

(1955) 02 PAT CK 0006

In the Patna High Court

Case No : Misc. Judicial Case No. 428 of 1952

Jugal Kishore Ramgopal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-02-1955

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 13(5), 9(5)
Bihar Sales Tax Rules, 1959 — Rule 37, 64

Citation : AIR 1955 Patna 473

Hon'ble Judges : Ramaswami, J; Banerji, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. In this case the assessee is a partnership firm called Jugal Kishore Ramgopal which carries on business in shellac and lac products. The assessee has a shellac manufacturing factory at Bilaspur which is located within the boundaries of the State of Bihar, but the main place of business of the assessee is at Murisemati which is at a distance of about a mile from Bilaspur and is located within the boundaries of Uttar Pradesh.

On 29-12-1949 the Inspector of Sales Tax had gone to Bilasporo with the Assistant Superintendent of Sales Tax. The Inspector made enquiries at Bilaspur and also inspected the shellac factory and the stock of goods kept by the assessee. The Inspector reached the inference that the firm was doing extensive business in shellac and oil-seeds as well as in foodgrain and "bidi" leaves.

2. A notice on plain paper was given to the Agent of the firm, Sri Ram, to produce the accounts of the partnership business. A notice was also later on given to one of the partners, Raghunath Seth, to produce the accounts before the Sales Tax Officer. On 11-1-1950, an application for time was filed on behalf of the assessee. The Sales Tax Officer granted time, but on the adjourned date, that is, 31-1-1950, no one appeared on assessee's behalf.

A registered post card was then sent to the partnership firm requiring it to produce the books of accounts. Finally, on 11-4-1950, the Sales Tax Officer issued a notice in Form XV, Bihar Sales Tax Rules requiring the assessee to produce his accounts, and intimating that in default a tax would be assessed to the best of judgment and a penalty would also be imposed u/s 13(5), Bihar Sales Tax Act.

3. The date fixed in the notice was 13-4-1950. On that date, no one appeared on behalf of the assessee and the Sales Tax Officer proceeded ex parte and made an assessment to the best of his judgment. For the period 1-7-1947 to 31-3-1948, the tax assessed was Rs. 2,679-11-0 and a penalty of an equal amount was also imposed upon the assessee u/s 13(5), Bihar Sales Tax Act.

For the period from 1-4-1948 to 31-3-1949, the Sales-tax Officer imposed a tax of Rs. 6,890-10-0 and penalty of a similar amount was imposed upon the assessee, u/s 13(5). The order of assessment and of penalty for the two periods namely, from 1-7-1947 to 31-3-1948, and from 1-4-1948 to 31-3-1949, was passed by the Sales Tax Officer on the same date and by a single order.

4. The assessee preferred an appeal to the Commissioner against the order passed by the Sales-tax Officer.

5. The appeal was allowed so far as the assessment and penalty for the period from 1-7-1947 to 31-3-1948, was concerned and the order of the Sales-tax Officer was set aside, but the Commissioner affirmed the order of assessment and penalty imposed upon the assessee for the period from 1-4-1948 to 31-3-1949. The assessee preferred an application in . revision to the Board of Revenue but that application was dismissed.

6. As directed by the High Court the Board of Revenue has stated a case upon the following question of law:

"Whether in the circumstances of this case, the imposition of penalty upon the assessee u/s 13(5), Bihar Sales Tax Act of 1947 is legally valid?"

7. On behalf of the assessee Mr. Ramanugrah Prasad put forward the argument that the Sales Tax Officer had no jurisdiction to impose a penalty for the period 1-4-1948 to 31-3-1949 under the provision of Section 13(5), Sales Tax Act. The argument of learned Counsel was that the Sales-tax Officer had already imposed a penalty u/s 13(5) upon the assessee on the ground that he had wilfully failed to apply for registration for the period 1-7-1947 to 31-3-1948.

It was contended that the Sales-tax Officer was bound nuclei Section 9(5) to register the dealer and grant him the certificate of registration. It was argued on behalf of the assessee that the dealer must be deemed to have been registered for the period from 1-4-1948 to 31-3-1949, and the Sales-tax Officer had no warrant or authority to impose a penalty upon the assessee u/s 13(5) of the "Act for the subsequent period. The argument is attractive at first sight. But we do not think that the argument can be accepted upon the facts found in the present

case and stated by the Board of Revenue.

