(1968) 03 CAL CK 0017

In the Calcutta High Court

Case No : Appeal from Original Order No. 666 of 1965

Jugal Kishore Radhakissen APPELLANT

Vs

Additional Member, Board of Revenue RESPONDENT

Date of Decision : 21-03-1968

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 11(2), 5(2)
Bengal Finance (Sales Tax) Rules, 1941 — Rule 27, 27A, 27A(2)
Constitution of India, 1950 — Article 226

Citation : (1969) 2 ILR (Cal) 626

Hon'ble Judges : Sinha, C.J;Arun K. Mukherjea, J

Bench : Division Bench

Advocate : Anil Kumar Sinha and Ambika Charan Bhattacharya, for the Appellant;N.C. Chakravorty and Sudhindra Kumar Kar, for the Respondent

Final Decision : Dismissed

Judgement

Arun K. Mukherjea, J.—This is an appeal against a judgment and order passed by Banerjee, J. on July 6, 1965. The short facts of the case are as follows:

The Petitioner carries on business both as a wholesale and a retail dealer in textile and other commodities. The Petitioner is a registered dealer under the Bengal Finance Sales Tax Act, 1941 (hereinafter referred to as the said Act). The Petitioner submitted its returns under the said Act for four quarters ending with Chait Sudi 8, 2011 S.Y. The Petitioner''s gross turnover was shown as Rs. 14,96,186-3-3 and the taxable turnover was shown as Rs. 1,396-7-0. The Commercial Tax Officer concerned made an assessment on the Petitioner and imposed the tax of Rs. 12,758-10-0. In making this assessment the Commercial Tax Officer disallowed the exemption claimed by the Petitioner u/s 5(2)(a)(ii) of the said Act in respect of 12 items of deduction amounting to Rs. 2,47,364-9-6 on account of declarations for sales to registered dealers. The Commercial Tax Officer also imposed a penalty of Rs. 1,000 u/s 11(2) of the Act. On appeal, the Assistant Commissioner of Commercial Taxes allowed one of the deductions which had been claimed by the Petitioner and disallowed by the Commercial Tax Officer. This was in regard to an item of sale of the value of Rs. 15,586-15-0. The tax demand was consequently reduced. The amount of penalty was also reduced to Rs. 300. On an application for revision of the said appellate order before the Additional Commissioner of the Commercial Taxes, the tax demand was further reduced as three other items of deduction were allowed in respect of three sales. No. content with this deduction the Petitioner again appealed to the Board of Revenue when another item of deduction was allowed by the Board of Revenue. Thus, out of the 12 items disallowed by the Commercial Tax Officer the Petitioner succeeded in getting relief in respect of five items in appellate and revisional proceedings under the said Act. Not content with these relief?s the Petitioner made an application under Article 226 of the Constitution and in that application was granted relief for two more items by Banerjee, J. in his Lordship''s aforesaid order. As a result, four items remained still outstanding for which the Appellant is now claiming relief?s. We are concerned with only these four items of deductions claimed by the Appellant. I set out below the particulars of these four items:

SI. No Name of wholesaler Number of declaration form Amount

1. Kasturchand Surajmal D/266037 Rs. 14,864-1-0

2. Do. D/308002 Rs. 53,562-11-6

3. Motilal Vedprokash C/324869 Rs. 3,437-12-0

4. Phusraj Gujrani C/561467 Rs. 5,257-8-6

We shall deal with the contentions of the Appellant with regard to all these items serially.

2. We take the first two items which relate to the declaration forms obtained from the same dealer, namely, Kasturchand Surajmal. The declaration forms concerned are two in number, viz. D/266037 and D/308002. These two declarations had been rejected by the Additional Commissioner on two grounds. It was alleged that the purchasing dealer had obtained its registration certificate by issuing a false name and was, in fact, criminally prosecuted. We do not uphold this ground of rejection of the declaration forms because it appears from the order of the Additional Commissioner himself that the purchasing dealer in question had been acquitted after prosecution. But the declaration forms suffer from another serious infirmity. The forms do not mention the purpose of purchase. The statutory form of declaration under Rule 27(a) shows that there should be an indication in the form as to whether the purchases were for resale, use in manufacture of goods for sale, use in the execution of contracts or packing of goods for re-sale. The certificate as to the purpose of the purchase in question is the most essential item in the form of declaration. We have inspected the forms of declaration submitted by the purchasing dealer, namely, Kasturchand Surajmal. In the declaration forms the dealer does not strike out the items which are not applicable in his case. To understand this point it may be convenient to

set out the form of certificate appearing in the statutory form No. XXIV ;

