
(1968) 07 PAT CK 0008

In the Patna High Court

Case No : Tax Case No's. 20, 21 and 22 of 1965

Gurumukh Rai Radha Krishna

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-07-1968

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 25(1), 25(3)

Citation : (1969) 17 BLJR 680 : (1970) 25 STC 70

Hon'ble Judges : S. Wasiuddin, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : K.D. Chatterji and S.B.N. Singh, for the Appellant; S. Sarwar Ali, for the Respondent

Judgement

N.L. Untwalia and S. Wasiuddin, JJ.

These three reference cases have been heard together as the question of law referred for answering in them is identical.

2. As directed by the High Court, the Commercial Taxes Tribunal, Bihar, has stated a case u/s 25(3) of the Bihar Sales Tax Act, 1947, hereinafter called "the Act", and referred the following question of law :-

Whether, on the facts and in the circumstances of the case, the company-principal of the assessee being the sole selling and del credere agent of the sugar company is liable for sales tax on sales outside the State of Bihar made under the approval of its principal, the sugar company, when the company itself, according to the arrangements, had shown the said sales as taxable in its return and has paid tax thereon.

The facts, which may be conveniently stated from the statement of the case, are these. The assessee was assessed to sales tax u/s 13 of the Act for the last quarter of 194-7-48, 1948-49 and 1949-50. Three separate assessment orders were passed by the Assessing Officer. The assessee took up three appeals to the Deputy Commissioner. Before the Deputy Commissioner, the assessee challenged

the legality of the levy of sales tax in respect of such of the transactions of sale in which he alleged to have acted as del credere agent on behalf of Lohat and Sakri sugar factories. This contention of the assessee was negated by the Deputy Commissioner of Commercial Taxes. The assessee then moved the Board of Revenue in revision against the order of the Deputy Commissioner. The point taken before the Board was that the petitioner was not liable to pay any tax on the sales of sugar made by him on behalf of his principal in respect of the production of two factories situated at Lohat and Sakri in Bihar to parties outside Bihar. The Board rejected the contention and dismissed the petition of revision by its order dated the 16th September, 1963. Eventually, an application filed u/s 25(1) of the Act came to be disposed of by the Commercial Taxes Tribunal, Bihar, and it was also rejected. On being directed by the High Court, the question of law aforesaid has been referred to it for determination.

3. It would appear from the order of the Board dated the 16th September, 1963, that the assessee claimed to be the sole selling agent of the company owning these two sugar factories, and, in that capacity he claimed to have arranged sale of sugar to dealers both in and outside Bihar. It is curious, however, to find that in regard to the sales made to the dealers in Bihar, the assessee did not dispute his liability to pay the sales tax, though he acted, according to him as an agent even for those sales. But in regard to the sales made to the dealers outside the State, the stand taken on behalf of the assessee was that the company owning the two sugar factories had shown the said sales as taxable in its return and had paid tax thereon. Therefore, the assessee was not liable to pay tax twice on such sales. The contention was rejected by the learned Member, Board of Revenue. From the facts stated in detail in that order, it would appear that the goods were despatched by the company showing the assessee undoubtedly and undisputedly as consignee in the railway receipts, if not the consignor as was stated in the appellate order of the Deputy Commissioner. The railway receipts were sent to the assessee by the company and were endorsed by the former in favour of the buyers outside the State of Bihar—the sales to whom are the subject-matter of consideration in these references. Bills for the quantities despatched after the assessee had sent his "sold note" to the company were prepared by the company in the name of the assessee. The assessee in his turn prepared the bills in the names of the purchasers. t)n these facts stated in the order of the Board, it is manifest that the goods at the time of the sales in question in the eye of law were the goods of the assessee. He transferred them to the various purchasers outside the State of Bihar when he endorsed the railway receipts in their favour. He made bills in the names of the purchasers for the quantities despatched. The company in its turn had made the bill in the name of the assessee when the goods were despatched from the factory premises. That being so, there is no escape from the position that the assessee was the principal seller of the goods to the purchasers, and the mere fact that as a commission agent he used to get only commission from the company is of no significance in this case to enable us to take the view that the sales in question were not made by the assessee. On

these facts, we are inclined to think that the assessee was not an agent of the company bringing about the transaction of sale between the company and the purchasers. He was not even a del credere agent. A del credere agent is one who, in consideration of special remuneration, undertakes that the persons with whom he enters into contracts on the principal's behalf will be in a position to perform their duties. In other words, while acting as an agent on the principal's behalf, he guarantees the performance by the persons with whom he deals on behalf of his principal and makes himself liable as a surety to the extent of any default which may be committed by such persons. The primary liability of the persons entering into the transaction through the instrumentality of del credere agent with his principal remains. The liability of the del credere agent becomes co-extensive with that of the third parties who enter into contract through him. The del credere agent is not the agent of those third parties. Here, in this case, on the facts stated by the Board, it does not appear that the liability of the assessee was co-extensive with that of the purchasers. The purchasers purchased the goods from the assessee, got the bills from him and must have made payments to him, although the last fact is not clear from the order of the Board. The mere fact that the goods were despatched by the sugar factories on the advice of the assessee direct to the destinations of the purchasers cannot indicate that the assessee was not the seller of the goods despatched outside the State of Bihar by the two factories.

4. The definition of the "dealer" as it stood at the relevant time clearly states that it means any person who sells or supplies any goods, whether for commission, remuneration or otherwise. It follows from this definition, therefore, that even though the assessee was selling or supplying goods to the purchasers outside the State of Bihar, on commission basis he will be a dealer within the meaning of Section 2(c) of the Act, and the transactions in question were sales within the meaning of Clause (g) of the said Section. When the goods were delivered to the railway for despatch by the factories showing in the railway receipts the assessee as the consignee, delivery to the railway on the facts and in the circumstances of this case amounted as delivery to the assessee. The goods remained his property until he endorsed the railway receipts in favour of the purchasers. On such endorsements being made, they became the property of the purchasers on its transfer by the assessee to them.

5. The mere fact that the company has shown the transactions as part of its sale in its return and paid sales tax on them cannot lead to the inference that the assessee is not liable to pay sales tax on these transactions. The Board has rightly refrained from going into the question whether the transaction between the company and the assessee was a sale or not within the meaning of the Act, as in this case it was not relevant to do so. But we find no error in the view that the nature of the transaction as between the assessee and the purchasers was clear enough to lead to the legal inference that it was a sale by the assessee liable to tax under the Act.

6. From our discussion of the point with reference to the facts stated in the revisional order of the Board, it would appear that the question of law is not appropriately worded. It assumes that vis-a-vis the transactions in question the company is the principal, or, the assessee is del credere agent of the company. Even though it may not be difficult to take the view that being a del credere agent the assessee would be liable to sales tax in respect of the sales in question, we do not think that the facts stated in the order of the Board justify the assumption that the assessee is a del credere agent vis-a-vis the transactions in question. We would, therefore, reframe the question in the following manner :

Whether on the facts and in the circumstances of the case, the assessee is liable for sales tax on sales of sugar despatched from Lohat and Sakri factories outside the State of Bihar during the period in question, even though in respect of those despatches the sugar company itself had shown them as taxable sales in its return and had paid tax thereon?

7. For the reasons stated above, we answer the question, as framed by us, against the assessee and in favour of the department and hold that the assessee is liable to sales tax for the sales aforesaid. The State of Bihar will get the cost of these references. The consolidated hearing fee for all the references is fixed at 150 (one hundred and fifty only).