
(1968) 01 PAT CK 0024
In the Patna High Court
Case No : Tax Case No. 28 of 1966

Jamuna Flour and Oil Mills (Private) Ltd.	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 17-01-1968

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1968) 1 PLJR 157 : (1968) 22 STC 1

Hon'ble Judges : Narasimham, C.J;B.N. Jha, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; The Additional Government Pleader, for the Respondent

Judgement

Narasimham, C.J.—As directed by this Court on the 16th September, 1966, the Bihar Sales Tax Tribunal stated the following case for the opinion of this Court u/s 33(3) of the Bihar Sales Tax Act, 1959 (hereinafter referred to as the Act) :

(1) Whether the order of the Tribunal to the effect that the turnover of Rs. 51,137.50 representing sale of bran on consignment basis out of Bihar should be included in the taxable turnover of the petitioner in view of the second proviso to Section 7 of the Bihar Sales Tax Act, 1959, and taxed at the rate applicable on account of sales in Bihar, is legally valid ?

(2) Whether the order of the Tribunal rejecting the claim of rebate for the quarter ending 30th June, 1961, is in accordance with law ?

2. Question No. (2) may be taken up first. The petitioner-assessee claimed rebate u/s 15 of the Act for the quarter ending 30th June, 1961. It was not denied that it paid the tax due before the 31st July, 1961 ; but the return was actually filed by it on the 1st August, 1961. The taxing authority held that, for the purpose of eligibility for rebate u/s 15 of the Act, the assessee must fulfil two conditions, viz., (1) the tax due for the quarter must be paid before the end of the succeeding month, and (2) the return also must be filed by the end of the

succeeding month. Hence, the claim for rebate was rejected.

3. Section 14(1) of the Act requires a registered dealer to furnish the return within the prescribed period. Rule 10(2) of the Bihar Sales Tax Rules, 1959, says that the return shall be filed within one calendar month of the expiry of the period to which it relates. Hence, under normal circumstances the return for the quarter ending the 30th June, 1961, should be filed by the 31st July, 1961. But Sub-section (3) of Section 14 confers power on the taxing authority to extend the period for the submission of the return if the dealer satisfies the authority that he was unable to furnish the return within the prescribed period for a reasonable cause. u/s 16 of the Act, assessment is made mainly on the basis of the return filed either within the prescribed period or within the extended period as permitted by Section 14(3). Sub-section (4) of Section 16 says that, if the return is not furnished within the aforesaid period (including the extended period), the taxing authority may assess the dealer to the best of his judgment. Here, admittedly, the petitioner was not assessed under the best of judgment principle, but was assessed on the return submitted by it. Hence, though the return was submitted one day late, viz., on the 1st August, 1961, nevertheless, as the assessment was based on that return, it must be held that, impliedly, the period for furnishing the return was extended by one day, as permitted by Sub-section (3) of section 14. It is true that the record does not show that any express order was passed by the taxing authority regarding its satisfaction about the existence of reasonable cause for the failure to furnish the return by the 31st July, 1961 ; but, as pointed out by the Privy Council in *Mohammad Akbar Khan v. Court of Wards* I.L.R (1934) Lah. 216, on construction of Section 5 of the Limitation Act, in some circumstances, the passing of an express order is not necessary. See also *Sree Sree Iswar Sridhar Jew Vs. Jnanendra Nath Ghose and Others*, .

4. The relevant portion of Section 15 may now be quoted :

A rebate at the rate of one per centum of the amount of tax admitted to be due in the return furnished under Sub-section (1) of Section 14 in the prescribed manner and within the prescribed or extended period shall be allowed to a registered dealer who has paid such amount according to the provisions of Sub-section (2) of Section 20.

Even if the view taken by the Tribunal be accepted as correct, it would necessarily follow that the assessee has fulfilled both the conditions because, for the reasons given in the earlier paragraph, it must be presumed that the time for furnishing the return was impliedly extended to the 1st August, 1961.