Certified that the goods *ordered for in our purchase order No. ...dated....

purchased from you as per bill/cash memo, stated below...supplied under your challan No. ...dated...are for *resale use in manufacture of goods for sale use in the execution of contracts packing of goods for resale.

and are covered by my/our registration certificate No. ...dated.... Date No. Amount Name of the purchasing dealer (in full).... Signature and status of the person singing the declaration?.

* Strike out whichever is not applicable. ** Particulars of Bill/Cash Memo.

3. At the foot of the form of declaration is a note that from the four items indicating the various purposes for which the purchases can be made, those which do not apply in any particular case should be struck out. This the purchasing dealer had not done in the particular declaration forms with which we are concerned. We are of the opinion that the Commercial Tax Officer was perfectly justified in rejecting these two declaration forms. Unless he knew the purpose for which the purchase had been made it was not possible for him to ascertain whether the declaration forms were valid and whether the dealer who sold would be entitled to exemption for those sales. Mr. Sinha sought to rely in this connection on the judgment of a Division Bench of this High Court in Durgasree Stores Vs. Board of Revenue, West Bengal and Another, where it was held that the mere non-striking of the alternatives in the several Forms (No. 11 A, 11B and XXIV) would not be a fatal defect. In our opinion, that case does not apply to the facts of the present case at all. In that case, their Lordships in giving their reasons for the particular conclusion to which they came observed:

If the Certificate of Registration of any particular registered dealer would include those multiple purposes, than, in the Declaration form, all the alternatives taken together, may very well be the purpose of purchase and none of the entries in Form No. XXIV would require to be scored out.

In that case, there was nothing to show that the certificates of registration of the dealers, to whom the goods in question were sold did not include those multiple purposes. In the instant case, however, it appears that the registration of the purchasing dealer included only one purpose. Therefore, in this case, if the non-relevant purposes which have no application are not struck out, it is impossible for the Commercial Tax Officer to know whether the dealer had bought the goods for the purpose for which alone he was allowed to buy against declaration forms. In these circumstances the Commercial Tax Officer would certainly be justified in rejecting such ambiguous declaration forms.

4. Our attention was then drawn to the case of Anil Kumar Dutta v. Board of Revenue (1967) 20 S.T.C. 528 where this point again came up for consideration before another Division Bench presided over by Banerjee, J. There also the facts were different from the facts of this case. But as Banerjee, J. has made certain

general observations in this case, it is necessary to deal with those observations. In the case before Banerjee, J., there were certain defects in the declarations furnished by the wholesale dealers. In some of these the dates of registration certificates of the purchasing dealers were not given and in others there was an omission to cast the total of the sales giving rise to a suspicion that some scope had been left for making additional entries in the form. Banerjee, J. relied on the decision in Durga Sree Stores v. Board of Revenue, West Bengal (Supra). We have already shown how the decision of Durga Sree Stores v. Board of Revenue cannot apply to the instant case before us. But Banerjee, J. made the following general observations which deserve our respectful notice:

If the selling dealer had himself been clothed with the control over the filling up of declaration forms, it might have been possible to hold that he must produce declaration forms duly filled in order to be able to claim exclusion of sales to registered dealers in the matter of computation of taxable turnover. But the law is such that he is to depend upon the ability and willingness of the purchasing dealer to fill up forms and can produce declaration forms filled up in such manner as the purchasing dealer may care to give him. If strict compliance with the formalities and legal provisions be insisted upon, then the innocent dealer may suffer for no fault of his. On the other hand, if even substantial compliance of the legal provisions be not insisted upon, then the purpose of the Act may be defeated, forms may be misused and revenue may suffer. Since considerations of convenience and justice determine whether a particular legal provision shall be treated as imperative or directory and since to penalize the innocent for the fault of another is not in consonance with the principles of justice and since such insistence may lead to very grave inconvenience to innocent dealers, we are of the opinion that the provisions of Section 5(2)(a)(ii) proviso read with Rule 27A and the prescribed form should be treated as directory, which need be substantially complied with. This is, in our reading, also the implication of the judgment of this Court in Durga Sree Stores (1964) 15 S.T.C. 186, in which the non-striking off of inapplicable portions in the declaration was condoned, in the view that it is not a fault.

