

(1989) 03 AHC CK 0039

In the Allahabad High Court

Case No : Sales Tax Revision No's. 558 and 559 of 1987

Hirason Enterprises

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 15-03-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3
Central Sales Tax Act, 1956 — Section 2, 3
Central Sales Tax Act, 1956 — Section 2, 3

Citation : (1990) 76 STC 355

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant; V.M. Sahai, for the Respondent

Final Decision : Allowed

Judgement

Anshuman Singh, J.—The facts giving rise to these two revisions u/s 11 of the U.P. Sales Tax Act (hereinafter referred to as "the Act"), at the instance of the assessee briefly stated are that the assessee is a sole proprietorship concern of Sri B.P. Garg, who was carrying on business of matches and was also a guarantor for payment of Coal (India) Limited, Calcutta. The assessee is registered under the Central Sales Tax Act. In the assessment years 1975-76 and 1976-77, it has been alleged by the assessee that it was acting as a guarantor for payment of Coal (India) Limited, Calcutta, or its subsidiary companies from where the coal is sent to the District Magistrate, Aligarh. The assessee got certain amount of commission for the services rendered by it. According to the assessee it was only a nominated coal agent of the District Magistrate, Aligarh, for ensuring the payment to Coal (India) Limited, Calcutta, and also for collecting the payment from various consumers on behalf of the District Magistrate, Aligarh. The District Magistrate, Aligarh, after finding out the requirements of the brick-kiln owners and the coal depots used to send the details of the requirements of coal to Coal (India) Limited, Calcutta, through the Director of Movement, U.P., Lucknow. Thereafter, the railway receipts are prepared by the Coal (India) Limited,

Calcutta, in the name of the District Magistrate, Aligarh, as consignee. It is further alleged that after the railway receipts are placed in the hands of the District Magistrate, he used to prepare lists of the various consumers and industrialists to whom the coal wagons are to be delivered for consumption. The District Magistrate also used to endorse the various railway receipts in favour of the various consumers and industrialists to whom the coal is to be delivered. Thereafter the consumers used to take delivery of the goods from the railway on payment of the freight and other delivery charges. It is further alleged that the assessee had no control on the goods during the entire period of movement nor after the goods reached Aligarh. The stand of the assessee had all along been that it was acting as a guarantor for ensuring payment to the Coal (India) Limited, Calcutta, and realising payment on behalf of the District Magistrate, Aligarh. The assessee always asserted that since it was not the consignee and was only entitled to commission hence it was exempted from payment of any Central sales tax and as such it did not file any return under the Central Sales Tax Act for the years in question on the assumption that it was not liable to pay any Central sales tax.

2. The Sales Tax Officer, however, issued notice to the assessee as to why Central sales tax be not imposed on it. The assessee contested the aforesaid notice issued by the Sales Tax Officer on the ground that no sale has been effected by it and the railway receipts have always been endorsed by the District Magistrate. The Sales Tax Officer by order dated 13th July, 1978, accepted the account books of the assessee but rejected the claim of the assessee that the sales were not effected by it and treated all the sales to be of the assessee. The assessee feeling aggrieved against the order of the Sales Tax Officer filed appeals u/s 9 of the Act before the Assistant Commissioner (Judicial), which were dismissed by order dated 15th February, 1979. Against the order passed by the Assistant Commissioner (Judicial), the assessee preferred revisions before the Additional Judge (Revisions), Sales Tax, Aligarh. It is pertinent to mention here that the revision in respect of the year 1975-76 was transferred to the Judge (Revisions), Sales Tax, U.P., Lucknow, which was dismissed on 3rd November, 1979, whereas the revision in respect of assessment year 1976-77 remained pending before the Additional Judge (Revisions), Sales Tax, Aligarh.

3. Against the order passed by the Judge (Revisions), Sales Tax, U.P., Lucknow, dated 3rd November, 1979, the assessee preferred Sales Tax Revisions Nos. 1151 and 1152 of 1979 in this Court which were allowed and the order passed by the Judge (Revisions), Sales Tax, are set aside and the cases sent back to the Tribunal concerned for decision afresh according to law. The aforesaid two revisions in this Court related to assessment years 1974-75 and 1975-76, The decision given in those two revisions are reported in *Hirason Enterprises v. Commissioner of Sales Tax, U.P.* 1981 UPTC 121. This Court after considering the various arguments raised on behalf of the assessee in the aforesaid case that the assessee was not a dealer and that it was only an agent came to the conclusion that for advancing the arguments no factual foundation was laid by the assessee

before the Sales Tax Officer as well as before the first appellate court. This Court also observed that the onus was on the Revenue to show that the assessee was a dealer. It appears that certain fresh evidences were filed before this Court which were not filed before the authorities below and as such this Court was of the opinion that the evidence which was filed before this Court for the first time should be filed before the authorities below and as such this Court remanded the case to the Tribunal for fresh consideration in the light of the observations made in that judgment and also directed the parties to lead evidence in support of their respective pleas.