5. In my opinion, however, on a proper construction of Section 15 read with Section 20 of the Act, the eligibility for claiming rebate arises if the amount is paid under Sub-section (2) of Section 20. That portion of section 15, which refers to the filing of return within the prescribed period, should not be construed as a condition for a right to claim rebate. It is true that, until and unless the return is

filed, the question of allowance of the rebate by the authorities will not arise ; but a distinction should be made between the right to claim rebate on the one hand and the date when the authority concerned will allow the claim. Sub-section (2) of Section 20 clearly envisages a situation where the full amount of tax is first paid by the dealer and then the return is submitted by him to the taxing authority, enclosing with the return a receipt from the treasury showing payment of the said amount. Thus, the Legislature clearly recognises that, between the date of payment of the tax due" and the date of submission of the return, there may be an appreciable interval depending on the obtaining of the receipt from the treasury showing payment. Delay may occur if the treasury does not pass the chalan promptly. It is not proper to construe Section 15 in such a narrow way as to disentitle a person from claiming rebate due to delay caused by some other agency, over which he has no control. The reference to the return in Section 15 is for the purpose of ascertaining the amount of tax admitted to be due, and it is not meant to restrict his right to claim rebate. I would, therefore, answer question No. (2) in the negative, and hold that the Tribunal was not justified in rejecting the claim for rebate for the quarter ending 30th June, 1961.

6. Turning to the first question, I may summarise the facts found by the Tribunal. The dealer purchased raw wheat free of sales tax, stating in his certificate of registration in Form V that the wheat was purchased tax-free for the purpose of manufacture of atta, maida and suji. This declaration was given in pursuance of Notification No. STGL-AR-107/59-9135-F.T., dated the 1st July, 1959. That notification was issued under Clause (b) of Sub-section (3) of Section 4 of the Act, and it (omitting immaterial portions) exempted "from the levy of both "general sales tax" and "special sales tax" sales of raw materials to an enrolled or registered dealer as are specified in his enrolment certificate or registration certificate as being required by him directly for the purpose of processing, milling, making or manufacturing for resale inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India" subject to the conditions and restrictions mentioned in Schedule II attached to that notification. The relevant portion of Schedule II also may be quoted:

----- Serial Name of goods. Conditions and restrictions subject to which No. exemption has been allowed. ----- 1. (i) Processed, If the selling dealer produces before the milled or assessing authority in respect of each such sale a manufactured true declaration in writing by the purchasing cereals and dealer or his manager, if any, declared under pulses ; Section 10 of the Act, to the effect that the (ii) Besan, goods in question are actually required by the sattu, flour purchasing dealer for the purpose of processing, including milling, making or manufacturing for resale atta, inside Bihar or in the course of inter-State maida and trade or commerce, the goods specified in suji; column 2 of this Schedule and are specified in * * his enrolment or registration certificate as being so required by him. -----

Having thus purchased wheat from the seller as raw material without payment of any sales tax, the dealer manufactured from the same atta, maida and suji and also bran. This bran was, however, not sold either in Bihar or in the course of inter-State trade or commerce or export out of the territory of India but was sent to the Calcutta office and subsequently sold at Baripada and Cuttack in Orissa. The total sale price of the bran was Rs. 51,137.50. The dealer claimed exemption from sales tax in respect of the said sale of bran outside Bihar on the ground that, inasmuch as it was an external sale, it was not liable to sales tax under the Bihar Act. The Sales Tax Tribunal, however, rejected this claim, and allowed that sum to be added to the turnover of the assessee, relying on the second proviso to Clause (b) of Sub-section (2) of Section 7 of the Act. The Tribunal thought that, though bran was not expressly mentioned in Schedule II to the notification (quoted above), it was a by product of the process of milling wheat, and must be deemed to have been included in column 2 of Schedule II, and that this dealer was, therefore, guilty of contravention of the declaration given by him while purchasing wheat tax-free. Hence, the Tribunal thought that the proviso to Clause (b) of Sub-section (2) of Section 7 would directly apply.

7. Section 4 of the Act is the well-known exemption section, and Sub-section (3) of that section empowers the State Government by notification to exempt certain classes of sales from general sales tax and special sales tax. Clause (b) of that sub-section authorises the exemption from such tax of "sales of any goods or class or description of goods to or by any class of dealers". It was in pursuance of this power that the aforesaid notification was issued by the State Government. The scheme of the section and the notification is quite clear. If raw materials are purchased by a dealer for the purpose of processing, milling, making or manufacturing certain goods specified in column 2 of Schedule II of the notification, no sales tax is payable in respect of "sales of such raw materials" provided, in the purchasing dealer's certificate, the necessary declaration (quoted above) is given. It is true that bran is not expressly referred to in column 2 of Schedule II which only describes "besan, sattu, flour including atta, maida and suji" but, even if it is assumed that the aforesaid articles were given by way of illustration and that all wheat products, including bran, resulting from the process of milling wheat would come within the scope of the said notification, the further question which arises is, what is the liability of a dealer who contravenes the terms of the declaration given by him while purchasing the raw material free of sales tax ? The learned Tribunal thought that the second proviso to Clause (b) of Sub-section (2) of Section 7 would apply. For the purpose of appreciating this point, I may quote Sub-section (2) of Section 7, omitting immaterial particulars:

