date of the order of the cancellation of the registration certificate of Jai Hind Stores, we need express no opinion on the point as to what was the effect of the delay in notifying the cancellation of the registration certificate in the official Gazette.

(5) We would, Therefore, answer the question, referred to this Court, against the department. In the circumstances of the case. we make no order as to costs.