5. After making these observations Banerjee, J. says that the date of the registration certificate is neither vital nor substation, as an omission to give the date did not make the purchasing dealer unidentifiable. In one of the declaration forms before Banerjee, J., there is a substantial mistake in the name of the dealer. His Lordship did not consider that defect to be a substantial defect either. His Lordship has analyzed the various defects and pointed out how the defects were not either vital or substantial in each particular case. With regard to the defect arising out of the dealer''s failure to state the purpose of the sale, his Lordship did not find such failure to be a vital defect. For this, Banerjee, J. relied on the decision in Durga Sree Stores (Supra). We have already indicated the circumstances in which omission of the ''purpose'' need not be a vital defect. In the instant case, however, where the purchasing dealer is entitled to buy without paying sales tax only when he makes the purchase for one particular purpose, it

is clearly essential that the purpose for which he buys should be indicated in the declaration form. As we have already said it is otherwise impossible for anybody to know whether the purchase in question was really such a purchase as would be exempt from sales tax. Banerjee, J. does not, in my opinion, lay down any general principle that the requirement of the rule regarding the filling up of the form may be ignored. Banerjee, J. has only held that substantial compliance with the rules is enough. To this extent we respectfully agree with his Lordship. The real question is, however, is what is in the circumstances of a particular case substantial compliance with the formalities. This must vary according to the circumstances of each case. We have no doubt, in our mind, that in the circumstances of this particular case there was no substantial compliance with the rules in filling up of the declaration forms and the Commercial Tax Officer was, therefore, justified in rejecting the declaration forms.

6. Coming now to the third item relating to the transactions between the Petitioners and Motilal Vedprokash we find that the declaration forms produced in respect of this transaction suffer from two defects. First, the actual purchase of the sale does not appear from the declaration form insofar as the irrelevant purposes have not been struck out. Secondly, the relevant declaration form was not in conformity with the rules made under the Act. Under these rules, one declaration cannot legally cover sales against bills of different dates when the total amount exceeds Rs. 1,000. But the declaration form in this case related to three bills of three different dates and the total of the bill amounts exceeded Rs. 1,000. Mr. Sinha''s arguments with regard to this second default were two-fold. Mr. Sinha''s first contention was that under the rules it is enough if the items of sales covered by a declaration form do not severally exceed the value of Rs. 1,000. This contention is obviously wrong. The language of the notification leaves us in no doubt about the requirement. The notification is in the following language:

NOTIFICATION NO. 189 CT Dated the 15th February, 1954.

In exercise of the power conferred upon me by the proviso to Sub-rule (2) of Rule 27A of the Bengal Sales Tax Rules, 1941, as amended by Finance Department notification No. 247 F.T. dated the 9th February, 1954, I hereby notify that no single form shall cover more than one transaction of sale, except in cases where the total amount covered by one form is equal to or less than Rs. 1,000 (Rupees one thousand).

H. N. Ray, Commissioner.

7. Mr. Sinha''s next contention was that the date of transaction in the relevant declaration form was prior to issue of the notification which was published on February 15, 1954. In our opinion, this contention has no substance either. The material date is that of issue of the declaration form; since the declaration form is of March 4, 1954, it was essential for the declaration to conform to the requirements of this notification which, incidentally, had been published in the

Calcutta Gazette of February 18, 1954. In this view of the matter the Sales Tax Officer was quite justified in rejecting the declaration form in regard to this particular transaction.

8. We now come to the last item relating to the sales transaction of Phusraj Gujrani. This declaration also does not conform to the rules prescribed by the notification dated February 15, 1954. Besides, the purpose of sales does not appear from the declaration. These two defects provide enough justification for rejection of the declaration form.

9. The result is that the four outstanding items for which the Appellant has so far failed to get relief from the various authorities under the said Act as well as from Banerjee, J., are items in regard to which the Appellant is clearly not entitled to get any relief. In this view of the matter we pass the following order.

10. The appeal is dismissed and the judgment and order dated July 6, 1965, is confirmed. We make no order as to costs.

Sinha, C.J.

11. I agree.