

(1956) 04 PAT CK 0005

In the Patna High Court

Case No : Misc. Judicial Case No's. 399, 400 and 403 of 1951

Hira Lal Agarwala

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 25-04-1956

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 24

Bihar Sales Tax Rules, 1949 — Rule 44, 44(1), 44(2)

Citation : AIR 1957 Patna 188 : (1956) 7 STC 396

Hon'ble Judges : Ramaswami, J; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : U.N. Sinha and S.B. Dayal, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. In M. J. C. 400 of 1951, the assessment of sales tax is for the period from the 26th of November, 1948, to the 31st of December, 1948. In M. J. C. 403 of 1951, the period of assessment is from 1st of January, 1949, to 31st of March, 1949; and in M. J. C. 399 of 1951, the assessment is for the period from the 1st of April, 1949, to the 30th of June, 1949. For all these periods the Sales Tax Officer made an assessment order with regard to the dealer Hiralal Agarwala on the 17th of January, 1950. Notice of the assessment order was served upon the assessee on the 7th of February, 1950. According to the report of the peon, the shop of the assessee was closed and, therefore, the peon effected service by hanging a copy of the notice on the shop premises. On the same date, the peon tendered a copy of the notice to Mr. Gauripati Mazumdar who was acting on behalf of Hiralal Agarwala. The pleader, Mr. Gauripati Mazumdar, refused to take the notice and, therefore, the peon affixed a copy of the notice in the office building of the pleader. The notices in question were issued by the Sales Tax Officer u/s 14 (4) of the Bihar Sales Tax Act.

2. The case of the assessee is that the notices were properly served and he actually came to know the assessment order on the 21st of March, 1950. The

assessee preferred appeals before the Commissioner on the 7th of April, 1950, against the order of assessment for all the three periods. The Commissioner, however, summarily dismissed the appeals on the ground that they were barred by limitation u/s 24 (2) of the Bihar Sales Tax Act. The Commissioner took the view that the appeals should have been presented within forty-five days of receipt of the notice issued under Sub-section (4) of Section 14.

But as the assessee did not prefer appeals within the stipulated period, the Commissioner held that Section 24 (2) was a bar and the appeals should be summarily dismissed. The assessee took the matter in revision before the Board of Revenue, but his application was dismissed on the 7th of May, 1951. In this state of facts, the High Court has directed the Board of Revenue u/s 25 (2) (b) to make a statement of the case on the following questions of law.

"(1) Whether the notice under Sub-section (4) of Section 14 of the Bihar Sales Act, 1947, has been served in accordance with the provisions of Rule 44 of the Bihar "Sales" Tax Rules. 1949; and

(2) Whether, in the circumstances of the case, the appeals were time-barred."

(3) On behalf, of the assessee, Mr. U. N. Sinha put forward the argument that both the Commissioner and the Board of Revenue have misconstrued Section 24 (2) of the Bihar Sales Tax Act and Rule 44 of the Bihar Sales Tax Rules. It was submitted that there was no valid service of notice issued u/s 14 (4) upon the assessee and, therefore, the appeals presented on behalf of the assessee on the 7th of April, 1950, were not barred by limitation. In this connection, it is necessary to examine the provisions of Section 24 (1) and (2) which state;

"(1) Any dealer objecting to an order of assessment, with or without penalty, u/s 13, or to an order passed under Sub-section (3) of Section 12 or u/s 24-A may, in the prescribed manner, appeal to the prescribed authority against such assessment or penalty or both:

Provided that no appeal shall be entertained by the said authority unless he is satisfied that twenty per centum of the tax assessed or such amount of the tax as the appellant may admit to be due from him, whichever is greater, has been paid.

(2). Every appeal under this section shall be presented within forty-five days of receipt of the notice issued under Sub-section (4) of Section 14, but the authority before whom the appeal is filed may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period."

