
(1959) 09 PAT CK 0027

In the Patna High Court

Case No : Miscellaneous Judicial Case No's. 634, 635 and 636 of 1956

Deo Narayan Singh Ishwar Narayan Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-09-1959

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 13, 13(3), 25(2)(b)

Citation : (1960) 11 STC 436

Hon'ble Judges : V. Ramaswami, C.J;R.K. Chaudhary, J

Bench : Division Bench

Advocate : R. Prasad and K.P. Ambastha, for the Appellant; G.P. Shahi, for the Respondent

Judgement

R.K. Chaudhary, J.—In these cases we are concerned with the assessment of sales tax on the petitioner who is a commission agent and deals in foodgrains and oil-seeds for the period 1st July, 1947, to 31st March, 1948, 1st April, 1948, to 31st March, 1949 and 1st April, 1949, to 31st March, 1950. It appears that, in response to a notice u/s 13 of the Bihar Sales Tax Act, the assessee appeared with his accounts which, on an examination, were found to have discrepancies. The case for the assessment year 1947-48 had, therefore, been given to the Area Inspector for inquiry. Accordingly, the Area Inspector, Sri R.D. Singh, paid a surprise visit to the gola of the assessee on the 19th July, 1950 and found a booklet and a few slips containing accounts in the cash box on the gaddi. On an examination, the Area Inspector found that they contained sales accounts which were not incorporated in the regular books of account, e.g., the rokar and nakal bahis. The dealer is said to have stated before the Area Inspector that the booklet and the slips were written by boys who were learning to write accounts. He, however, suspected the booklet and the slips to contain suppressed sales. Therefore he signed all the leaves of the booklet and the slips and took a written statement from Babu Hiralal Singh, who was present in the gola at the time of his visit and asked him to produce them on the date fixed for examination of his accounts. On the 10th August, 1950, the dealer appeared and produced the

booklet and the slips which had been signed by the Inspector, but most of them were found not to be in their original form. It is said that a few slips were produced with forged signatures. The slips and the booklet were, therefore, seized by the Superintendent of Sales Tax and the dealer was asked to produce his accounts up to 30th June, 1950, on the 1st September, 1950. After a part examination of the accounts on 1st September, 1950, the case was adjourned to the next day and the dealer, on the next day, disowned the slips and the booklet and said that these belonged to one Lachman Prasad, a dandidar in his gola. He was, however, given a chance to produce this Lachman Prasad, dandidar, but he failed to produce him. The Superintendent of Sales Tax, therefore, took the view that the slips and the booklet belonged to the dealer and the entries of sales made in them were sales made by him. He also found that the dealer had not entered certain goods found in his stock in the regular account books. He, therefore, came to the conclusion that the dealer had suppressed his sales and disbelieved his return and the accounts produced in support of the return. Accordingly, he proceeded to assess the dealer to the best of his judgment u/s 13(3) of the Bihar Sales Tax Act. Considering all these facts, the Superintendent of Sales Tax took 100% suppression on account of sales as per slips and determined the total suppression at 200%. The gross turnover was, therefore, enhanced by three times. Appeals preferred by the dealer were dismissed by the Additional Assistant Commissioner of Sales Tax and similarly the revision applications filed by the assessee were dismissed by the Deputy Commissioner of Sales Tax. The assessee then came up in revision before the Board of Revenue which dismissed the revision applications with certain modifications in the quantum of assessment by doubling the gross turnover instead of its having been enhanced by three times by the Superintendent of Sales Tax. Thereafter the assessee made applications before the Board of Revenue for referring certain questions of law to this Court, but they were not admitted. He, accordingly, made applications to this Court u/s 25(2)(b) of the Bihar Sales Tax Act and, as directed by this Court, the Board of Revenue has referred the following question of law for the decision of this Court :-

Whether in the facts and circumstances of the case the order of the Board of Revenue that the assessment should be made on the estimate of double the gross turnover is legal ?

2. It appears that the assessment for the quarter 1st April, 1950, to 30th June, 1950, was also made by the Superintendent of Sales Tax in circumstances similar to the assessment made for the assessment years in question in these cases. There also the accounts of the assessee had been disbelieved on account of the recovery of the booklet and the slips referred to above by the Area Inspector. The matter ultimately came to the Board of Revenue where it was contended that the finding that the booklet and the slips found by the Inspector belonged to the assessee was not justified inasmuch as Lachman Prasad, to whom, according to the assessee, the booklet and the slips belonged, had not been examined and that there could not be any finding as to the documents having been forged in

the absence of the examination of an expert. This contention appears to have been accepted by the Board of Revenue which remanded the case to the Sales Tax Officer for further inquiry about the question of forgery and for the examination of the Inspector and a handwriting expert on the points in question. It was also directed that the declarations of the registered dealer should be examined afresh. It is, however, not known whether a fresh inquiry has been made, but the fact remains that the Board of Revenue in that case did not accept the reasoning of the Sales Tax Officer for discarding the accounts of the assessee on the ground of the recovery of the booklet and the slips without further investigation.

3. The only contention raised by counsel for the assessee is that the Board of Revenue, not having accepted the rejection of the accounts produced by the assessee on the ground of the recovery of the booklet and the slips by the Area Inspector in the case referred to above, should not have accepted the best of judgment assessment made by the Sales Tax Officer rejecting the account books on the ground of the recovery of the same booklet and the slips. The argument advanced on behalf of the assessee is that the Board of Revenue in the case relating to the assessment of the quarter 1st April, 1950, to 30th June, 1950, did not accept the findings of the Sales Tax Officer that the booklet and the slips that were recovered by the Area Inspector belonged to the petitioner on the evidence as it stood on the record and had to remand the case for further inquiry into the matter. It was not, therefore, possible for the Board of Revenue to accept the assessment made for the years in question on the same material, namely, the rejection of the account books due to the recovery of the booklet and the slips by the Area Inspector. This point does not seem to have been raised before the Board of Revenue, as there is nothing in the order of the Board with regard to it. Be that as it may, the question for our consideration is, whether the Board of Revenue was justified and was right in law in basing its decision on the material for the assessment years in question, even though with respect to another assessment period it had not accepted that as sufficient for making best of judgment assessment. To me there appears to be nothing in law which could prevent the Board of Revenue from coming to a decision on the materials that were before it on a re-consideration of the same, though on a previous occasion it had not accepted them as sufficient for the purpose. From the resolution of the Board of Revenue in that case, which is typed at page 89 of the paper book, it does not appear that its attention was drawn to the fact that the assessee had given an explanation to the Area Inspector absolutely different from the one that he gave before the Sales Tax Officer. This may probably be the reason why it did not think it proper to reject the explanation given by the assessee in that case. But in the present case the two different explanations given by the assessee at two different times have been noticed by the Board of Revenue and, in view of the same it was perfectly entitled to come to a conclusion different from that to which it had arrived in the previous case referred to above. The question whether the booklet and the slips that were recovered on surprise inspection belonged to

the assessee or to some other person is purely a question of fact and nothing has been placed before us to interfere with the findings of the Courts below on that question of fact.

4. In my opinion, therefore, the question referred to must be answered against the assessee, who must pay the costs of the reference. Hearing fee is assessed at Rs. 250 for all these cases.

V. Ramaswami, C.J.

5. I agree.