
(1971) 09 AHC CK 0003
In the Allahabad High Court
Case No : Writ No. 5324 of 1970

Kasturi Lal Har Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-09-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1972) 29 STC 495

Hon'ble Judges : R.S. Pathak, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant; R.R. Agarwal, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—Messrs Kasturi Lal Har Lal, petitioners, are a partnership concern carrying on the business of sale of coal.

2. The petitioner-firm purchases coal in the State of Bihar and thereafter the goods are booked in the name of the petitioners. In the sales which are the subject-matter of the dispute in the present petition, the firm endorsed the documents of title to the goods while the same were in transit from Bihar to this State. The delivery of the goods was thereafter taken by the endorsees. The petitioners effected sales of the value of Rs. 9,08,548.81 by this method. No tax under the Central Sales Tax Act appears to have been paid by the petitioners in this State, and accordingly, the Sales Tax Officer, Lucknow, issued notice u/s 21 of the U.P. Sales Tax Act treating the sales to be inter-State sales having been effected in this State, and imposed a tax of Rs. 18,170.98 on the petitioners. The petitioners thereafter filed the present petition challenging the jurisdiction of the Sales Tax Officer, Lucknow, to make the imposition. It now transpires that the petitioners have also preferred an appeal against the order of assessment.

3. The main contention raised on behalf of the assessee is that inasmuch as the movement of the goods had started from the State of Bihar, the tax, if any,

payable on such sales was assessable in Bihar and the Sales Tax Officer, