

(1956) 04 PAT CK 0016

In the Patna High Court

Case No : Misc. Judicial Case No. 23 of 1953

Great India Rice and Oil Mills

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 24-04-1956

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 13(5), 2
Sales of Goods Act, 1930 — Section 19, 20

Citation : AIR 1957 Patna 178 : (1957) 8 STC 341

Hon'ble Judges : Choudhary, J; Banerji, J

Bench : Division Bench

Advocate : Baldeo Sahay, Tarkeshwar Pd., Madan Kishore and P.P. Rajgrahia, for the Appellant; Government Advocate, for the Respondent

Judgement

Choudhary, J.—In this case the assessee is a firm styled as the-Great India Rice and Oil Mills located at Garh Banaili. The assessment year is the financial year 1947-48 and the period of assessment is from the 1st of July, 1947, to the 31st of March, 1948.

2. The above firm carries on business in cereals, linseeds, jute, gunny bags, cement, mustard oil, etc., since the year 1945. The dealer did not apply for registration as required by the Bihar Sales Tax. Act of 1944 or the Bihar Sales Tax Act of 1947. On being detected, a notice was served on the firm to produce accounts. It Was found that the dealer's gross turnover exceeded the taxable limit during the year 1945-46, and, as such, he became liable to pay sales tax with effect from the 1st of July, 1946. The assessee has already been assessed for the period prior to the 1st of July, 1947, and we are not concerned with that assessment. For the period in question, namely, from the 1st of July, 1947, to the 31st of March, 1948, the assessee was assessed u/s 13 (5) of the Bihar Sales. Tax Act, 1947 (Bihar Act XIX of 1947), hereinafter to be referred to as the Act. Its gross turnover was determined at Rs. 14,40,378-3-3" and its taxable turnover was found to be Rs. 12,48,902. It was, therefore, assessed to pay the

sales tax amounting to Rs. 19,514-2-0. Over and above that, a penalty of Rs. 956-12-0 was imposed on it on account of its failure to apply for registration. Against the assessment so made and the penalty imposed as stated above, the assessee took up an appeal to the Commissioner of Sales Tax, Bhagalpur Division, who remanded the case with certain modifications.

Thereafter the assessee moved the Board of Revenue in revision which upheld the order of the Courts below subject to certain modifications. Being aggrieved by the above order of the Board, the assessee made an application before it for making a reference to this Court, but, as in the opinion of the Board no question of law arose from its order, it rejected the application. Thereafter the assessee moved this Court u/s 25 (2) of the Act. This Court directed the Board of Revenue to state, and it has accordingly stated, a case on the following questions of law:

(1) Whether in the circumstances of this case there was sale by the assessee of 31,000 maunds of jute estimated at the value of Rs. 7,87,625 within the meaning of the Bihar Sales Tax Act, 1947, and whether the assessee is liable to pay sales tax on the amount?

(2) Whether there was sale by the assessee of gunny bags to the value of Rs. 15,000 and whether the assessee is liable to pay sales tax thereon under the provisions of the Bihar Sales Tax Act, 1947?

(3) Whether in the circumstances of this case the penalty imposed upon the assessee for non-registration u/s 13 (5) of the Act is legally valid?"

3. It may be noted that in this case the assessee did not file any return and the assessment had to be made to the best of the judgment of the Sales Tax Officer u/s 13 (5) of the Act. The account books that were produced by the assessee were found not to be genuine. The Sales Tax Officer examined certain forwarding notes and despatch registers maintained at Garh Banaili railway station of the then O. T. Railway which is the nearest station from the place where the firm, is located. From the examination of those documents he found that the dealer had despatched 31,505 maunds of jute during the period under assessment from that railway station to various destinations mostly outside the State of Bihar.

He further found that 431 maunds of gunny bags were despatched by the dealer from that railway station to various other railway stations. He also found other despatches made by the dealer with respect to other commodities with which we are not concerned in the present case. Question No. 1 relates to the despatches of jute and question No. 2 to those of gunny bags. It has to be seen as to how far the above quantities of jute and gunny bags could be held to have been sold by the assessee within the meaning of the Act so as to make it liable to pay sales tax thereon.

4. Question No. 1:-- According to the finding of the Sales Tax Officer, the various despatches where by a quantity of 31,505 maunds of jute is said to have been sold were made either in the name of the firm itself or in the names of one or

two of its partners or in the names of the employees of the firm. Admittedly, the forwarding notes in respect of these despatches were signed by one or other of the employees of the firm. The assessee, however, denied to have made any of those despatches. Its case was that its partners had their own separate firms and the above despatches were made by them in their individual capacities or on behalf of their own firms and not on behalf of the assessee.

There are, however, certain despatches which, as already stated, are made in the name of the assessee itself. With regard to such despatches also, the case of the assessee was that the partners made those despatches in their individual capacities in the name of the firm. This explanation was not accepted by the Sales Tax Officer and, in my opinion, he, was perfectly justified in refusing to accept the same. The partners who are said to have despatched the jute in question either in their individual capacities or on behalf of their separate firms did not produce the account books of those firms to show that these despatches were made on behalf of those firms and not on behalf of the assessee.

The account books produced by the assessee did not show the above despatches. They did not show even any purchase of jute by it. When the dealer was asked to explain the same, he kept silent. It may be noted that a surprise visit was made by Mr. C. M. Singh, Assistant Superintendent of Commercial Taxes, to the dealer's place of business on the 15th of February, 1948. He found a little exercise book containing stray sales and a railway receipt book for the year 1946-47. He signed every page of the exercise book and instructed the dealer to produce the same along with the railway receipt book at the time of the examination, of the accounts.

