(1988) 03 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No''s. 1735 and 1736 of 1986 (R)

G.B. Kumar and Sons APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:
Central Sales Tax Act, 1956 — Section 14, 15, 16, 3

Citation : (1988) PLJR 474 : (1988) 70 STC 240

Hon'ble Judges : Satyeshwar Roy, J;B.P. Singh, J

Bench : Division Bench

Advocate : G.C. Bharuka and P.D. Agrawala, for the Appellant; S.B. Gadodia, S.C.I., Biren Poddar and Pradeep Modi, J.C. to S.C.I., for the Respondent

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—The facts involved in both these writ petitions and the law applicable thereto are similar. They were, therefore, heard together and are being disposed of by this judgment.

2. The facts are not in dispute. The petitioner purchased from Tata Iron & Steel Company Limited (TISCO) rejects and middlings of coal, declared goods u/s 14 of the Central Sales Tax Act, 1956 (for short "the C.S.T. Act"). The petitioner paid sales tax under the Bihar Finance Act, 1981 (for short "the Act"). The petitioner thereafter sold part of the coal so purchased by it from TISCO in the course of inter-State trade and commerce during the period August, 1982 to March, 1983 in one case and April, 1983 to March, 1984 in the other case. Central sales tax was also paid by the petitioner. The assessment, both under the Act and the C.S.T. Act, was completed by order dated 17th June, 1984 in one case and 22nd February, 1985 in the other case.

The petitioner made a claim in the prescribed form for refund of the sales tax paid under the Act. This was done as, the petitioner contended, it was entitled under Clause (b) of Section 15 of the C.S.T. Act. By order as contained in annexure 4, the claim was rejected by respondent No. 2. The ground on which this was rejected was that as the claim was not preferred within three months from the date on which the sale in the course of inter-State trade and commerce was effected, the petitioner was not entitled to refund.

3. The petitioner has prayed for quashing annexure 4, order dated 3rd September, 1986 passed by respondent No. 2 on the ground that respondent No. 2 could not have refused to refund the sales tax on the ground of limitation.

4. Section 16(b) of the C.S.T. Act provides that where a tax has been levied under the State law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under the State law in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State. Section 12(1) of the Act provides for "rate of tax". Section 12(2) provides that notwithstanding anything contained in this part the levy of the tax payable by a dealer under this part on sales or purchases of declared goods made by him inside Bihar shall be subject to the restrictions and conditions contained in Section 15 of the C.S.T. Act. Rule 35 of the Bihar Sales Tax Rules, 1983 provides for refund of tax necessitated by Clause (b) of Section 15 of the C.S.T. Act. Sub-rule (2), inter alia, provides that every dealer, who claims refund shall furnish to the appropriate authority the statement in form XXIII-

(a) within three months from the date on which the movement of the goods to another State commenced in the case of a sale in the course of inter-State trade or commerce falling within Clause (a) of Section 3 of the C.S.T. Act;

(b) within three months from the date on which the sale in the course of inter-State trade or commerce is effected by transfer of documents of title to the goods in the case of sale falling under Clause (b) of Section 3 of the C.S.T. Act.

In this case, we are concerned with Sub-rule (2)(b) only.

5. It was contended on behalf of the petitioner that when Section 15 of the C.S.T. Act provides for refund of tax paid on the declared goods which goods ultimately were sold in the course of inter-State trade or commerce, the respondents could not have rejected the claim of the petitioner on the ground that the application for refund was not made within three months from the date on which the sale of inter-State trade or commerce was effected. It was urged that the right which has been given to a dealer under the C.S.T. Act cannot be taken away on the ground of limitation, as it was beyond the power of the State Government. On behalf of the respondents, it was contended that Section 15 of the C.S.T. Act provides for refund on such terms and conditions as may be prescribed and the State Government was entitled to fix a period as a condition within which an application for refund shall be made. In support of the rival contentions made on

behalf of the parties, learned counsels relied on a number of decisions which shall be referred to hereinafter.

6. The question which is required to be decided in this case is whether the State Government could under the rules framed by it prescribe limitation within which an application for refund of State sales tax paid by a dealer on a declared goods which ultimately became subject-matter of inter-State trade or commerce.

