(1966) 01 PAT CK 0024

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 1018 of 1962

Commissioner of Sales Tax APPELLANT

Vs

Basta Colla Colliery Co. Ltd. RESPONDENT

Date of Decision : 27-01-1966

Acts Referred:
Bihar Sales Tax Act, 1947 — Section 2(c), 25(1)
Finance Act, 1950 — Section 4(5)

Citation : (1968) 21 STC 454

Hon'ble Judges : S.N.P. Singh, J;Mahapatra, J

Bench : Division Bench

Advocate : K.B.N. Singh, for the Appellant; Tarkeshwar Prasad, Manindra Nath Varma and Rameshwar Prasad, for the Respondent

Judgement

Mahapatra, J.—The Board of Revenue has made a reference u/s 25(1) of the Bihar Sales Tax Act, 1947, at the instance of the department. The assessee is a dealer in coal and was assessed to sales tax by the Assistant Commissioner of Sales Tax, Dhanbad, for the year 1958-59. During the relevant period he had transacted sale of machineries aggregating to a sum of Rs. 1,18,500. This was included in his turnover but the assessee''s objection was that it being a casual sale and not in the course of his business, should not count within the taxing definition. His contention was accepted by the Board of Revenue though it had failed before the appellate authority. It is against that that the department wanted the reference to be made to this Court.

2. There is no dispute that the line of business of the assessee did not include the disposal or sale of machineries. It was a solitary transaction and the question is whether that will be included as a sale in the turnover of the assessee. The definition of "dealer" as given in the Bihar Sales Tax Act, 1947, in Sub-clause (c) of Section 2 was, before the Bihar Finance Act, 1950, came into operation, as follows:

''Dealer '' means any person who carries on the business of selling or supplying goods in Bihar, whether for commission, remuneration or otherwise and includes any firm or a Hindu joint family, and any society, club or association which sells or supplies goods to its members.

3. The Bihar Finance Act, 1950, which came into force from the 1st April, 1950, substituted this definition by the following:

''Dealer'' means any person who sells or supplies any goods (including goods sold or supplied in the execution of a contract) whether for commission, remuneration or otherwise and includes any firm or a Hindu joint family, the Government and any society, club or association which sells or supplies goods to its members.

4. It will be noticed that in the new definition the words "business of selling or supplying goods" were omitted in the first part and in their place "sells or supplies any goods" were brought in to keep in conformity with the expression "which sells or supplies goods" in the last part of the sentence as it was before. And "sale and supply of goods in the execution of a contract" was added into the definition.

5. Learned counsel appearing for the department contended that the omission of the word "business" by the amending Act was very significant and purposeful. The amendment sought to widen further the definition of dealer and to rope in any person who transacts a sale of a particular commodity although he may not be carrying on a business of sale in that. In other words, learned counsel''s argument is that a single transaction of sale on the part of a person, if the sale price exceeds the limit provided in the Act, will bring him within the mischief of the definition of dealer and will expose him to the levy of sales tax. The preamble of the Bihar Finance Act, 1950, was :

Whereas it is expedient to amend the Bihar Sales Tax Act, 1947, and the Bihar Agricultural Income Tax Act, 1948, to levy a tax on passengers and goods carried by public service vehicles and public carriers, and to lay down rates of sales tax payable under the Bihar Sales Tax Act, 1947, to fix the limit of taxable agricultural income and to lay down rates of agricultural Income Tax and super-tax chargeable under the Bihar Agricultural Income Tax Act, 1948, for the financial year beginning on the 1st day of April, 1950, and to make further provision in connection with the finance of the State of Bihar.

It is hereby enacted as follows.

6. The purpose of ''the amendment can be gathered from this preamble. Although in the aims and objects that were appended to the Bill, at the stage when it was introduced, it was stated that one of the purposes was to catch the tax evasion, it was discretely omitted from the preamble at the time it passed into an enactment by the Legislature. It is well-known that when any doubt is cast in the mind about the real import of a particular piece of legislation, aid can be sought from the preamble of the Act itself. The Finance Act affected two enactments, the Bihar Sales Tax Act, 1947, and the Bihar Agricultural Income Tax

Act, 1948. Rates of tax under the two Acts were sought to be laid down. Previously they were being prescribed from year to year. Another purpose was to bring under the liability of taxation the conveyance of passengers and goods by public service vehicles and public carriers (as provided under item 56 of List II, Schedule VII of the Constitution). The preamble did not refer to any intention to increase the domain of levy in regard to sales and supplies of goods. Thus, the preamble does not give us any support to interpret the substituted definition of "dealer" in a sense more extensive than it was in the previous definition.