7. For the purposes of this Act, the "taxable turnover" of a dealer shall be-

* * * * (2) in respect of special sales tax, that part of the gross turnover which remains after deducting therefrom,-

(a)(i) sale prices on account of sales exempted u/s 4;

(ii) amount of sales tax actually collected as such, if any, along with the sale prices received or receivable in respect of sales of goods ; and

(b) subject to the provisions of Section 5, sale prices on account of sales to a registered dealer other than a dealer liable to pay tax under Sub-section (8) of Section 3, of goods specified in his registration certificate as being required-

(i) for resale by him inside Bihar or in course of inter-State trade or commerce or export out of the territory of India, or

(ii) for use by him in the packing of goods which he sells inside Bihar or in course of inter-State trade or commerce or export out of the territory of India:

Provided that in the case of such sales a declaration in the prescribed form duly filled up and signed by the registered dealer to whom the goods are sold, or by his manager declared u/s 10, is furnished in the prescribed manner by the selling dealer :

Provided further that where any goods, specified in the certificate of registration of a dealer, are purchased by him after furnishing a declaration as aforesaid, but are utilised by him for any purpose other than those specified in Sub-clause (i) or (ii) the sale price of the goods so purchased shall, without prejudice to any action which is or may be taken u/s 38, be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer."

(I may mention that this section has been completely recast by the Bihar Finance Act, 1966 ; but we are concerned with the section as it stood prior to the amendment).

8. The two provisos (quoted above) appear to be provisos to Clause (b) of Sub-section (2) only and not to the whole of Sub-section (2). This is clear by the special reference to Sub-clauses (i) and (ii) in the second proviso. It will be noticed that, though both in Clauses (a) and (b), there are two Sub-clauses numbered as (i)"and (ii), nevertheless it is only in the two sub-clauses attached to Clause (b) that the purpose for which the goods are purchased by the registered dealer are mentioned. The two Sub-clauses (i) and (ii) of Clause (a) have nothing to do with such a purpose. Hence, when the said second proviso says, "but are utilised by him for any purpose other than those specified in Sub-clause (i) or (ii)", it necessarily follows that the whole of that proviso applies only to Clause (b), and it is not a proviso to both clauses (a) and (b). Here, the notification was issued u/s 4(3)(b) of the Act, and hence it will be wholly outside the scope of the second proviso to Clause (b) of Section 7(2), and will come within the scope of Sub-clause (i) of Clause (a) of Section 7(2). As pointed out in *The King v. The Inhabitants of Newark-Upon-Trent* 107 E.R. 656 ,

in the construction of a statute, the question whether a proviso in whole or in part relates to, arid qualifies, restrains, or operates upon the immediately preceding provisions only of the statute, or whether it must be taken to extend in

whole or in part to all the preceding matters contained in the statute, must depend, I think, upon its words and import, and not upon the divisions into sections that may be made, for convenience of reference in the printed copies of the statute.

Following this principle, I think, the words and import of the second proviso leave no room for doubt that it is a proviso to Clause (b) and not Clause (a).

9. Sales to registered dealers may be of two categories. There may be sales of raw materials which the registered dealer converts into manufactured goods. Such sales are exempt from sales tax by virtue of the said notification, and they will come within the scope of Sub-clause (i) of Clause (a) of Sub-section (2) of Section 7. But there may also be sales to registered dealers of goods which are subsequently sold by them without undergoing any process of manufacture, milling, etc. Such sales are regulated by Clause (b) of Sub-section (2) of Section 7. If, in respect of such sales, the purchasing dealer mentions in his certificate of registration that those goods were intended for sale by him inside Bihar or in the course of inter-State trade or commerce or export out of the territory of India or for use by him in the packing of goods [Sub-clauses (i) and (ii) of Clause (b)], the sale price on account of such sales may be excluded from the turnover of the selling dealer. But the second proviso is in the nature of a provision for preventing evasion. If the purchasing dealer, after obtaining them from the selling dealer free from sales tax, utilises the goods for purposes other than those mentioned in his declaration, he is penalised by the inclusion in his taxable turnover of the sale price of the goods so purchased. This liability is in addition to other penalties provided in the Act for contravention of a declaration made under the provisions of the Act.

