
(1979) 01 CAL CK 0014

In the Calcutta High Court

Case No : Appeal from Original Order No. 1059 of 1978

Jagadish Prosad Agarwalla

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-01-1979

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 5(1)(aa)

Citation : (1979) 44 STC 412

Hon'ble Judges : Chittatosh Mookerjee, J;B.C. Ray, J

Bench : Division Bench

Advocate : S. Ganguly and Parimal Das, for the Appellant;Samarendra Nath Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Chittatosh Mookerjee, J.—The appellant has preferred this appeal under Clause 15 of the Letters Patent, against summary rejection of his writ petition by the judgment and order passed on 11th September, 1978, by his Lordship the Honourable Mr. Justice A.K. Mookerji.

2. The appellant has claimed that he carried on business under the trade name M/s. Indra Cement Company at 279, Roy Bahadur Road, Calcutta-53. On 11th June, 1975, he had applied in form 1A under Rule 4 of the Bengal Sales Tax Rules, 1941, to the Commercial Tax Officer, 24-Parganas Range, for registration u/s 7 of the Bengal Finance (Sales Tax) Act, 1941. He had mentioned in the said application that his business was wholesale and retail distribution. In his application and in the declaration form he had stated that he had been ordinarily purchasing cement for resale in West Bengal. After enquiry, the Commercial Tax Officer, 24-Parganas Range, by his order dated 4th September, 1975, issued registration certificate in form IIA read with Rule 6 of the Bengal Sales Tax Rules to the appellant. But the said certificate as originally issued did not mention any commodity the sale of which will be taxable at the rate mentioned in Clause (aa) of Sub-section (1) of Section 5 of the Bengal Finance (Sales Tax) Act, 1941.

3. The appellant's case is that he was previously appointed as a stockist of cement produced at Hira Cement Works (Orissa) Limited having their office at 10, Middleton Row, who were distributors in respect of the products of Hira Cement Works (Orissa) Limited. The further case of the appellant is that with effect from 21st September, 1976, he used to get supply of cement from the local godown of the Industrial Development Corporation of Orissa Limited, Behala, 24-Parganas. From the said date there were no inter-State but intra-State purchases by the appellant.

4. The Commercial Tax Officer on two different dates had issued in all 29 declaration forms to the appellant although the appellant's registration certificate did not then mention that he was entitled to coverage u/s 5(1)(aa) of the Act in respect of purchase of cement for resale in West Bengal. Thereafter, the Commercial Tax Officer had refused the appellant's prayer for issue of further declaration forms on the ground that his registration certificate issued on 4th September, 1975, was without any coverage of the item, cement.

5. On 2nd September, 1977, the appellant had applied to the Commercial Tax Officer, 24-Parganas Charge, stating that through oversight or through mistake by the Commercial Tax Officer the item, cement, was not included in the registration certificate issued to the appellant. He prayed that the necessary orders might be passed for inclusion of the item cement in the registration certificate in the appropriate column u/s 5(1)(aa) of the Act with effect from 4th September, 1975 (the date of issue of his registration certificate).

6. The Commercial Tax Officer, 24-Parganas Charge, by his order dated 15th September, 1977, had ordered that the appellant's registration certificate be amended by including cement in the column provided for goods for resale u/s 5(1)(aa) of the Act. But the Commercial Tax Officer rejected the appellant's prayer for the said amendment of the registration certificate with retrospective effect from 4th September, 1975.

7. The appellant, being aggrieved by the said order, preferred a revision application u/s 20 of the Bengal Finance (Sales Tax) Act, 1941. The Assistant Commissioner, Commercial Taxes, Howrah Circle, by his order dated 25th April, 1978, rejected the said revision application and affirmed the order of the Commercial Tax Officer. The Assistant Commissioner held that the Commercial Tax Officer was right in rejecting the prayer of the appellant for inserting cement in the resale column u/s 5(1)(aa) with effect from the date of his registration as a dealer. According to the Assistant Commissioner, Commercial Taxes, there was no provision in the Bengal Finance (Sales Tax) Act for amendment of a registration certificate with retrospective effect. Further, the Commercial Tax Officer, in his order dated 4th September, 1975, granting his registration, had directed that there was no intra-State purchase of cement by the appellant-dealer and, as such, no item should be inserted in the resale column of his registration certificate.