4. It appears that after the remand of the aforesaid case, the Tribunal remanded the case of all the assessment years, i.e., 1974-75, 1975-76 and 1976-77, to the Sales Tax Officer for deciding the controversy. The Sales Tax Officer by order dated 20th January, 1983, held that the assessee was a dealer and liable to pay Central sales tax u/s 3(b) of the Central Sales Tax Act. The assessee feeling aggrieved filed first appeals u/s 9 of the Act before the Assistant Commissioner (Judicial), who by order dated 29th September, 1983, dismissed the appeals. The assessee further feeling aggrieved preferred second appeals u/s 10 of the Act before the Tribunal. The Tribunal after perusing the fresh materials placed by the assessee came to the conclusion that the assessee was a "dealer" as defined u/s 2(b) of the Central Sales Tax Act and as such was liable to be taxed u/s 3(b) of the said Act.

5. I have heard Sri Bharatji Agarwal, learned counsel for the assessee, and Sri V.M. Sahai, learned counsel for the Revenue. Mr. Bharatji Agarwal vehemently urged that on the basis of the material placed on record the assessee had established that he was merely a guarantor and got only commission for the services rendered and always acted as an agent of the District Magistrate, Aligarh, and the Tribunal was not justified in taking a contrary view without there being any material on record. He further contended that the property never passed on to the assessee and the District Magistrate, Aligarh, was always the owner of the property and the assessee merely received commission for the service rendered by it. This fact is further strengthened by the finding recorded by the Tribunal that the railway receipts were also endorsed by the District Magistrate, Aligarh, and not by the assessee. In view of the said fact, Mr. Bharatji Agarwal contended that no tax can be imposed u/s 3(b) of the Central Sales Tax Act. To strengthen his contention he referred to the relevant portions of paragraphs 26 and 27 of the judgment of the Tribunal which are as under :

"26. In the present case orders having been placed by the District Magistrate, Aligarh, he named assessee as his commission agent. The price of goods was deposited by Ajai Trading Co., who were the agent of the assessee. The goods were despatched and in the documents of title namely, the bill and railway receipt, name of District Magistrate as well as that of assessee found place.....his agent Ajai Trading Co., used to receive all the bills from Coal (India) Ltd., and they were sent to the assessee directly along

with railway receipt, assessee used to collect price of goods, commission, etc., from the purchaser, and having received the money assessee used to issue certificate to the consumers and on the strength of these certificates while the goods were in movement, consumers used to get railway receipt endorsed in their name by District Magistrate, Aligarh, for taking delivery of the goods.

27. The endorsements in the railway receipt were made by District Magistrate, Aligarh, to keep the trading activities in accordance with provision of U.P. Coal Control Order. In such circumstances District Magistrate, Aligarh, was getting, buying and selling of goods done on his behalf by assessee, Hirason Enterprises as his commission agent."

6. It is also relevant to refer to the provision of Section 3(b) of the Central Sales Tax Act which reads :

"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.--A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase--

(a).....

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another."

7. From a perusal of the aforesaid provision it is clear that until and unless it is proved that the goods sold was transferred to the assessee during the movement from one State to another and the assessee endorsed the documents of title, the transfer of such property shall not be taxable in the hands of the assessee.

8. Counsel for the assessee has invited my attention to the decision of the Supreme Court in *Tata Iron and Steel Co. Ltd. v. Sarkar* [1960] 11 STC 655, which fully supports the contention raised on behalf of the assessee. Apart from the said decision, counsel for the assessee has also placed reliance on a decision of the Supreme Court in *State of Bombay (Now Maharashtra) v. Ratilal Vadilal & Bros.* [1961] 12 STC 18 . The facts of that case were almost identical to the facts of the present case. In the case of *The State of Bombay Vs. Ratilal Vadilal and Bros.*, , the State Coal Controller, Bombay, allocated a quota of 30 wagons of slack coal for consumption in the manufacture of bricks by Nanalal Karsandas for the period January to June, 1954. Nanalal Karsandas thereupon approached the appellant and requested them to arrange for the supply of the said coal to him. The appellants inquired of the S.C. Rungta Colliery, Vindhya Pradesh (referred to hereinafter as "the colliery") whether they could supply the said quantity. On their agreeing to do so, the appellants applied to the Deputy Coal Commissioner, for sanction for "priority supply of wagons" in the name of Nanalal. Such sanction would enable the colliery to indent for the necessary wagons. Thereafter the colliery supplied the coal consigning it from Burhas in Vindhya Pradesh to the consumer Nanalal Karsandas at Ahmedabad. The railway receipt showed the colliery as consignors and Nanalal Karsandas as consignees but the colliery sent

the said receipt as well as a bill for the coal supplied to the appellants wherein it was written "terms cash, bills not paid on presentation, interest will be charged at 12 per cent per annum". The rate charged for the coal was the controlled rate as fixed by the Government of India. The appellants in their turn sent their bill to Nanalal Karsandas at the same rate as in the colliery's bill plus "middleman commission" at the rate of Re. 1 per ton. The bills are duly paid. On these facts the Supreme Court came to the conclusion that the assessee was commission agent of the colliery and the property never passed on to the assessee. On the strength of the said decision of the Supreme Court learned counsel for the assessee contended that the Tribunal committed an error in imposing the tax u/s 3(b) of the Central Sales Tax Act.

9. After hearing counsel for the parties and carefully perusing the order passed by the Tribunal I am of opinion that since no tax could be imposed u/s 3(b) of the Central Sales Tax Act on the facts of the case, the order passed by the Tribunal cannot be sustained.

10. In the result the revisions succeed and are allowed. The order passed by the Tribunal is quashed. However, the parties shall bear their own costs.

11. Let a copy of this order be sent to the Tribunal concerned as contemplated u/s 11(8) of the Act.