10. This view gains support from a close scrutiny of Rule 8 of the Bihar Sales Tax Rules, 1959. It is a well-known principle of statutory construction that, where the language of a statute is ambiguous and difficult to construe, the Court may, for assistance in its construction, refer to rules made under the provisions of the Act (see *Craies on Statute Law*, 6th Edition, page 157). Exemption claimed under Clause (b) or Clause (c) of Sub-section (3) of Section 4 is dealt with separately in Clause (c) of Rule 8, whereas exemption claimed under Clause (b) of Sub-section (2) of Section 7 is dealt with in Clause (d) of that rule. If, as now urged by Mr. Sarwar AH, Clause (b) of Sub-section (2) of Section 7 would also include sales of raw materials to the registered dealers subject to the conditions and restrictions mentioned in the aforesaid notification, there would have been no necessity to have two separate clauses in Rule 8, viz., clauses (c) and (d). This seems to indicate that sales described in Clause (b) of Sub-section (2) of Section 7 were not intended to be included in the sales described in Clause (a) of that sub-section. In other words, sales of raw materials to registered dealers for the purpose of processing and manufacture are wholly outside the scope of Clause (b) of Sub-section (2) of Section 7.

11. It is true that, on the aforesaid interpretation, there is no special liability cast

on a purchasing dealer, who, after purchasing raw materials, contravenes the declaration given as required by the notification (quoted above). For such contravention, he will have to incur the other penalty provided in the Act; but the special liability of having his turnover increased in the manner provided in the second proviso to Clause (b) of Sub-section (2) of Section 7 will not attach to him.

12. Even if the view taken by the Sales Tax Tribunal regarding the applicability of the second proviso to Clause (b) of Section 7(2) to sales to a purchasing dealer of raw materials and their subsequent conversion into manufactured products be taken as correct, the conclusion drawn by the Tribunal will not necessarily follow. The second proviso merely says that, if the very goods which are purchased by the purchasing dealer from the selling dealer free of sales tax are utilised for any purpose other than those specified in Sub-clause (i) or (ii), the sale price of the goods so purchased shall be included in the taxable turnover of the purchasing dealer. This would only mean that, if wheat is purchased free of sales tax by a purchasing dealer from a selling dealer and the purchasing dealer subsequently contravenes the declaration given under the notification, the sale price of that wheat may be added to the turnover. There is nothing in the proviso to show that, if one of the products manufactured out of the said raw material is sold in contravention of the declaration, the sale price of that product should be added to the taxable turnover of the purchasing dealer. This is clear from the language "sale price of the goods so purchased" mentioned in the proviso. Hence, the Tribunal was not justified in adding the sale price of bran to the taxable turnover of the assessee merely because, though he purchased wheat as raw material free of sales tax, he contravened the declaration as regards the sale of one of the wheat products.

13. Thus, in any view of the case, the Tribunal was not justified in adding the sale price of bran sold outside Bihar in the taxable turnover of the petitioner-assessee, relying on the second proviso to Clause (b) of Sub-section (2) of Section 7 of the Act. My own view, however, is (as stated in paragraph 10) that purchase of raw materials by a dealer free of sales tax would come under Clause (a) of Sub-section (2) of Section 7, and that Clause (b) of that Sub-section (including the proviso) will apply only to those sales of goods to a registered dealer who subsequently sells them (without "their undergoing any change) to other persons for the purposes mentioned in sub-clauses (i) and (ii) of that clause.

14. We are not called upon to decide here as to what will be the penalty which a registered dealer like the petitioner will incur for contravention of the declaration given under the said notification while purchasing wheat free of sales tax.

15. For these reasons, the Tribunal acted illegally in adding the sale price of bran to the taxable turnover of the petitioner, relying on the second proviso to Clause (b) of Sub-section (2) of Section 7 of the Act.

16. Therefore, the two questions are answered as follows :

Question No. (1) answered in the negative.

Question No. (2) also answered in the negative.

The petitioner is entitled to its costs : hearing fee Rs. 200.

B.N. Jha, J.

17. I agree.