
(1971) 04 PAT CK 0011
In the Patna High Court
Case No : Tax Case No's. 7 and 21 of 1966

H.A. Brothers

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-04-1971

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1971) 4 PLJR 400 : (1971) 28 STC 89

Hon'ble Judges : U.N. Sinha, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Rajeshwari Pd., A.B.S. Sinha and Devendra Pd. Sinha, for the Appellant; Standing Counsel No. 1, for the Respondent

Judgement

U.N. Sinha, C.J.—These two tax cases arise out of references made by the Commercial Taxes Tribunal, Bihar, Patna, u/s 25(1) of the Bihar Sales Tax Act, 1947, and u/s 33(1) of the Bihar Sales Tax Act, 1959, respectively. Tax Case No. 7 of 1966 relates to the period between 1st April, 1959, to 30th June, 1959, and the question involved in this case is whether sales amounting to Rs. 26,454.99 by the assessee to certain dealers in Nepal were exempt from the Sales Tax Act or not. Tax Case No. 21 of 1966 relates to the period between 1st July, 1959, to 31st March, 1960, and the question was the same with respect to an amount of Rs. 43,255.44. The exemption claimed by the assessee in both these cases was based on the ground that the sales in question were in the course of export, within the meaning of Article 286(1)(b) of the Constitution of India.

2. The assessing authority, by its order dated the 20th February, 1961, disallowed the claims on the ground that the sales had taken place at Muzaffarpur, deliveries had also taken place there and the assessee had failed to prove that he had delivered the goods to the purchasers in Nepal by carrying them to Birganj. The assessee had filed two appeals, which were allowed by the Deputy Commissioner by his orders dated the 8th January, 1962, and 28th February, 1962, and he remanded both the cases to the Sales Tax Officer giving

his directions for consideration. The main point which had arisen at the appellate stage is indicated by the following quotation taken from the appellate order dated the 8th January, 1962:

The discussion in the order of the learned Sales Tax Officer shows that the appellant produced before him customs clearance certificate from the proper authorities but as the details of expenses with regard to the despatches of goods to Nepal were not furnished by the appellant, the claim for deduction was disallowed. I think in view of the customs clearance certificate there seems not much of doubt that the goods crossed the Indian frontier and the claim should have been allowed. The appellant states the details with regard to the expenses have been noted down in his books of account but not in the manner desired by the Sales Tax Officer. He has shown expenses on account of the travelling expenses of his authorised agent upto Raxaul and is stated that the medicines were sent through him to the places in Nepal after the customs certificate was obtained from the Nepal authorities. In some of the cases the entries were examined by reference to the books of accounts produced. In view of this, this matter should be reconsidered and if there is no doubt in the mind of the Sales Tax Officer with regard to the genuineness of the customs clearance certificate and if he is satisfied that the goods have been sent through the present agency of the appellant's employees, necessary deductions admissible should be allowed to him.

After these remands the matters were reconsidered by the assessing authority and by order dated the 30th September, 1962, the original assessment for the first period was affirmed and the original assessment for the second period was reduced to some extent. It may be mentioned at this stage that the following observation was made in both the orders of assessment, after remand;

In the instant case, the dealer has taken the goods up to Raxaul and has delivered them physically to the purchasers at Raxaul within the territory of Bihar and has delivered within the territory of Bihar (Raxaul). The sales, therefore, come within the mischief of the law and are accordingly taxable under the Bihar Sales Tax Act.

The difference in the fresh assessment for the second period after remand, was made on a re-examination of the assessee's books of account in the following words :

Total \\value of the consignments between 7th September, 1959, and 26th October, 1959, and again after 17th December, 1959, to 31st December, 1959--Rs. 52,959.58. Less the value of the consignments accounted for in the books of accounts of the dealer--Rs. 36,894.13. Balance--Rs. 16,065.45.

The assessee again appealed in both the cases and the assessments were revised by the Deputy Commissioner by his order dated the 28th February, 1963. The main point, that is to say, the assessee's claim to exemption, was negatived. Thereafter, the assessee's petitions in revision were dismissed by the

Board of Revenue by its order dated the 13th August, 1963. The following question was referred to this Court by the Commercial Taxes Tribunal :

Whether in the facts and circumstances of the case, the sales amounting to Rs. 26,454.99 and Rs. 43,255.44 should be treated as sales in the course of export out of the territory of India.

In view of a decision by a Full Bench of this Court, in the case of Shankerjee Raut Gopalji Raut Vs. State of Bihar, , this Court required a supplementary statement in both the cases in order to determine the question of law referred to above. The Commercial Taxes Tribunal was accordingly directed to rehear the assessee and the State and to submit additional statements in both the cases. The following quotation from this Court's order dated the 9th July, 1968, will explain what supplementary statement was required from the Tribunal:

The point of difference is that while in the Full Bench case the seller had completely disassociated himself after the delivery and had neither taken any stand nor placed any materials to indicate that the purchaser had transported the goods across the border in pursuance of any contractual obligation, in this case, however, we find on the findings recorded by the assessing authority after remand by the Deputy Commissioner, a finding which has not been upset either by the Deputy Commissioner or by the Board, rather seems to have been upheld, that the assessee had transported the goods to Raxaul, at least, if not upto Birganj as was his case. In view of the findings that the sale was complete at Muzaffarpur, it is clear that the transport of the goods by the assessee upto Raxaul after the completion of the sale within the meaning of the Sales of Goods Act must have been in pursuance of some arrangement or agreement between the parties indicating an obligation to transport on the part of the seller upto certain stage and it may well be that the transport of the goods for the little distance left thereafter from Raxaul to Birganj was under a similar obligation on the part of the buyer. We, however, feel that whether this obligation was there or not is a question of fact which has to be determined by the Tribunal. The inference of the fact of obligation which may be drawn from the facts and circumstances found in this case may again be an inference of fact only.

