
(1952) 01 PAT CK 0018
In the Patna High Court
Case No : Misc. Judicial Case No. 62 of 1950

Harmukh Rai Jairam Das

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-01-1952

Acts Referred:

Citation : AIR 1952 Patna 278

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

Bench : Division Bench

Advocate : R. Prasad and T.R. Bajaj, for the Appellant; Government Pleader, for the Respondent

Judgement

Ramaswami, J.—This case is stated by the Board of Revenue u/s 25 (3) of the Bihar Sales Tax Act 1947.

2. The petitioner Harmukh Rai Jairam Das was assessed by the Sales Tax Officer of Darbhanga for the quarter ending 30th of June 1948 to sales-tax amounting to Rs. 7,656/4/-. The assessee had declared in his return a gross taxable turnover of Rs. 89,000 and odd. But the Sales Tax Officer held that the taxable turnover was five lacs and made assessment of tax thereon. It is admitted that on 1st July 1948 the Sales Tax Officer made a surprise visit to the shop of the assessee and discovered that sales to the extent of Rs. 1,349/- were not accounted for. The sales were entered in the Kacha Rokar but not in the Pucca Rokar maintained by the assessee. On 20th July 1948, the assessee filed his return and on 3rd September 1948, line Sales Tax Officer actually made the order of assessment. An appeal was preferred by the assessee to the Commissioner of Tirhut Division who dismissed the appeal. The assessee moved in revision before the Board of Revenue against the order of the Commissioner. By its order dated 11th July 1949 the Board allowed the petition in part and ordered that the gross turnover should be assessed at 3 lacs. It was contended on behalf of the assessee that the assessment was invalid since notice u/s 13 (2) had not been issued and the Sales Tax officer had no jurisdiction to make any assessment. The Board rejected

the contention on the ground that though the statutory notice was not issued the petitioner had appeared before the Sales Tax Officer and explained the registers and accounts maintained by him.

3. As required by the High Court the Board of Revenue has referred the following questions to be determined:

(1) Whether the Member, Board of Revenue, having held (that the statutory notice u/s 13 (2) of the Bihar Sales Tax Act, 1947, had not been issued, could uphold the assessment as valid and lawful? and (2) Whether in absence of the statutory notice u/s 13 (2) of the Bihar Sales Tax Act, 1947, the Sales Tax Officer had any jurisdiction to assess the petitioner u/s 13 (2) (b) or under any other section of the Bihar Sales Tax Act 1947?

4. In our opinion it is not necessary to deal with both the questions since they involve the self-same point of law and we propose therefore to deal in this reference with the second question in a modified form -- whether in the absence of the notice u/s 13 (2) of the Bihar Sales Tax Act, 1947, the Sales Tax Officer could validly make assessment in the circumstances of the present case.

5. On behalf of the assessee, Mr. Rajeshwari Prasad addressed the argument that the Sales Tax Officer had no jurisdiction to make assessment u/s 13 (2) (b) since notice u/s 13 (2) was not admittedly issued. Learned Counsel pointed out that Section 13 (2) (a) requires that the Commissioner if not satisfied that the return furnished was correct and complete :

"shall serve on such dealer a notice in the prescribed manner requiring him on a date and at a place to be specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns."

Section 13 (2) (b) states that:

"On the day specified in the notice or as soon afterwards as may be, the Commissioner, after hearing such evidence as the dealer may produce, and such other evidence as the Commissioner may require on specified points, shall assess the amount of tax due from the dealer."

It was maintained on behalf of the assessee that the requirements of Sections 13 (2) (a) and 13 (2) (b) were imperative and the Sales Tax Officer had no jurisdiction to assess the tax unless the condition precedent, viz., the issue of the notice u/s 13 (2) (a) was satisfied. In my opinion the argument is not correct. The jurisdiction to assess and the liability to pay tax are not conditional on the validity of a notice. Section 13, though a part of the Act, imposes no charge on the subject and it is merely a part of the machinery of assessment. The liability to pay sales-tax is founded upon Sections 4 and 5 of the Sales Tax Act which are the charging sections. It cannot be held on principle that the jurisdiction to assess and the liability to pay tax depends on the issue or non-issue of the notice u/s 13.

The principle has been accepted in "CHATTURAM v. COMMISSIONER OF Income Tax, BIHAR" 1947 15 ITR 302 in which the argument was stressed before the Federal Court that notices issued u/s 22 (1) and (2) of the Income Tax Act were invalid and the assessment was therefore "ultra vires." The contention was rejected by the Federal Court on the ground that it was based on a misunderstanding of the jurisdiction of the Income Tax Officer and the operation of the Income Tax Act. At page 307, Kania, J., as he then was, observed :

"It was next contended that in the present case notices u/s 22 (1), and (2) of the Income Tax Act were already issued before the Notification of the 26th May 1940. The notices were the foundation of the jurisdiction of the Income Tax Officer. At that time the Finance Act of 1940 was not operative in the area in question and the Governor, by his Notification, cannot give jurisdiction to the Income Tax Officer in respect of his ultra vires notices. This contention is founded on a misunderstanding of the jurisdiction of the Income Tax Officer and the operation of the Income Tax Act. The Income Tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of the assessee to pay the tax. It may be urged that the issue and service of a notice u/s 22 (1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice."

