
(1973) 04 PAT CK 0006
In the Patna High Court
Case No : Taxation Case No. 9 of 1967

Commissioner of Commercial Taxes

APPELLANT

Vs

Jugal Kishore Devi Prasad

RESPONDENT

Date of Decision : 27-04-1973

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 33(3), 42, 5

Citation : (1973) 32 STC 89

Hon'ble Judges : Untwalia, C.J.; S.K. Jha, J

Bench : Division Bench

Advocate : Shreenath Singh and Gurusaran Sharma, for the Appellant;
Rajeshwari Prasad and A.B.S. Sinha, for the Respondent

Judgement

Untwalia, C.J. and S.K. Jha, J.—A plea of limitation was raised on behalf of the assessee at the time when a statement of case was directed to be called for by this court on 13th September, 1967 and it was observed that this plea of limitation may be considered at the time of the hearing of the reference case. Learned standing counsel No. 1 submitted on behalf of the State that the application filed in this court by the commercial taxes department was not barred by limitation. Mr. Rajeshwari Prasad, learned counsel for the assessee, fairly conceded that it was not so. The plea of limitation was given up on behalf of the assessee.

2. On being directed by the High Court, the Commercial Taxes Tribunal, Bihar, has stated a case and made this reference u/s 33(3) of the Bihar Sales Tax Act, 1959, hereinafter called the Act. The questions of law referred for determination by this court are the following :

(1) Whether, in the facts and circumstances of the case, the Tribunal's finding that the opposite party is not an importer in respect of the vegetable products is legally correct ?

(2) Whether, in the facts and circumstances of the case, the decision of the

Tribunal as to who is an "importer" within the meaning of the Bihar Sales Tax Act, 1959, is legally correct?

Truly speaking, the two questions can be condensed in one and really they are one. The reframed question will be in the following term :

Whether, in the facts and circumstances of the case, the finding of the Commercial Taxes Tribunal that the assessee is not an importer in respect of the vegetable products in question and that the importer was the Vegetable Products Ltd., Patna City, is correct in law or not ?

The assessee had sold vegetable products worth Rs. 1,73,360.12 in the relevant period, i.e., 1962-63. The goods were despatched from Calcutta to Dumka. Section 5 of the Act provides :

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 notification issued under the proviso to Section 5 is Notification No. STGL(MPT) PT2/59-11687. F.T., dated the 27th August, 1959. Serial No. 3 of this notification relates to vanaspati, hydrogenated vegetable oil and other edible oils. The stage at which special sales tax is to be levied given in column 3 of the notification is (a) if the goods are imported from a place outside Bihar, at the point of sale by the importer and (b) if the goods are manufactured in Bihar, at the point of sale by the manufacturer. No conditions and restrictions subject to which exemption is to be allowed has been prescribed in column 4. The assessing officer treated the assessee who is a Dumka dealer to be an importer within the meaning of the notification dated 27th August, 1959 and held that the turnover in question was liable to be taxed in the hands of the assessee. The assessee filed an appeal. The Additional Appellate Assistant Commissioner by a cryptic order dismissed the appeal. It went up in revision. The Deputy Commissioner found that the assessee was not an importer in relation to the goods in question and was, therefore, not liable to pay sales tax on the sales made by it. The department went up in second revision before the Commercial Taxes Tribunal. The Tribunal dismissed the revision. The Commissioner of Commercial Taxes requested it to make a reference to this court. The Tribunal refused to do it. Thereupon the Commissioner moved this court and got the reference made.

3. In the revisional order of the Tribunal which is referred to in the statement of the case the following eight findings have been recorded :

- (1) M/s. Vegetable Products Ltd., Calcutta, had a branch at Patna City.
- (2) The opposite party placed orders with the Patna City branch for the supply of the vegetable products and the latter submitted bills to the former on account of the price of the goods supplied.
- (3) The opposite party purchased several tins of vegetable products from the Patna City branch.
- (4) The Patna City branch, in order to minimise the transport cost, directed its head office to despatch the goods direct to the opposite party at Dumka.
- (5) All the bills were drawn by the Patna City branch in respect of the sale of the goods to the opposite party charging sales tax on such sales.
- (6) Some vegetable products were actually imported from West Bengal to Bihar.
- (7) There was no evidence that the opposite party placed orders direct with the Calcutta firm for supply of these goods and there was no privity of contract between the Calcutta firm and the opposite party.
- (8) The Patna City branch had applied to the prescribed authority for permit to import these goods into Bihar.

On these findings the inference drawn that the assessee was not an importer of the goods is perfectly justified in law. The word "importer" is not defined in the Act. Specific reference may be made to finding No. 8. u/s 42 of the Act read with Rule 31 of the Bihar Sales Tax Rules, 1959, no person could transport from any railway station, steamer station, airport, post office or any other place, any consignment of notified goods which included vegetable products except in accordance with the conditions as may be prescribed. A person intending to transport had to apply for a permit under Rule 31(1)(a) in form 28. The Patna dealer which is a branch of the Calcutta dealer and which is a registered dealer in Bihar applied for the permit. A consignor or consignee, according to the form, need not necessarily be a person intending to transport. But then the person applying for permit has to give a declaration and say that he undertook to duly account to the authority for the disposal of the goods on completion of the movement and to pay tax on the sales thereof according to the provisions of the Act and the Rules made thereunder. It is in the revisional order of the Tribunal that the Patna dealer had realised sales tax on the sale of goods in question by it to the assessee. It had been taxed also by the department in accordance with the notification dated 27th August, 1959, treating it as an importer of the goods. In such a situation, it is difficult to understand the stand of the department as to how in regard to the same goods Dumka dealer could be the importer and how it could be subjected to sales tax in accordance with the notification dated 27th August, 1959.

4. Learned standing counsel submitted that the freight, namely, the transport charge was paid by the assessee. It may be so. That cannot make the assessee

an importer of the goods. It all depends upon the terms of contract of sale between the assessee and the Patna dealer as to who was to pay the freight. The primary findings of fact recorded by the Deputy Commissioner and the Tribunal in their respective revisional orders clearly show that the Dumka dealer was not an importer of the goods in question; it was the Patna dealer who was the importer although the goods had been transported from Calcutta to Dumka directly to the assessee. It is, therefore, plain that the reframed question must be answered in favour of the assessee and against the department. The reference is accordingly answered. The assessee will have the costs of the reference. Hearing fee Rs. 100 only.