Accordingly, supplementary statement regarding both the assessment periods of the case has been sent by the Commercial Taxes Tribunal. The ultimate conclusion of the Tribunal is in the following words :

The evidence discussed above leads to the irresistible conclusion that the assessee, as per contract of sale, transported the goods sold not only upto Raxaul (which fact appears to have been accepted by the Deputy Commissioner), but also undertook to transport the goods to Nepal. It has, thus, been proved that there was an obligation on the part of the assessee to transport the goods sold to the Nepal party.

In other words, it has now been stated by the Tribunal that the goods in question had been transported by the assessee under an obligation to do so. It may be

mentioned that at this stage the finding of the Tribunal is, in effect, that the assessee had carried the goods to Birganj, in the territory of Nepal.

3. Learned counsel for the assessee has contended that on the supplementary statement of the case forwarded by the Commercial Taxes Tribunal, the reference should be answered in favour of the assessee. According to the learned Counsel, all the three elements required on the principles laid down in *Shankerjee Raut Gopalji Raut Vs. State of Bihar*, for exemption under Article 286(1)(b) of the Constitution have been proved. Shri Sreenath Singh appearing for the State of Bihar has contended that according to the order of assessment, after remand, the assessee had taken the goods upto Raxaul and had delivered them to the purchasers at that place, within Bihar, which finding had been affirmed on appeal by the Deputy Commissioner. According to the latter's judgment on appeal the buyers had exported their goods on their own responsibility to Nepal. Our attention has also been drawn to the finding of the Board of Revenue affirming this conclusion. According to the learned Counsel, all the previous conclusions were based on the materials on record and the conclusion of the Commercial Taxes Tribunal, mentioned in the supplementary statement of the case, is contrary to the record. But this argument is not quite correct. Even the first assessment order dated the 20th February, 1961, stated thus:

In view of the above, the dealer failed to adduce the evidences regarding the expenses incurred for carrying the goods from Muzaffarpur to Nepal. In the circumstances, the claims regarding sales to outside India (Nepal) is disallowed.

This matter has been mentioned in the order of this Court calling for a supplementary statement of the case. That it was always the case of the (1) *Shankerjee Raut Gopalji Raut Vs. State of Bihar*, .

assessee, that the assessee had transported the goods in question to Birganj may also be found in its applications made to the Board of Revenue, Bihar, u/s 33 of the Bihar Sales Tax Act, 1959. Paragraphs 4, 5 and 6 in each of these cases stated as follows:

4. That the goods in question were transported by the petitioner from Muzaffarpur to Birganj, etc. which is on the India-Nepal border and at the border the goods were handed over to the Nepal parties.

5. That the sales in question to dealers in Nepal occasioned the movements of the goods from the Indian territory to Nepal.

6. That the cost of transport of the goods upto Birganj is recorded in the petitioner's books of account.

In the original statement of the case made by the Commercial Taxes Tribunal it stated as follows:

It is further contended that the goods in question were transported by the applicant from Muzaffarpur to a place called Birganj, which is on the India-Nepal

border where the goods were handed over to the Nepal parties.

In these circumstances, this Court had mentioned in its order calling for a supplementary statement of the case, that the assessee's case was that it had transported the goods to Raxaul, at least, if not upto Birganj as was his case. Thus, the supplementary statement of the case has concluded that, as per contract of sale, the assessee had undertaken to transport the goods to Nepal. Therefore, there is substance in the argument of the learned Counsel for the assessee, that Article 286(1)(b) of the Constitution is attracted to the case and, therefore, the question of law referred to this Court for opinion should be answered in favour of the assessee. Learned counsel for the parties have referred to certain decisions of the Supreme Court of India, *State of Travancore-Cochin v. Bombay Co. Ltd.* AIR 1952 S.C. 366, *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, , *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, , *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras* [1970] 25 S.T.C. 528 (S.C), and *State of West Bengal Vs. North Adjai Coal Co. Ltd.*, for the meaning of the expression "in the course of export of the goods out of the territory of India" occurring in Article 286(1)(b) of the Constitution. It is not necessary to deal with any of these decisions, as the learned Counsel for the parties agree with the principle which must now be followed in interpreting this provision of the Constitution. As a matter of fact, in *Shankerjee Raut Gopalji Raut Vs. State of Bihar*, , this Court laid down the criterion, following the decisions of the Supreme Court of India. All that this Court required in the supplementary statement of fact from the Commercial Taxes Tribunal was its finding as to whether on the materials on record, the assessee had transported the goods out of the territory of India under an obligation to export, as was its case. The supplementary statement of the case clearly mentions "that the assessee had connection with the transport of the goods across the border of India" and that its transport to Nepal was under an obligation placed on the assessee. Therefore, on the facts and circumstances of the case the answer to the question of law referred for opinion of this Court must be that the sales amounting to Rs. 26,454.99 and Rs. 43,255.44 should be treated as sales in the course of export out of the territory of India. Thus, the assessee is entitled to the exemptions claimed and the references must be answered in its favour. The assessee is entitled to its costs of this Court which is assessed at Rs. 250.

Singh, J.

I agree.