

(1955) 09 PAT CK 0003

In the Patna High Court

Case No : Miscellaneous Judicial Cases No"s. 33, 34, 35 and 36 of 1953

Karamchand Thapar and Brothers

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-09-1955

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 2(g), 25(3)
Bihar Sales Tax Act, 1959 — Section 8

Citation : (1956) 7 STC 58

Hon'ble Judges : S.K. Das, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Rajeshwari Prasad and Jagat Narain Prasad Sinha, for the Appellant;
The Government Pleader, for the Respondent

Judgement

Kanhaiya Singh, J.—Messrs. Kararnchand Thapar & Bros. (Coal Sales) Ltd., the assessee, have their head office in Calcutta arid a branch office at Ranchi. They were assessed to sales tax by the Sales Tax Officer for four quarters, namely, the last three quarters of the financial year 194-7-48, that is, quarters ending 30th September, 1947, 31st December, 1947, and 31st March, 1948, and the first quarter of the financial year 1948-49, that is, quarter ending 30th June, 1948 on a gross taxable turnover of Rs. 39,396, Rs. 41,119-7-0, Rs. 40,334-9-0 and Rs. 49,649-8-9, respectively. The tax imposed amounts to Rs. 615-9-0, Rs. 689-6-0, Rs. 630-4-0 and Rs. 775-12-6 for the said four quarters in order. They disputed the legality of the imposition and urged that they did not deal in coal but that they were merely the selling agents on behalf of the collieries working as middlemen between the collieries and customers. Their case is that they did not carry on the business of buying and selling coal and that they did not transfer any property in the coal to the buyers. What they actually did was that they made arrangements for the sale of coal from the collieries to the persons requiring coal and got commission both from the collieries and the buyers. Their further objection was that the collieries had already paid tax and the imposition of tax on them amounted to double taxation in the same series of transactions

and was consequently illegal by virtue of the provisions of Section 8 of the Sales Tax Act. The Sales Tax Officer overruled their objections and made the assessment on the 27th December, 1948. As the assessment was made separately for each quarter, the assessee preferred four appeals to the Assistant Commissioner of Commercial Taxes. The learned Assistant Commissioner by his order dated the 15th March, 1950, overruled the contentions of the assessee and affirmed the decision of the Sales Tax Officer. Thereafter, the assessee moved the Commissioner of Sales Tax, Chotanagpur, in revision. The learned Commissioner by his order dated the 12th March, 1951, dismissed the four revisions. The assessee then moved the Board of Revenue, but without success. The Board, however, observed that if sales tax had actually been paid in respect of the same transaction, or the same series of transactions, the amount should certainly be refunded so that actually there is no double payment to Government. Thereafter, the assessee moved the Board on the 9th August, 1952, for referring to the High Court four questions of law. After hearing the parties, the Board of Revenue came to the conclusion that no question of law was involved and rejected the application.

2. Then they filed petitions before the High Court for a direction to the Board to state a case u/s 25(3) of the Bihar Sales Tax Act, 1947. The High Court directed the Board of Revenue to state a case on the following question of law :-

Whether the petitioner, Messrs. Karamchand Thapar & Bros ., is a "dealer" within the meaning of Section 2(c) of the Bihar Sales Tax Act, and whether the transactions in question are "sales" within the meaning of Section 2(g) of the Act and whether the petitioner is liable to be taxed on these transactions.

3. The assessee has reiterated the grounds which they urged before the Sales Tax Authorities. Their main contention is that they did not deal in coal and that they were simply middlemen and arranged for despatch of coal from the collieries to the intending buyers. There was no investigation by the Sales Tax Authorities as to the nature and character of the business carried on by the assessee. They held, however, that since the assessee was a registered dealer and the registration was in operation, the assessee was liable to pay tax on its sales of coal. They proceeded on the assumption that there was necessarily sale of coal by the assessee, and this inference they deduced only from the fact that the assessee was a registered dealer. The registration was virtually forced upon the assessee. Treating them as dealers in coal, the Sales Tax Department called upon the assessee to furnish returns and get itself registered. The company assessee repudiated the claim of the department, but when they refused to reconsider the matter, with a view to save itself from unnecessary botheration and harassment, the assessee, under protest, obtained registration under the Act. There was no determination aliunde that the assessee was a dealer under the Bihar Sales Tax Act, 1947. There is no legal evidence to prove this fact. Assuming, though not admitting, that the assessee is a dealer, this fact by itself is insufficient to show that all the transactions done by the assessee will

necessarily constitute sales within the meaning of the Bihar Sales Tax Act, 1947. The Sales Tax Authorities, it appears, failed to appreciate properly the meaning and significance of the term "dealer". As defined by the Sales Tax Act, 1947, "dealer" means any person who carries on the business of selling or supplying goods in Bihar, whether for commission, remuneration or otherwise and includes any firm or a Hindu joint family, and any society, club or association which sells or supplies goods to its members." This is, however, not enough to make a dealer liable for payment of sales tax. In order to consider whether or not any transaction was liable to sales tax reference has to be made to the charging Section 4 of the Act. Sub-section (1) of Section 4 is in these terms:-

