
(1952) 12 PAT CK 0024

In the Patna High Court

Case No : Misc. Judicial Case No. 74 of 1952

Diamond Coal Co. Ltd.

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 09-12-1952

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 13, 2
Constitution of India, 1950 — Article 226, 286(1)

Citation : AIR 1953 Patna 78 : (1953) 1 BLJR 45

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : S.C. Banerji, B.C. Ghosh and A.K. Choudhury, for the Appellant;
Govt. Pleader and L.M. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—In this case the petitioner has obtained a rule calling upon the State of Bihar and the other respondents to show cause why a writ in the nature of prohibition should not be issued restraining them from levying or realising tax on sale and purchase of coal outside the State of Bihar.

2. The petitioner is Diamond Coal Company, Limited, which is a joint stock company having its registered office at Jharia in the district of Manbhum. The petitioner carries on trade in coal in the various States of India. During the year 1949-50 the petitioner's gross turnover on sale of coal was estimated to be a sum of Rs. 6,11,717/2/9. After allowing for sales to registered dealers and a rebate of 2 per cent, the taxable turnover was determined by the Sales tax authorities to be Rs. 5,98,467. The petitioner claimed that he had sold coal outside Bihar to the value of Rs. 55,862/3/6. The petitioner demanded that this amount should, be exempted from sale tax. On 30-10-1951 the Assistant Superintendent of Sales Tax rejected the claim holding that the petitioner was liable to pay tax even on the quantity of coal sold outside Bihar. The petitioner alleges that he was illegally made liable to pay sale tax of Rs. 790/1/- in excess

of what he is really liable to pay.

3. In support of the rule, Mr. Basant Chandra Ghosh referred to Section 2(g), Bihar Sales Tax Act, 1947. Section 2(g) defines "Sale" as follows:

""Sale" means 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, the sale of any 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, shall, wherever the said contract of sale is made be deemed for the purposes of this Act to have taken place in Bihar."

The Act was amended by Bihar Act 7 of 1951 and as a result the second proviso to Clause (g) of Section 2 was omitted and to the said clause as so amended, the following explanation was added : "Explanation: -- The sale of any goods actually delivered in Bihar as a direct result of such sale for the purpose of consumption in Bihar shall be deemed for the purpose of this Act to have taken place in Bihar, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has by reason of such sale, passed in another State."

4. The argument of the petitioner is that after the date when the Constitution came into force that second proviso was void and inoperative as it was in conflict with Article 286(1) of the Constitution. Article 286(1) states :

"No law of a State shall impose or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place (a) outside the State; or (b) in the course of the import of the goods into, or export of the goods out of, the territory of India."

The case of the petitioner is based on the Explanation to Article 286(1) of which Sub-clause (a) runs.

"a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State."

5. The first question is whether upon the facts stated in the affidavit the High Court may properly issue a writ of prohibition under Article 226 of the Constitution. The respondents contended in the first place that the second proviso to Section 2(g) was not unconstitutional or void. The respondents

contended secondly that even on the assumption that the section was ultra vires there was no basis for the argument that the sales Tax authorities acted in excess of their jurisdiction. It was argued that an assessment made under the machinery provided by the Sales Tax Act even if based on a provision held to be ultra vires was not in excess of jurisdiction. In, Other words, the fact that the Commissioner relied upon an ultra vires provision of the statute did not make the assessment a nullity. In my opinion the argument of the learned Government Pleader is correct.

It is conceded in this case that the petitioner is a registered dealer under the Bihar Sales Tax Act and that he carries on trade in coal. It is also conceded that the petitioner submitted his return of sales tax. The assessment was made u/s 13 by the Commissioner upon the basis of the petitioner's return. It is manifest upon these facts that the preliminary conditions required by Section 13 are satisfied, and the commissioner had jurisdiction u/s 13 to make assessment. In fact the section imposes on him the duty to make assessment of the sales tax. If the assessment is made under the machinery of the Sales Tax Act, the assessment is manifestly made in exercise of the Commissioner's jurisdiction. The circumstance that the Commissioner has relied upon an ultra vires provision of the statute in making the assessment, will not invalidate the assessment like an order of a Court lacking jurisdiction. The argument was stressed on behalf of the petitioner that second proviso to Section 2 (g) was ultra vires of the Constitution and the petitioner ought to have been allowed a remission of sales tax with respect to the quantity of coal sold outside the State of Bihar. Assuming though not affirming that the second proviso to Section 2 (g) is in conflict with the Constitution, the inference) does not by any means follow that the assessment made by the Commissioner is void and without jurisdiction. If the Commissioner had relied upon an ultra vires provision of the Sales Tax Act in making the assessment such reliance is not an excess of jurisdiction but a mistake of law made in the course of exercise of jurisdiction. This view is supported by the principle enunciated by the Judicial Committee in -- "Raleigh Investment Co. Ltd. v. Governor General in Council 74 Ind. App. 50 (P. C.) and -- "Commr. of Income Tax West Punjab, North West Frontier and Delhi Provinces, Ignore v. Tribune Trust 74 Ind. App. 306 (P. C.).

