
(1993) 03 PAT CK 0006
In the Patna High Court
Case No : Taxation Case No. 43 of 1979

Hira Lal Jain

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 2(1), 33(1)

Citation : (1994) 1 PLJR 283

Hon'ble Judges : G.C. Bharuka, J;Aftab Alam, J

Bench : Division Bench

Advocate : Jay Narain Sahay, for the Appellant; Rafat Alam and S.D. Sanjay, for the Respondent

Judgement

G.C. Bharuka, J.—The present case has been referred by the Commercial Taxes Tribunal, Bihar, Patna u/s 33(1) of the Bihar Sales Tax Act, 1959 (hereinafter in short the "Act" only) referring the following question for the opinion of this Court:

Whether in the facts and circumstances of the case the finding of the Tribunal that a sum of Rs. 2,94,952.48 P., which represented the aggregate sale price of transaction in which the dealer acted both as selling and purchasing agent, can be included within the gross turnover of the dealer for the purpose of levy of purchase tax is legal?

2. The relevant facts may be summarised in short. The Assessee is a registered dealer under the Act and the question involved relates to an assessment proceeding pertaining to financial year 1966-67. During this period transaction in chillies were liable to levy of tax in the hands of the purchaser. The Assessee filed a return showing gross turn over of Rs. 5,46,955.26P. The assessing officer while examining the books of accounts found that the purchases of chillies to the extent of Rs. 2,94,952.48 P. has not been included in the taxable turnover on the ground that according to the Assessee, in the transaction relating to this commodity, he has acted as an agent of both the seller and the purchaser and therefore in his hands no tax was leviable. To substantiate the claim for

exemption, the Assessee produced a register showing the receipt of chillies from cultivators on different dates with corresponding entries of purchases by different dealers of outside the State of Bihar. From the assessment order it appears that for ascertaining the true nature of the transaction, the Assessing Officer examined one of the cultivator-sellers, who disclosed that he had sold the stock to the Assessee and the Assessee had issued a purchase memo containing weight, rate etc. After making a visit to the shop of the Assessee, the Assessing Officer has recorded that the cultivators used to come to the Assessee's business premises and after negotiation, used to sell their goods for price against which purchase memos used to be issued. Subsequently, those goods used to be delivered to common carrier consigned as self for different destinations, where it used to be delivered to the persons for whom the purchases had been made by the Assessee. The Assessing Officer by reference to various transactions and entries has concluded that manipulations have been made in the books of accounts in order to make out a claim for exemption. On these facts the transactions of chillies were held to be liable for the purchase tax in the hands of the Assessee holding it to be a purchase by him either in his own account or on account of the principals of other States. It was also found that the Assessee had also charged purchase tax at the rate or 5% from his principals of outside the State, which in the books of accounts had been shown under Amanat Khata.

3. The Assessee preferred an appeal and the appellate authority by placing reliance on an Allahabad judgment in the case of Commissioner, Sales Tax, U.P. v. Vijay Kumar Krishna Kumar reported in (1968) 21 STC 37, remanded the case for fresh assessment. Against the said order both the Assessee and the Department preferred revisions before the Tribunal which were disposed of by a common judgment. The Tribunal after noticing the facts found by the Assessing Officer recorded its own finding on the basis of the books of accounts examined by them, which is as follows:

The next question is whether the Assessee was an agent of the sellers or the purchasers. If he was the former, he was not liable for purchase tax but if he was the latter, he was clearly liable. On a consideration of the manner in which the transactions have been put through and recorded in the books of account, and on his own admission in the appeal it is clear that the Assessee was functioning as a commission agent both on behalf of the sellers and the purchasers. This is apparent from the fact that when the goods were delivered to him by the cultivators for sale, he issued a purchase memo and subsequently it was he who arranged for despatching them to his outstation buyers by drying, grinding and packing them. There is no evidence that the sellers directly delivered the goods to the ultimate purchasers. The Assessee, therefore acted as an agent of the sellers in receiving them in his Arhat and finding purchasers for them and also as an agent of the ultimate purchasers in taking delivery of the goods on their behalf and despatching them after drying etc. In the circumstances, the Assessee clearly acted as the purchasing agent also and is therefore, liable for purchase tax on his purchases.

4. No decision has been cited at the Bar which can be said to have any relevance on the question referred to this Court. The Allahabad judgment in the case of Commissioner of Sales Tax (supra) cited before the appellate authority related to the case of a dealer who was acting as a broker in respect of certain transactions and as rightly held by the Tribunal, also has no bearing in the facts of the present case. But what seems to be strange to us is the finding of the Tribunal to the effect that the dealer has acted as an agent both of the cultivator-sellers as also the purchasers of outside the State. In our opinion, the same person can never be a seller as well as purchaser. He can either be a purchaser or a seller because in a transaction of sale there has to be necessarily two parties who can negotiate and settle the transaction. Therefore, the Assessee in this case had acted either as an agent of the seller or the purchaser.

5. From the facts as found by the Assessing Authority, as well as, the Tribunal clearly demonstrate that the Assessee had made purchases from the local cultivators acting as an agent (Aadhatiya) of the purchasers of out side the State and despatched the same through common carrier by charging his commission and incidental charges. As is borne out from his own books of accounts, he had also realised purchase tax from his principals by correctly appreciating his liability in this regard which he credited in the so called "Amanat Khata" as if those amounts had been kept by him in trust only.

6. Section 2(1) of the Act defines dealer to mean any person who sales or purchases any goods whether for commission, remuneration or otherwise. Therefore, the Petitioner while making purchases even for commission on behalf of this principals was dealer within the meaning of the Act and had made himself liable for paying tax on such purchases.

7. For the foregoing reasons in our considered opinion, the Tribunal has rightly held that the Petitioner was liable to pay purchase lax in respect of purchases of chillies during the period under assessment and therefore, the question as referred is answered in affirmative on the basis that the Petitioner has acted only as an agent of the purchasers and thus liable to purchase tax. But keeping in view the facts and circumstances, there will be no order as to costs.

Aftab Alam, J.

8. I agree.