The provisions of Section 14 (4) are also important:

"The amount of tax -

(a) due where the returns are furnished without receipt shewing full payment thereof, or

(b) assessed under Sub-sections (1), (2), (3) and (4) of Section 13 less the sum, if any, already paid by the dealer in respect of the said period, or

(c) Assessee under Sub-section (5) of Section 13 together with the penalty directed to be paid under that sub section or under Sub-section (3) of Section 12 or Sub-section (3) (a) of this section, or u/s 24-A, or

(d) due under the first proviso to Section 5 less the sum, if any, already paid by the dealer, shall be paid by the dealer into a Government treasury by such date as may be specified in a notice issued by the Commissioner for this purpose and the date to be so specified shall ordinarily be not less than thirty days from the date of service of such notice."

Rule 44 of the Bihar Sales Tax Rules, 1949, provides as to the manner in which notices under the Act should be served. The language of Rule 44 is important and it is necessary to quote in full:

"(1) Notices under the Act ,or these rules may be served by any of the following methods, namely:--

(i) by delivery or tender of a copy of the notice to the addressee, or his agent or other person duly authorised to receive notice on his behalf,

(ii) by post:

"Provided that if upon an attempt having been made to serve any such notice by any of the above mentioned methods, the Sales Tax authority is satisfied that the addressee is keeping out of the way for the purpose of avoiding service, or that, for any other reason, the notice cannot be served by any of the above-mentioned methods, the said authority shall order the service of notice by affixing a copy thereof on some conspicuous part of the addressee's office or of the building in which his office is located or where he habitually resides, or upon some conspicuous part of any place of business, office or residence last notified by him and such service shall be as effectual as if it had been made on the addressee personally.

(2) When the serving officer delivers or tenders a copy of the notice to the addressee personally or to his agent or other person oh his behalf, he shall require the signature of the person to whom, the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice. When the notice is served by affixing a copy thereof in accordance with the proviso to Sub-rule (1), the serving officer shall return the original to the Sales Tax authority which issued the notice with a report endorsed thereon or annexed thereto stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or the building in which his office is or was located or his place of business or residence was identified and in whose presence the copy was affixed. The serving officer shall also require the signature or thumb impression of the person identifying the addressee's office or building or place of business or residence to

his report."

The argument on behalf of the assessee is that the peon did not obtain the order of the Sales Tax authority before affixing a copy of the notice on the premises of the pleader, Mr. Ganripati Mazumdar or in the shop of the assessee. The contention of learned Counsel is that there was no valid service of notice, because the pleader, Mr. Gauripati Mazumdar, did not acknowledge the service by making an endorsement on the back of the notice.

It was contended that unless there was such endorsement by the pleader, there was no valid service of notice within the meaning of Rule 44, Sub-rule (2). We think that the contention of learned Counsel is well-founded. In the circumstances presented in this case, we are satisfied that there was no valid service of notice either on the pleader or upon the assessee within the meaning of rule 44, Sub-rules (1) or (2). In other words, there was only an attempt made by the peon to serve the notice on the assessee or upon his agent, namely, the pleader, Mr. Gauripati Mazimdar, If that is the correct legal position, the proviso to Rule 44 will not operate and it was necessary for the peon to make a report to the Sales Tax authority about the failure of his attempt to serve the notice.

If upon the report of the peon the Sales Tax authority was satisfied that the assessee was keeping out of the way for the purpose of avoiding service or that for any other reason the notice could not be served by any other methods, such authority would order the service of notice by affixing a copy thereof on some conspicuous part of the assessee's office or of the building in which his office is located or where he habitually resides. The last sentence of the proviso to Rule 44(1) states "such service shall be as effectual as if it had been made on the addressee personally."

The procedure prescribed by the proviso to Rule 44(1) is an important safeguard for the assessee and must be construed to have peremptory effect. It is not disputed in this case that the proviso to Rule 44(1) has not been followed.

It follows, therefore, that there has been no valid service of notice upon the assessee within the meaning of Rule 44 and the Commissioner and the Board of Revenue were both erroneous in holding that the appeals presented by the assessee on the 7th of April, 1950 were barred by limitation under the provisions of Section 24(2) of the Bihar Sales Tax Act. In our opinion, the appeals were not barred in the circumstances presented in this case and it was the duty of the Commissioner to have heard the appeals on merit and dispose of them in accordance with law.

3. For these reasons, we answer the questions of law referred by the Board of Revenue in favour of the assessee and against the State of Bihar. The assessee is entitled to the costs of this reference. There will be a consolidated hearing fee of Rs. 250/- in all the three cases.