It is clear from the order of the Sales-tax Officer that an assessment was made upon the partnership firm for the entire period from 1-7-1947 to 31-3-1949. It is not correct to state that there are two assessments for two distinct periods. The assessment was one, and it is equally clear that the penalty imposed upon the assessee was a single penalty imposed u/s 13(5) on account of the wilful default of the assessee in not applying for registration. Section 12(1) states that the dealer may be required by the Commissioner to furnish return "by such date and to such authority as may be prescribed". Rule 18 printed at page 215 of the Commercial Taxes Manual, Vol. II, states that every dealer should furnish to the Commissioner quarterly returns within a calendar month from the expiry of the quarter to which the return relates.

The dealer is also required to furnish an annual consolidated return in respect of the whole year within a calendar month from the expiry of the year. Section 13(4) provides that if a registered dealer does not furnish returns in respect of any period by the prescribed date, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of tax, if any, due from the dealer. In the present case we are concerned with Section 13(5) under which assessment has been made upon the partnership firm of Jugal Kishore Ramgopal.

8. Section 13(5) gives authority to the Commissioner to assess the dealer who has committed default not only for the period for which the return was due by the prescribed date but the Commissioner is authorised to make assessment, for all subsequent period. It is clear, therefore, that the order of assessment for the two periods in question, viz., the period from 1-7-1947 to 31-3-1948 and the period from 1-4-1948 to 31-3-1949, was a single order made under the authority conferred by Section 13(5). The penalty imposed in this case is also a single penalty imposed u/s 13(5) upon the assessee on account of his wilful default in not applying for registration. The argument of the learned counsel for the assessee on this point must, therefore be rejected as unsound.

9. The second point taken on behalf of the assessee is that the imposition of penalty was not legally valid since notice was given to the assessee and a reasonable opportunity was not given to him being heard. In support of his submission counsel referred to Section 13(5) of the Act which expressly states that the Commissioner may assess the amount of tax and also may impose penalty upon the dealer after giving him a reasonable opportunity of being heard.

Counsel referred in this connection to Rule 64 which provides that notice under the Act may be served (i) personally upon the addressee, if present, or his agent or other person duly authorised to receive notice on his behalf; (ii) by messenger and (iii) by post. There is a proviso to this rule to the effect that if the dealer was keeping out of the way for the purpose of avoiding service, the authority may cause such notice to be served by affixing a copy thereof on some conspicuous

part of his office and also on some conspicuous part of any place of business last notified by the dealer.

Rule 37 is also important. This rule requires that the notice to be given u/s 13(5) should be served in Form XV Rule 2(h) is also important in tin's connection. This rule defines a "place of business" to mean "any place where a dealer sells any goods or keeps accounts of sales". It appears from the assessment order that the notice in Form XV was sent to the assessee on 11-4-1950 and the direction contained in the notice was that the assessee should appear at Daltonganj on 13-4-1950.

The argument of Mr. Ramanugrah Prasad is that there was a violation of Rule 37 since the rule requires that the date fixed for appearance should be at least thirty days after the date of the issue of the notice. Learned counsel also stressed the point that the notice was not served upon the dealer in the manner required by Rule 64. From the assessment order it appears that the notice in Form XV was not served upon any of the partners of the firm or upon any agent or other person duly authorised to receive notice on his behalf.

It appears that the notice was affixed on the main gate of the factory at Bilaspore. Counsel pointed out that according to the assessment order the account books of sales were kept not at Bilaspore but at Murisemar, which is the head-office of the partnership business. It does not appear that any sales were made at Bilaspore or that accounts of sales were kept at this place. The factory at Bilaspore was, therefore, not a place of business within the meaning of Rule 2(h) and the service of the notice in Form XV was not in accordance with the requirements of Rule 64.

The learned Government Pleader drew our attention to the fact that in this case notices on plain paper were given to the assessee on 29-12-1949, 12-1-1950, 2-2-1950 and 20-2-1950. A certified copy of each of these notices were produced by the counsel on behalf of the assessee during the hearing of this case. But it does not appear that in any of these notices the authorities mentioned the fact that a penalty was liable to be imposed upon the assessee u/s 13(5).

All these notices only say that if accounts were not produced by a particular date the authority would make assessment upon the firm to the best of its judgment. We are, therefore, satisfied that the assessee was not given a notice as contemplated by Section 13(5) of the Act. In our opinion, the giving of a reasonable opportunity of being heard u/s 13(5) is a mandatory statutory provision and unless such reasonable opportunity is given, the Sales-tax officer had no jurisdiction to impose the penalty upon the assessee.

In other words, the condition as to reasonable notice imposed u/s 13(5) is the foundation of the jurisdiction of the Sales-tax Officer to impose the penalty upon the assessee. It follows that in the circumstances of this case the imposition of penalty upon the assessee u/s 13(5) is not legally valid.

10. For these reasons we answer the question referred to the High Court in favour of the assessee and against the State of Bihar. The assessee is entitled to the costs of this reference; hearing fee Rs. 250.