8. The appellant had filed the aforesaid writ petition inter alia for quashing the aforesaid revision order of the Assistant Commissioner, Commercial Taxes, Howrah Circle, and also the order of the Commercial Tax Officer, 24-Parganas Range, dated 15th September, 1977, refusing his prayer for amendment of his registration certificate by inserting the commodity cement in the resale column u/s 5(1)(aa) of the Act with retrospective effect. As already stated, the learned single Judge summarily rejected the said writ petition. The principal point in this appeal is whether or not the authorities under the Bengal Finance (Sales Tax) Act had committed any error of jurisdiction by refusing the above amendment of the registration certificate of the appellant as a dealer under the Bengal Finance (Sales Tax) Act with retrospective effect from the date of his original registration.

9. The Commissioner u/s 7(4) of the Bengal Finance (Sales Tax) Act, 1941, has authority to amend from time to time any certificate of registration in accordance with the information furnished u/s 16 or otherwise received. The learned Advocate for the appellant has placed before us the decision of B.N. Banerjee, J., in *Merchant and Traders (Private) Ltd. Vs. State of West Bengal and Another*, . In the said case, a writ petition filed by a registered dealer challenging a proceeding for amendment of his registration certificate was dismissed. The learned single Judge in the said case, inter alia, held that it was within the competence of the commercial tax authorities to correct errors or meaninglessness in certificates of registration on detection or discovery thereof. The learned Judge further held that the Commercial Tax Officer may act not only on information supplied by the dealer but also on information supplied by others as also matters discovered by the authorities themselves. In the said case, one of the items of coverage u/s 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act was "general merchandise". The learned Judge held that the said word was of generic import and did not serve any purpose at all whereas Section 7(3) of the said Act required that the certificate of registration shall specify the class or classes of goods for the purpose of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act. Therefore, the certificate of registration was irregular and called for amendment. The learned single Judge, however, did not consider whether such amendment of the registration certificate could be made with retrospective effect from the date of the original registration or the said amendment would be only prospective.

10. The decision of Anil Kumar Sen, J., in *Azad Hind Stores v. Commercial Tax Officer, Siliguri Charge* (1977) 10 S.T.A. 37, upon which the learned Advocate for the appellant had relied upon also does not assist the appellant's case. The learned Judge in the facts of the said case held that after orders for amendment of the registration certificates under the Bengal Finance (Sales Tax) Act and the Central Sales Tax Act were made, full effect was not given to the said order in respect of the registration certificate issued under the Bengal Finance (Sales Tax) Act and only some of the articles had been inserted thereon. But the other registration certificate under the Central Act was properly amended. The learned Judge at page 40 of the Reports found that the said omission was an obvious