The dealer, however, failed to produce them. In the circumstances mentioned above the Sales Tax Officer, while assessing to the best of his judgment, held the above quantity of 31,500 maunds of jute to have been sold by the assessee and included a sum of Rs. 7,87,625 in its gross turnover calculating the sale price at the rate of Rs. 25 per maund which was the average market rate of jute during the period under assessment.

5. Mr. Baldeva Sahay appearing for the assessee has contended that the only materials on the record on which the assessment has been made are the forwarding notes and despatch registers maintained at Garh Banaili railway station, and, except in cases where the despatches are said to have been made in the name of the assessee, there is no evidence, on the record on which it could be held that the other despatches were made by it. He has, therefore, argued that the despatches appearing to have been made by persons other than the assessee should not be held to have been made by it. I am unable to agree with this contention. As already observed, the Sales Tax Officer had to make a best judgment assessment.

It has been held by this Court in *Raghubar Mandal Harihar Mandal Vs. The State of Bihar*, that when no return is submitted the assessment has to be made by

the officers concerned to the best of their judgment and in making such assessment there must necessarily be guess work, which of course must be an honest guess-work. It was further held in that case that an assessment to the best of the judgment has to be made upon inadequate materials and the assessing officer alone has to determine the amount of assessment "and the sum payable.

It was also held that it is a pure question of fact of which the assessing officer has been made the sole judge and he is compelled to draw inferences and to consider materials which would not be justified by the Evidence Act. On the authority of this decision, the Sales Tax Officer, in my opinion, was perfectly justified in relying upon the railway forwarding notes which were admittedly signed by one or other of the employees of the assessee, and the despatch registers for coming to the conclusion that those despatches were made by it. I must, therefore, hold in agreement with the taxing authorities that the above despatches of jute weighing 31,500 maunds were made by the assessee.

6. The next point taken by Mr. Baldeva Sahay is that most of the despatches were made by the despatchers to self and as such they could not amount to sale within the meaning of the Act." The point raised has no substance. According to S; 19 of the Indian Sale of Goods Act the property in goods in a contract for the sale of specific or ascertained goods is transferred to the buyer at such time as the parties to the contract intend it to be transferred and u/s 20 of that Act where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both is postponed.

On these two sections it is manifest that the property in goods may pass to the buyer at the time of the contract even though it is despatched subsequently to the address of the seller himself. The sale is completed as soon as the property in the goods passes. In the present case, therefore, it was quite possible that the property in the jute passed to, the buyer even though most of the despatches were made to the address of the consignor himself. There is no material before us from which it could be even urged that the ownership in the described jute did not pass to the buyer at the time of the contract. The onus was on the assessee to prove under what circumstances the despatches were made.

Instead of even attempting to discharge that onus it falsely denied to have made them and as such no material could be brought on the record to prove the terms of the contract, if any, under which they were made. The terms of such contract must be within the special knowledge of the assessee and it having with-held to place them before the taxing authorities, they were perfectly within the limits of law in holding on the materials that were before them as referred to above, that the above despatches of jute amounted to sale within the meaning of the Act.

7. Mr. Sahay lastly contended that in view of the letter of the Commissioner of

Commercial Taxes, Bihar, to, the Honorary Secretary, Sub-divisional, Merchant Association, Sahibganj, (Annexure A), no tax could be levied on these despatches. According to this letter, jute despatched to the dealer's own godown or to his commission agent's godown in Calcutta during the period from the 1st of July, 1947, to the 30th of September, 1948, for the purpose of being sold there in due course was not leviable to tax.

Even if any effect could be given to this letter, the necessary preliminaries that the despatches were made to the consignor's, own godown or to his commission agent's godown have to be established by the assessee. There is no material on the record to throw any light on these matters. It was for the assessee to have placed materials before the taxing authorities if it wanted to have an exemption on this ground. In view of the circumstances of this case, therefore, they correctly held the quantity of 31,500 maunds of jute to have been sold by the assessee and as such it was liable to pay sales tax on the estimated amount of the sale price. Question No. 1, therefore, is answered in the affirmative and in favour of the Department.

8. Question No. 2:-- In this question we are concerned with the despatches of gunny bags; These despatches were undoubtedly made by the assessee. Its contention, however, is that those gunny bags were supplied to it at the orders of the Government on Government account. In support of this contention, reliance has been placed on Annexure B printed at page 65 of the paper book which show that letters were issued for supply of about 11,600 gunny bags to it on Government account.

There is, however, nothing to show that it actually received those gunny bags. It is undisputed that the assessee was dealing in gunny bags also. No account has been produced by it to show as to how many gunny bags be received on Government account and how many be sold in course of his business. There is also nothing to show that it did not receive the price for the despatched gunny bags. The taxing authorities have, therefore, correctly held, while making a best judgment assessment, that they must be taken to have been sold by the assessee.

For the reasons given for answering Question No. 1 in this connection I am of opinion that there was sale by the assessee of gunny bags to the value of Rs. 15,000 and it was, therefore, liable to pay sales tax thereon under the provisions of the Act. Question No. 2, therefore, is also answered in the affirmative and in favour of the Department.

9. Question No. 3:-- The legality of the imposition of penalty has been challenged by Mr. Sahay only on the ground that there had already been an imposition of penalty on this assessee on account of non-registration and as such it could not be imposed for the second time. There is nothing on the record, however, to show that any penalty was imposed on the assessee on a previous occasion,

This point does not seem to have been taken before the taxing authorities and

Mr. Sahay cannot be permitted to raise it for the first time before us. It must, therefore, be held that the penalty of Rs. 956-12-0 imposed u/s 13 (5) of the Act is legally valid. This question is thus answered in the affirmative and in favour of the Department.

10. The result is that all the questions referred to above are answered in the affirmative and in favour of the Department which is entitled to its costs. Hearing fee is assessed at Rs. 250.

Banerji, J.

11. I agree.