6. It was nevertheless contended on behalf of the petitioner that a writ of "certiorari could be granted for an error of law apparent on the face of the record even if the taxing authorities had committed no error of jurisdiction. Mr. Basant Chandra Ghosh strongly relied on -- "Rex v. Northumberland Compensation Appeal. Tribunal-Ex parte Shaw (1952) 1. T. L. R. 161, in which it was held by the Court of Appeal that the King's Bench had jurisdiction to quash by "ccrtiorari1 the decision of an inferior tribunal where there was error of law on the face of the record and that "certiorari" could be granted notwithstanding that an inferior tribunal had not acted without or in excess of its jurisdiction. But all the Judges constituting the Court held that a writ of "certiorari" was available in such a case only if the order of the tribunal was a "speaking order". It is not

necessary to decide for the purpose of this case whether a writ of "certiorari" under Article 226 of the Constitution can properly be granted for a mere error of law committed by an inferior tribunal. For I consider that the petitioner has a complete and equally efficacious alternative remedy by way of appeal and revision to the authorities constituted under the machinery of the Sales Tax Act. Section 24 states that any dealer objecting to an order of assessment may, in the prescribed manner, appeal to the prescribed authority against such assessment. Section 24 (4) enacts that the Commissioner may, upon application or of his own motion revise any order passed under the Act and the Board of Revenue may, in like manner, revise any order passed by the Commissioner. If the petitioner is still dissatisfied he may ask the Board of Revenue to state a case to the High Court referring any question of law arising out of the order of assessment. If his request is refused he may apply to the High Court for an order requiring a case to be stated and to be referred to the High Court (see section 25 of the Act). It is manifest that the statute provides effective and appropriate machinery for the review of any assessment on ground of law including any question as to the constitutional validity of any taxing provision in the statute. In the light of these considerations I think it will be improper in the present case to grant a writ under Article 226 of the Constitution prohibiting the sales tax authorities from imposing or realising tax to which the petitioner has taken objection. The principle applicable has been recently stated by the Supreme Court in -- "Veerappa v. Raman & Raman Ltd 1952 S. C. J. 261. In that case the Madras High Court had quashed certain proceedings of the Regional Transport Authority and the Central Traffic Board, Madras, and an order of the State of Madras directing issue of permits to the petitioner. The High Court took the view that the procedure laid down in the Act was not followed and that the order of Central Traffic Board was most unsatisfactory. The Supreme Court allowed the appeal and set aside the order of the High Court granting the writ. The Supreme Court based its decision on the ground that the Act itself provided a complete and precise scheme for regulating the issue of permits and there was a regular hierarchy of administrative bodies established to deal with the regulation of Transport by means of motor vehicles. The Supreme Court emphasised that the remedies for the redress of grievances or the correction of errors were found in the statute itself and it was to these remedies that resort must generally be had. At page 287 the Supreme Court states : "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made".

7. Applying the principle to the present case I think that there is no warrant for issue of a writ of prohibition of certiorari to the respondents restraining them from assessing or collecting sales tax from the petitioner.

8. As the application must fail on the preliminary question, it is, I think, not proper to express any opinion on the other question whether the second proviso to Section 2(g) of the Sales Tax Act was constitutionally valid or whether that provision was in conflict with Article 286 of the Constitution.

9. In my opinion this application must be dismissed with costs. Hearing fee five gold mohars.

Sarjoo Prosad, J.

10. I entirely agree. The interpretation of Article 286(1) of the Constitution, and, in particular, the explanation appended thereto has presented to me no small measure of difficulty. The Sales-tax Officer purported to assess the petitioner in regard to the item complained of on the hypothesis that Article 286(2) of the Constitution read with the Sales Tax Continuance Order, 1950, promulgated by the President of India had no application to the case, and the tax on the sale of goods could continue to be levied until 31-3-1951. Mr. Ghosh, however, contends that the case is nevertheless governed by Clause (1) (a) of Article 286, and as such exempt from taxation because the State could not impose tax on sale or purchase of goods which had taken place outside the State. He further claims that the explanation to Clause (1) (a) of the Article is of no avail to the taxing authorities because although the sale of the goods may have taken place in Bihar, the goods were actually delivered for the purpose of consumption outside the State, and, therefore, those goods would be deemed to have been sold not in the State of Bihar but outside that State. There is undoubtedly *prima facie* much force in the contention of Mr. Ghosh, and Article 236 requires very careful examination. The matter will have to be decided at one stage or another either by the Revenue Authorities themselves or by this Court on an appropriate reference made for that purpose. As at present advised, I do not consider it necessary to deal with this problem, as I am also of the view that even assuming for the sake of argument that the Sales Tax Authorities relied upon an "*ultra vires*" provision of the Sales Tax Act in making the assessment, the action of the authorities was not without jurisdiction, and the party aggrieved is entitled to have his grievances redressed by the appropriate procedure which the machinery of the Act itself provides. This view, as my learned brother has rightly held, is fortified by the decision of the Judicial Committee in -- "*Raleigh Investment Co., Ltd. v. Governor-General in Council* 74 Ind. App. 50 (P. C.).