

(1957) 03 PAT CK 0008

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 668 of 1954

Debu Lal Gudarmal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-03-1957

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 2(g), 25(3)
Sales of Goods Act, 1930 — Section 25

Citation : (1957) 8 STC 583

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Tarkeshwar Prasad and K.N. Jain, for the Appellant; The Government Pleader, for the Respondent

Judgement

Ramaswami, C.J. and Raj Kishore Prasad, J.—In this case the Board of Revenue has submitted the following questions of law for the opinion of the High Court u/s 25 (3) of the Bihar Sales Tax Act :-

(i) Whether there is any material to support the assessment of sales tax upon the petitioner firm Debulal Gudarmal on a turnover of goods worth two lacs for local sale ?

(ii) Whether the assessment of sales tax upon linseed to the value of Rs. 1,24,998 despatched outside the State of Bihar is legally valid ?

(iii) Whether there is any material to support the contention of the assessee firm that the quantity of linseed to the extent of Rs. 1,24,998 has been sold outside the State of Bihar ?

2. The petitioner is a firm called Debulal Gudarmal and carries on business in foodgrains, potato, sugar, oil-seeds etc. at Rafiganj in the district of Gaya. For the period from the 1st April, 1949, to the 31st March, 1950, the petitioner did not furnish quarterly returns nor produced his books of account. The Superintendent of Sales Tax therefore made assessment to the best of his

judgment. The assessment order is dated the 2nd December, 1950. The gross turnover of the assessee was determined to be Rs. 11,51,890. The taxable turnover with regard to the linseed despatched outside the Province was determined to be Rs. 6,29,300. As regards the local sales, the taxable turnover was determined to be Rs. 1,80,000. Against the assessment made by the Superintendent of Sales Tax the assessee preferred an appeal to the Deputy Commissioner of Sales Tax who made an order of remand in the case. The assessee then took the matter before the Board of Revenue and on the 9th November, 1953, the revisional application was allowed in part. The assessee then applied to the Board of Revenue to state a case to the High Court on certain questions of law. The application was rejected by the Board of Revenue on the 25th October, 1954. The assessee then moved the High Court u/s 25(3) of the Bihar Sales Tax Act, and the Board of Revenue has now made a statement of case in accordance with the direction of the High Court on three questions of law which have been already referred to.

3. With regard to the first question the argument put forward by Mr. Tarkeshwar Prasad on behalf of the assessee is that there is no material to support the assessment made upon the assessee on the turnover of goods worth two lacs for local sale. The argument was that the assessee had no local sale at all and the entire business of the assessee consisted in despatching goods for sale outside the State of Bihar. It was argued that there was no material whatsoever for holding that there was any local sale on the part of the assessee. We are unable to accept the argument of learned counsel as correct. As we have already said the assessee did not file returns for the relevant quarters nor did he produce his account books though he was given several opportunities by the Superintendent of Sales Tax. It was pointed out on behalf of the assessee that the books of account were stolen but from the order of the Deputy Commissioner of Sales Tax it appears that the allegation was that the account books were stolen in January, 1951, but notice was served upon the assessee to produce the account books on the 20th August, 1950. In any case the fact remains that the assessee did not produce his books of account and so the Superintendent of Sales Tax was compelled to make assessment to the best of his judgment. We do not accept the argument of the assessee that the assessment of the Superintendent of Sales Tax is made upon no material so far as local sale is concerned. The assessment has been made in the first place upon the report of the Inspector printed at page 59 of the paper book. In this report dated the 10th February, 1950, the Inspector states that he saw the books of account, Rokar, Khata, Bilti Nakal and Nakal Bahi. He also notes that the dealer's Munib objected to take further extracts from the account books on the ground that the proprietor was absent. He further states in his report that "the dealer's gola is the biggest gola in Rafiganj Thana and deals in all kinds of food-grain, potato, tisi, groundnuts etc. and even despatches these articles outside the District". The Inspector has further stated as follows : "The dealer's non-co-operative attitude to explain his accounts clearly indicated that he has got some mala fide intention. Taking a

most modest estimate of his monthly transactions, I estimate Rs. 30,000 as his average monthly gross turnover". In the assessment order the Superintendent of Sales Tax states that he paid a surprise visit to the business of the assessee on the nth August, 1950, together with two Inspectors, Babu Gopal Krishna Verma and Maulvi Akhtar Ali, and at the time of his visit the business of the dealer was going on in full swing. In the course of the assessment order the Superintendent of Sales Tax further states as follows :-