7. According to the respondents, Rule 35 has been necessitated to be framed in view of the provisions of Section 15(b) of the C.S.T. Act which provides for refund "in such manner and subject to such conditions as may be provided in any law in force in that State". Since the section not only provides for prescribing manner but also condition, the State Government was empowered to impose a period of limitation as a condition within which an application for refund is to be made. On behalf of the petitioner, it was urged that since right has been given to the party for claiming refund under the C.S.T. Act, the respondents could not have taken away that right by imposing a period of limitation.

8. On behalf of the respondents reliance was placed in Munshi Abdul Rahiman and Bros. and Another Vs. Commercial Tax Officer, I Circle, Hubli and Others, , a Division Bench case of the Mysore High Court, Sri Venkateswara Groundnut Factory v. Commercial Tax Officer, Cuddapah [1972] 30 STC 185 AP, a Division Bench case of the Andhra Pradesh High Court, A.K.D. Alaga Raja and M.D. Chandrasekara Raja Vs. The State of Madras, , a Division Bench case of the Madras High Court, and Shivaratan Inderchand Mundra v. Commissioner of Sales Tax, Orissa [1971] 28 STC 211 Ori, a Division Bench case of the Orissa High Court, in support of the proposition that the State Government was entitled to prescribe limitation in view of Section 15 of the C.S.T. Act. So far Munshi Abdul Rahiman and Bros. and Another Vs. Commercial Tax Officer, I Circle, Hubli and Others, is concerned, it appears from paragraph 14 of the report that it was not contended that it was beyond the power of the State Government to prescribe condition subject to which refund may be claimed. Consequently, the Bench was not required to record any finding on this question. In the case of A.K.D. Alaga Raja and M.D. Chandrasekara Raja Vs. The State of Madras, the power of the State Government to prescribe period of limitation for making any application for refund was not questioned. In Sri Venkateswara''s case [1972] 30 STC 185 (AP) and in Shivaratan''s case [1971] 28 STC 211 (Ori), it was held that the State Government could impose a period of limitation for preferring claims for refund. It was so held in both the cases on the ground that in the sales tax law of both the States, i.e., Andhra Pradesh and Orissa, there was provision in the Act itself of both the States which prescribes that the tax levied on the declared goods sold in the course of inter-State trade or commerce shall be refunded in such manner and subject to such condition as may be prescribed. Rules were framed prescribing limitation as a condition for making the application of refund.

So far the Bihar Act is concerned, there is no such provision as is in the Sales Tax Acts of Andhra Pradesh and Orissa. The only provision which was brought to our notice was Section 12(2) of the Act which reads as follows :

12. Rate of tax....

(2) Notwithstanding anything contained in this part the levy of the tax payable by a dealer under this part on sales or purchases of declared goods made by him inside Bihar shall be subject to the restrictions and conditions contained in Section 15 of the Central Sales Tax Act, 1956 (74 of 1956).

9. In the case of State of Mysore and Others Vs. Mallick Hashim and Co., the power of the State Government to impose a limitation as a condition for making application for refund was directly questioned. A Division Bench of the Mysore High Court held that it is ultra vires the rule-making power to frame any rule prescribing period of limitation. The matter was taken to the Supreme Court by the State of Mysore and the judgment of the Supreme Court is reported in that volume at page 363. The Supreme Court observed that it was not necessary to go into the question whether it was ultra vires the rule-making power of the State Government, but it held that the rule prescribing the period for limitation for making an application for refund is wholly unreasonable, and consequently cannot be sustained. The appeal was dismissed. Applying the law laid down by the Supreme Court, which is directly applicable to the facts of this case, it must be held that the period prescribed under Rule 35 of the Bihar Rules for filing application for refund is wholly unreasonable and consequently cannot be sustained. In view of the decision of the Supreme Court in Mallick''s case [1973] 31 STC 358 AP, the decisions of the Andhra Pradesh High Court and the Orissa High Court referred above cannot be accepted as laying down the law correctly.

10. On behalf of the petitioner, reliance was also placed in AIR 1972 1935 (SC) : since that case arose out of a completely different Act, I am not discussing it.

11. In the result, the applications are allowed and the orders as contained in annexure 4 to both the writ petitions are quashed. The respondents are directed to refund the amount the petitioner is entitled, in view of Section 15(b) of the C.S.T. Act with interest at the rate of 16 per cent per annum from the date the application for refund was made. There will be no order as to costs.

B.P. Singh, J.

12. I agree.