Subject to the provisions of Sections 5, 6, 7 and 8 and with effect from such date as the Provincial Government may, by notification in the official Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act, on sales which have taken place both in and outside Bihar, exceeded Rs. 10,000 shall be liable to pay tax under this Act on sales which have taken place in Bihar after the date so notified.

4. Sales tax is, therefore, to be levied on the gross turnover on sales, which have taken place both in and outside Bihar. The emphasis in this provision is on sales. In other words, if a transaction does not constitute sale, there can be no valid imposition of sales tax, apart altogether from the fact whether one is a dealer. A person may be a dealer and still he may not be liable to sales tax if the transactions done by him were not sales. The question is what is "sale". As defined by Section 2(g) of the Act,

"sale" means, with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge.

5. In order, therefore, to constitute sale, there must be a transfer of property in goods. It is now well-settled that "sale" in the Bihar Sales Tax Act has not been used in the popular sense, as laid down by this Court in the case of *State of Bihar v. The Bengal Chemical and Pharmaceutical Works Ltd.* [1954] 5 S.T.C. 28 and "sale" according to the definition in the Bihar Sales Tax Act, 1944, means in effect the transfer of property in goods. The definition of "sale" in the Bihar Sales Tax Act, 1947, is practically the same as in the Act of 1944. In this particular case the Sales Tax Authorities did not direct their investigation to the ascertainment of the nature of the transactions carried on by the assessee. They probably thought that since the assessee was supplying goods, he will be a dealer within the meaning of the Bihar Sales Tax Act. The next question is whether the business of supplying goods in Bihar is enough to make the assessee a dealer within the meaning of Section 2(c) of the Bihar Sales Tax Act, 1947, and to make him liable to tax under the charging section, namely, Section 4 of the Act. A dealer, according to the definition, includes a person who supplies

any goods. The word "supply", however, is not mentioned in the charging Section 4, and the question is whether mere supply of goods can be assessed to tax even when there was no sale in the sense that there was no transfer of property in goods. What will constitute supply in order to determine the liability to tax was considered by this Court in the case above referred to, and the Court held that the word "supply" in Section 2(c) of the Bihar Sales Tax Act cannot be interpreted in its literal absolute sense, but must be given a limited and qualified sense. It was pointed out that the word "supply" or "supplying" should be interpreted in association with the word "sale". The Court has held that in a case of this description the rule of interpretation is *noscitur a sociis*, and "supply" is merely a form of sale and despatch, and there can be no supply of goods in this sense unless there is sale. Therefore, the mere fact that the assessee was carrying on the business of supplying goods on a commission basis was not conclusive on the point. The important question is whether in supplying goods there was a sale, as contemplated by Section 2(g) of the Act, namely, whether there was any transfer of property in goods supplied. There is no evidence to that effect. The assessments made by the Sales Tax Authorities are founded solely on the fact that the assessee was a dealer and, as shown above, the fact that he is a dealer is not sufficient in the eyes of the law to make him liable to tax under the charging section. The imposition of sales tax on the assessee was, therefore, without basis and hence illegal.

6. It was next contended that the imposition of sales tax in the present case will amount to double taxation, since the collieries supplying the coal had already paid the tax and will, therefore, be illegal by virtue of the provisions of Section 8 of the Bihar Sales Tax Act which prohibits double taxation in the same series of transactions. This is purely a question of fact, and it has been found unanimously by the Sales Tax Officer, the appellate authority and the Board of Revenue that there was no evidence at all to prove payment of the tax by the collieries. When there are no sufficient materials on the record to establish the payment of the tax by the collieries, there is no question at all of double taxation, and the argument of the learned advocate must be overruled.

7. In these circumstances, I would answer the question referred to the Court as follows : The assessee is not a dealer within the meaning of Section 2(c) of the Bihar Sales Tax Act, and the transactions in question do not constitute sales within the meaning of Section 2(g) of the Act, and, therefore, the petitioners are not liable to be taxed on these transactions. The petitioners will be entitled to costs: hearing fee Rs 200

S.K. Das, C.J.

8. I agree.