But no books of accounts could be produced before us for examination nor could we have any access to his godowns to have an idea of his stock position, on the usual plea that the proprietor of the firm was out with the keys of the godown as well as of the almirah which contained the books of accounts belonging to the dealer. However we got hold of a few loose sheets of paper containing accounts of daily transactions and served a notice on the dealer to appear with his books of accounts on 28th August, 1950, at Gaya, On the date fixed the dealer failed to appear but sent a stamped petition for time by registered post on the ground of his illness. As this was the first petition for time the case was adjourned for nth October, 1950, and he was duly informed. On the date fixed a second petition for time was received again by registered post and the time prayed for was on the ground of illness of his son. In order to give the utmost opportunity to the dealer for the production of his accounts, the case was again adjourned to 2nd November, 1950. Meanwhile an Inspector was deputed for collection of the figures of despatches made by him or on his behalf from the different railway stations of Gaya District. A letter was also addressed to the Agent, Imperial Bank, Gaya, for furnishing a statement of deposits made by the dealer during 48-49 and 49-50. No action was taken by the dealer on 7th November, 1950, the date fixed for hearing. However a stamped petition for time was received again on 20th November, 1950, again on the ground of his illness. As more than reasonable time had already been allowed the petition was rejected and assessment of the dealer was completed u/s 13 (4) to the best of judgment.

4. It was argued on behalf of the assessee that the Nakal Bahi only contained entries with regard to despatch of goods outside the State of Bihar. Even assuming that this argument is correct there is sufficient material in the report of the Inspector dated the 10th February, 1950, and the inspection made by the Superintendent of Sales Tax on the nth August, 1950, to support the assessment made upon the assessee with regard to local sales over two lacs. We therefore hold that the first question referred to the High Court should be answered in favour of the State of Bihar and against the assessee and it must be held that there is material to support the assessment of sales tax upon the assessee on a turnover of goods worth two lacs for local sales.

5. We shall then take up the second and third questions together. The argument on behalf of the assessee is that the sale of linseed to the extent of Rs.1,24,998 took place outside the territorial limits of the State of Bihar and so the sale of linseed to this extent should not have been taxed. In support of his argument

learned counsel referred to the list of despatches printed at page 56 of the paper book. The despatches of linseed according to this statement are for the period from the 16th April, 1949, to the 14th July, 1949. The statement is as follows :-

Statement showing despatch and sale of linseed outside Bihar in the year 1949-50 of M/s Debulal Gudarmal, Rafiganj (Gaya).

Date of R. R. Destination No. of Weight as Date of sale Firm through despatch. No. bags. per as per Bijak. whom sold. railway certificate.

16-4-1949. 139992 Ramkristopur 250 668-30 Jeth Badi-7 Rai Bahadur (19th May Seth Jasaram 1949). Fatehchand, 160 Cross St., Calcutta. 16-4-1949. 139993 Do. 250 668-30 Jeth Badi-1 Kalicharan (torn) Ram Chandra. (20th May 6 Hanopokar 1949). 1st Lane, Calcutta. 25-6-1949. 140128 Howrah 240 546-0 Asoj Sudi-5 Rai Bahadur (27th Sept. Seth Jasaram 1949). Fatehchand, 160 Cross St. Calcutta. 11-7-1949. 140149 Do. 240 548-0 Asoj Badi-5 Do. (14th Sept. 1949). 23-5-1949. 140075 Ramkristopur 250 591-20 Sawan Badi- Do. 10(20th July 1949). 15-4-1949. 139991 Do. 250 668-30 Jeth Badi-5 Do. (18th May 1949). 20-4-1949. 140004 Do. 261 593-30 Jeth Badi-11 Do. (23rd May 1949). 20-5-1949. 140063 Do. 260 591-20 Asar Sudi- Do. 16(10th July 1949). 5-6-1949. 716296 Do. 221 532-31 BhadoVadi- Do. 11(20th Aug. 1949). 14-7-1949. 716312 Do. 241 548-5 Asoj Badi-12 Do. (19th Sept. 1949).

6. The statement at page 50 of the paper book also shows that most of the consignments were made to "self". This statement is as follows:

Statement showing the total list of despatch made by Messrs Debulal Gudarmal from Rafiganj station: Financial year 1949-50.