mistake. The Commercial Tax Officer had declined to issue declaration forms in respect of articles not specifically mentioned in the registration certificate under the Bengal Finance (Sales Tax) Act. Anil Kumar Sen, J., held that the Commercial Tax Officer was bound to rectify the registration certificate under the Bengal Finance (Sales Tax) Act by incorporating therein by way of amendment of articles in accordance with the order of the Commercial Tax Officer dated 18th July, 1962, and to treat the said rectified registration as amended with effect from 18th July, 1962. In *Azad Hind Stores v. Commercial Tax Officer, Siliguri Charge* (1977) 10 S.T.A. 37, the order for amendment had been passed but there was error or omission to incorporate all items in the registration certificate issued due to mistake or error in carrying out the amendment order. Therefore, the above decision is an authority for the proposition that when there has been an error or mistake by the Commercial Tax Officer and a registration certificate is not in accordance with the order passed by the authorities for registration of a dealer or for amendment of his certificate, the authorities may be compelled by appropriate writ to correct such error or omission from the said registration certificate of a dealer. *Amiya Kumar Mookerji, J., in Khalsa Automobiles v. Additional Commissioner, Commercial Taxes, West Bengal* (1977) 10 S.T.A. 22, similarly held that there was an error apparent on the face of the record in the registration certificate in question and, therefore, the assessee should not be penalised. These reported decisions do not further lay down that, in every case, the authorities are bound to retrospectively amend a registration certificate of a dealer. But, in case the authorities commit an error apparent on the face of the record, they may be compelled to act according to law.

11. Therefore, it is necessary to examine whether, in the instant case, the Commercial Tax Officer, while issuing the registration certificate to the appellant on 4th September, 1975, had committed any error or mistake in mentioning the coverage of the dealer u/s 5(1)(aa) of the Act. In other words, was there any inconsistency between the order of the Commercial Tax Officer granting registration to the appellant and the registration certificate issued to him on 4th September, 1975 ? We have perused the materials produced before us including the original file of the Commercial Tax Officer, 24-Parganas Charge, relating to registration of the appellant as a dealer u/s 7(2) of the Bengal Finance (Sales Tax) Act.

12. The appellant in his application in form IA for registration had prayed for coverage in respect of resale of cement in West Bengal. But, the Commercial Tax Officer by his order dated 4th September, 1975, had rejected the said prayer. The Commercial Tax Officer, after referring to the materials produced before him, recorded the following finding:

No intra-State purchase of cement has yet been made. As such no item should be inserted in the resale column. . . .

13. Thus, the Commercial Tax Officer had expressly disallowed the prayer of the appellant for coverage in respect of resale of cement in West Bengal in terms of

Section 5(1)(aa) of the Act. The lawyer for the appellant, who had attended the said hearing before the Commercial Tax Officer, had put his signature in the margin of the order sheet. The registration certificate was fully consistent with the said order of the Commercial Tax Officer, 24-Parganas Charge, dated 4th September, 1975. The registration certificate issued to the appellant did not contain any inadvertent error or clerical mistake. In case the Commercial Tax Officer was not right in disallowing the appellant's prayer for recoverage in respect of resale of cement, he was entitled to file a petition u/s 20 of the Act. But the appellant did not take recourse to the said remedy.

14. The appellant himself has stated in the writ petition that previously he had been making purchases of cement outside West Bengal for resale within the said State. In fact, he had simultaneously obtained registration as a dealer under the Central Sales Tax Act. The appellant himself has alleged at the date of his registration that he was making only inter-State purchases of cement. According to him, only with effect from 21st September, 1976, he began to get supply of cement from the local godown of Industrial Development Corporation Orissa Limited at Ray Bahadur Road, Behala, 24-Parganas--"from the said date there was no inter-State purchase of cement by the petitioner and there was intra-State purchase" (vide paragraph 3 of the writ petition). Therefore, according to the appellant, he himself had commenced intra-State purchase of cement only with effect from 21st September, 1976, and not before the issue of his registration certificate dated 4th September, 1975. But the appellant did not immediately apply for amendment of his registration certificate and for incorporating the commodity, cement, in the relevant column u/s 5(1)(aa) of his registration certificate under the Bengal Finance (Sales Tax) Act. As already stated, he had applied only on 2nd September, 1977, for amendment of his said registration certificate. It is, therefore, clear that, in the instant case, the amendment was prayed for not because of any mistake or error on the part of the Commercial Tax Officer in issuing the registration certificate in question but such amendment had become necessary because of the alleged fact that, with effect from 21st September, 1976, the appellant had engaged himself in intra-State purchase and resale of cement in West Bengal.