7. "Sale" and "sale of goods" are expressions which had a recognised meaning in general law under the Contract Act and the Sale of Goods Act. When item 54 was incorporated in List II of Schedule VII of the Constitution (Taxes on the sale or purchase of goods other than newspapers) that has to be understood in that meaning to define the legislative powers of the State in that respect. But when an enactment is made by the State to provide for levy of such taxes, it is open to the State Legislature to say whether all "sales" or particular kind of "sales" will be taxed. In the original Act (Bihar Sales Tax Act, 1947) only those kinds of sales that may comprise "a business of selling" were made taxable by the definition of "dealer" who came within the charging section. If the amendment of that definition by the Bihar Finance Act, 1950, is taken to mean every kind of sale is taxable, that will certainly impose a new burden upon the people and more people will come under the liability than before. "Business" imports a frequency, system, motive of profit and continuity. If "sale" is taken divorced from that, every person transferring property in any goods for a price, though only once, will incur the liability of tax. For imposition of a new burden, the taxing statute must enact in express terms. If there is any doubt either in the meaning or the extent of any expression in such statute, or if two views are clearly permissible, that which is more advantageous to the subject shall be allowed to prevail. I have already referred to the preamble of the Finance Act, 1950, to show that imposition of a new burden was not the purpose of the amending Act. If the enacting language of that Act conclusively imposes such a new burden, the absence of an intention to that effect from the preamble will not stand in the way to reduce the scope of the enacting provision.

8. Learned counsel pressed, that the expression "any person who sells or supplies goods" is clear and unambiguous and will bring in all kinds of sales, though unconnected with a business. That is so, if that expression is taken disjointly with the other provisions of the Act. But, a well-recognised canon of interpretation of statutes is that a particular word or expression should be given, if necessary, not its full but a reduced extent of meaning, to reconcile that with the other provisions in the same enactment. The rule of harmonious construction is beyond question. If other relevant provisions of the Act, where "business of selling" was referred, were left unamended by the Finance Act, 1950, there will be a mass of anomaly in the working of the statute, in case "any person who sells" in the definition is not taken in a reduced scope limiting it to the "business of selling". The provisions under Sections 9, 13 and 19 still refer to "business".

The different forms prescribed by this Act, e.g., those printed at pages 61, 64, 66, 68, 71, 72 and 73 of the Bihar Commercial Taxes Manual, Volume II (1954 Edition), also refer to "business" in connection with taxable sales. The return form also requires the assessee to state about his "business". The rules made under the Act, such as Rules 4 and 10 also have similar reference to "business". All these will be meaningless and redundant if not only the business of selling but also any casual sale comes under the taxing area. If the above provisions of the Act with reference to business are faithfully and fully followed, only the sales of goods connected with a business can be assessed and the prescribed mechanism will leave out any other sale. There will be a serious conflict in the working of the Act, if the expression "any person who sells goods" is not taken confined to "a business of selling".

9. The Finance Act, 1950, introduced by amendment, a new Clause (5) to the charging Section 4 of the Act whereby a "newly started business" of a dealer was made liable to pay tax on sales from the date of commencement of such business. If all kinds of sales of goods were to be included in the amended definition of "dealer" this new provision would not have confined the new liability to sales in a newly started business. The charging section (Section4) cannot be taken to mean two different kinds of liabilities for the same class of persons and things. This, in my view, is another decisive pointer that the meaning of "any person who sells" must be taken as confined to a "business".

10. An amending Act is a new but a partial legislation. The main scheme of the original enactment will ordinarily control the meaning of the amending provisions. Any repugnancy in the amending statute will yield to the essential and central stream in the original Act. The original definition of "dealer" needed redrafting in the Finance Act, 1950, as the sale or supply of goods in the execution of a contract and the sale or supply of goods by the Government were sought to be brought into the taxing area. These two new elements were not included in the original definition. Gradually the Government in a welfare State is engaging itself more and more in business like any private citizen or association of citizens. That may have necessitated the change. The change was obviously in regard to other groups of persons, like those engaged in contract business and Government. The change sought for was not in the kind of sale that had been specified in the original Act by saying "the business of selling or supplying etc." While drafting anew the definition of "dealer", the draftsman adopted the present form, which appeared to him to be more compendious than the former. If the essence of the original definition was not sought to be changed, the changed form of language should be taken in consistency with the original essence and the other unamended provisions of the Act.

11. The rates of sales tax are related to the turnover of the assessee. "Turnover" used in relation to a dealer liable to tax under the Act means the aggregate of the sale prices received or receivable by him. The notion of "aggregate" is coupled with the frequency of sales which is the main feature of a business of

selling.

12. For all these reasons I am of the view that the amended definition of "dealer" means any person who sells or supplies any goods in connection with his business. Any casual sale of another kind of goods will not make the seller a "dealer". In the present case the sale of machineries was not in the course of the assessee''s business. Admittedly they were casual sales. The assessee was not liable to pay sales tax in that respect. This disposes of the reference in favour of the assessee.

13. Since the changed definition gave rise to the view taken by the department, and there was some apparent justification for that, the department shall not be liable to costs.

S.N.P. Singh, J.

14. I agree.