Date Name of To whom Station to R/R No. of Description Weight sender onsigned No. bags of goods M.S. 15-4-1949 Mahabir Oil Self Ramkristopur 139991 250 Linseed 568-30-0 Mill 16-4-1949 Do. " " 139992 250 " 568-30-0 16-4-1949 Debu Lal " " " 139993 250 " 568-30-0 20-4-1949 Mahabir Oil " " 140004 261 " 593-30-0 Jee Mill 20-5-1949 Sri Oil " " 140003 260 " 591-20-0 Mahabir Mill 25-6-1949 Do. " Howrah 140128 240 " 546- 0-0 11-7-1949 Debu Lal " " 140149 240 " 546- 0-0 23-5-1949 Sri Ji " Ramkristopur 140075 260 " 591-20-0 Mahabir Oil Mill

7. The argument on behalf of the assessee is that the railway receipts were not made out in the name of the purchaser and so there has been reservation of the right of disposal within the meaning of Section 25 of the Sale of Goods Act and so title did not pass to the purchaser at the time the goods were put on board the common carrier. There is, however, no material in this case to show in whose name the railway receipts were endorsed by the assessee. It is true that the fact of the seller taking the bill of lading to his own order is prima facie evidence but that is not a conclusive circumstance, because it is possible that the seller may intend to appropriate the goods on shipment as to pass the property, yet may deal with the bill of lading in such a way as to prevent the buyer obtaining

possession of the goods without paying, or accepting a bill of exchange in payment of the price. In such a case the property will pass, subject to the seller's lien for the price. That is the position for example illustrated by the case of *Browne v. Hare* (1858) 27 L.J. Ex. 372 ; 117 E.R. 811. There is no material produced on behalf of the assessee to indicate how the railway receipts were endorsed, to whose name it was endorsed and where it was endorsed. In the absence of any such material it is difficult to accept the argument of the assessee, that title to the goods did not pass to the purchaser within the territorial limits of Bihar but title passed in Calcutta and therefore the sale took place in Calcutta. We are accordingly of the opinion that there is no material to support the contention of the assessee that the quantity of linseed to the extent of Rs. 1,24,928 has been sold outside the State of Bihar and the third question referred to the High Court must be answered in favour of the State of Bihar and against the assessee. It further follows that the assessment of sales tax upon the linseed is legally valid and the second question referred to the High Court by the Board of Revenue must also be answered in favour of the State of Bihar and against the assessee.

8. It is also necessary to mention one other point. Even assuming that the quantity of the linseed to the extent of Rs. 1,24,998 was sold outside the State of Bihar it does not necessarily follow that the State of Bihar had no jurisdiction to tax those sales. The reason is that Section 2 (g) of the Bihar Sales Tax Act has extended the conception of the word "sale" for the purposes of that Act. As the section stood on the material date, that is, from the 1st October, 1948, to the 31st March, 1951, it read as follows:-

"Sale" means, with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge:

Provided that a transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale :

Provided further that notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930 (III of 1930), the sale of any goods-

(i) which are actually in Bihar at the time when, in respect thereof, the contract of sale as defined in Section 4 of that Act is made, or

(ii) which are produced or manufactured in Bihar by the producer or manufacturer thereof, shall, wherever the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in Bihar...

10. Under the second proviso it is competent for the taxing authorities to tax sale of goods which are actually in Bihar at the time when, in respect thereof, the contract of sale as defined in Section 4 of that Act is made, and such sale of

goods shall, wherever the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in Bihar. The constitutional validity of this provision was the subject-matter of consideration in a recent decision of a Division Bench of this Court in *Messrs. Tata Iron and Steel Company Limited v. State of Bihar* AIR 1956 Pat 92 and it was held in that case that the provisions of Section 2 (g) as amended by Bihar Act VI of 1949 are constitutionally valid. It was further held in that case that the circumstance that the goods were manufactured in Bihar constituted a sufficient territorial nexus or connection which conferred jurisdiction upon the Provincial Legislature to impose the tax, and the situs of the goods attracted the constitutional authority of the Provincial Legislature to tax the sale transaction.

11. For these reasons we hold that all the questions referred by the Board of Revenue to the High Court should be answered against the assessee and in favour of the State of Bihar. The assessee must pay the cost of this reference, hearing fee Rs. 250.