To the same effect is the decision in Firm Jitanram Nirmalram Vs. Commissioner of Income Tax, . I would therefore hold in the present case that the Sales-tax Officer had jurisdiction to make assessment notwithstanding the fact that no notice had been issued u/s 13 (2) (a) of the Act.

5a. In support of his argument Mr. Rajeshwari Prasad referred to Nirmal Kumar Singh Nowlaksha Vs. The Secretary of State, , in which the question was whether non-compliance with the provisions of Sub-section (2) of Section 23 would invalidate an assessment. It was found in that case that the return filed u/s 22 was examined in the presence of the assessee's Gomashas who were fully aware of all the matters in the return which were questioned by the Income Tax Officer but no application was made by them to adduce any further evidence, oral or documentary, with regard to the dispute item. It was held by Greaves, J., that under the circumstances the notice u/s 23 (2) should be held to have been waived on behalf of the assessee. Mukherji, J., who was the other member of the Bench, was of opinion that the notice had not been waived and since non-compliance by the Income Tax Officer of the provisions of Sub-section (2) of Section 23 had prejudiced the assessee, the assessment made was not valid. The case is therefore no authority on the proposition that in the absence of a notice u/s 13 (2) the Sales-tax Officer has no jurisdiction to make assessment. On the contrary, the ratio of the case would appear to be that the assessment was Invalid for the reason that non-compliance of the provisions of Section 23 (2) had caused prejudice to the assessee and hence the assessment by the taxing authorities was invalid.

6. On behalf of the assessee reference was also made to Misc. Judicial Case No. 108 of 1947 in which the question arose whether the Sales-tax Officer was bound to serve notice u/s 10 (2) (a) of the Act before proceeding to make assessment u/s 10 (3). The assessee in that case was a registered dealer under the Act and was required to submit quarterly return to the Sales-tax authorities. As no return was filed for the quarter in question a notice was issued upon the assessee u/s 10 (4) to show cause against the assessment which was proposed to be made. The notice was served on the 28th of October. On the 20th of October 1945 the assessee filed return instead of showing cause of non-filing the return. The Sales-tax Officer asked the assessee to produce evidence on 20th of November 1945 to support of his return as he was not satisfied that the figure shown in the return were correct. The notice was not actually issued to the assessee, although it was directed to be issued, because on the 23rd of October the assessee's agent signed the order-sheet in token of having received notice. Upon these facts it was held that the requirement of Section 10 (2) (a) was satisfied and the assessment was validly made. It was pointed out by Manohar Lall, J., that the conduct of the assessee in that case amounted to a waiver even if it is assumed that the notice should have been served upon him. For the assessee appeared in the proceedings and asked for extension of time and extension was granted to him to produce his books. Further extension was not granted to him as the Sales-tax authorities had discretion to refuse or to grant. Mr. Rajeshwari Prasad contended in the alternative that even if the issue of notice u/s 13 (2) (a) was not imperative in the sense that the jurisdiction of the Sales-tax Officer was not affected, the failure to serve the notice had caused prejudice to the petitioner in the present case and for this reason the assessment made must be held to be invalid. Learned Counsel founded his argument upon the fact that the Sales-tax Officer had paid surprise visit to the shop on 1st July 1948 and required the assessee to submit return though under Rule 19 (1), the quarterly return was not due till 1st August 1948. On 20th June 1948 the assessee made the quarterly return. The Board of Revenue has said that the failure to issue notice u/s 13 (2) caused no prejudice to the assessee since he appeared before the Sales-tax authorities on 24th July 1948 and on subsequent dates to explain his account. But the resolution of the Board dated 11th July 1949 indicates that the assessee explained the accounts of the previous three quarters and not the accounts of the quarter ending 30th June 1948, assessment for which period is disputed in the present case. Since there is no material on the record to show that the assessee had opportunity of producing account books and other papers for the period in question it must be held that the failure to issue notice has in the circumstances of the present case caused prejudice to the assessee. It is necessary to add that the Sales-tax Officer had wrongly thought that the amount of Rs. 1,349 which was not entered in the Pucca Rokar was suspicious. On this point the Board has commented that the amount of Rs. 1,349 has been explained and books were produced to show that the item has been accounted for.

8. For these reasons I hold that the failure for issue notice u/s 13 (2) of the Act has caused prejudice to the assessee and in consequence the assessment made by the Sales-tax Officer is invalid in the circumstances of the case.

9. The case should now recommence from the stage when the Sales-tax Officer should issue notice u/s 13 (2) (a) of the Act on the basis of the returns which have been already furnished. After such notice is issued the assessment proceedings should be completed in the manner prescribed by the Act.

10. There will be no order as to costs of this reference.

Sarjoo Prosad, J.

11. I agree.