15. Mr. Ganguly, the learned Advocate for the appellant submitted before us that, although the original registration certificate of the appellant did not mention the coverage of resale of cement u/s 5(1) of the Bengal Finance (Sales Tax) Act, the Commercial Tax Officer had issued to the dealer altogether 29 declaration forms. In our view, the appellant cannot rely on the said fact in support of his contention that there should have been a retrospective amendment of his registration certificate. In case the Commercial Tax Officer through mistake or oversight had issued the said declaration forms and the appellant had used the same, the appellant cannot claim any equity in his favour. After the said mistake was detected, the Commercial Tax Officer was entitled to refuse to issue of any further declaration forms until the registration certificate of the dealer was amended by granting him coverage. Secondly, Mr. Dutta fairly submitted that, in

the instant case, the appellant might have a legitimate grievance if the Commercial Tax Officer had proceeded to impose penalty upon the appellant in respect of the transactions for which he himself had issued declaration forms prior to the amendment of the registration certificate. But the appellant on the basis of the said mistake cannot claim that he should be granted coverage in respect of resale of cement from the date of his original registration.

16. Mr. Ganguly also submitted before us that Sub-section (3) of Section 7 enjoins the Commercial Tax Officer to specify in every registration certificate the class or classes of goods for the purposes of Clause (aa) of Sub-section (1) of Section 5 of the Act. According to Mr. Ganguly, a registration certificate which does not mention such coverage is meaningless and invalid. We are unable to accept this extreme submission. Under Sub-section (1) of Section 7, every dealer, while being liable to pay tax u/s 4 of the Act, must possess a registration certificate in order to carry on business as a dealer. A dealer who is required to be registered shall make an application in the prescribed manner (vide Rule 4 read with form IA). The authority under Sub-section (3), after being satisfied, may register the applicant and grant a certificate of registration in the prescribed form (vide form IIA). The Commercial Tax Officer shall specify the class or classes of goods for the purposes of Clause (aa), Sub-clauses (i) and (iii) of Clause (bb) of Sub-section (1) or Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 only in case coverage under all or any of these clauses is granted by the Commercial Tax Officer. In case the Commercial Tax Officer, while registering a dealer, refuses to grant coverage under the said clause or any of them, no question of specifying the said class or classes of goods in the registration certificate can arise. Therefore, the expression "shall specify the class or classes of goods" in Sub-section (3) of Section 7 clearly means that when the Commercial Tax Officer has upheld the prayer of the dealer for granting coverage under any of the above clauses, he shall insert in the relevant column of the registration certificate issued to the dealer the said fact of coverage.

17. In the instant case, the Commercial Tax Officer by his order dated 4th September, 1975, had refused to specify cement for the purposes of Clause (aa) of Sub-section (1) of Section 5 because, according to the Commercial Tax Officer, at that point of time, the appellant was engaged only in inter-State purchase of the said commodity and there was no transaction of intra-State purchase by him. Therefore, the registration certificate issued on 4th September, 1975, was consistent with the said order of the Commercial Tax Officer granting registration to the appellant when the appellant at the appropriate time did not challenge the said order dated 4th September, 1975. Therefore, by making an application for amendment in September, 1977, the appellant cannot contend that he should be granted coverage in respect of resale of cement with effect from the date of his original registration as a dealer (4th September, 1975). We accordingly hold that the writ petition filed by the appellant does not make out a prima facie case and the same was rightly summarily rejected by the learned single Judge. We, however, make it clear that the appellant did not challenge in the writ petition

the order of the Commercial Tax Officer dated 4th September, 1975. Therefore, we refrain from determining whether or not the Commercial Tax Officer had acted in accordance with law by holding in the said order dated 4th September, 1975, that the appellant should not be given any coverage in respect of resale of cement.

18. In the above view, we dismiss this appeal without any order as to costs.

B.C. Ray, J.

I agree.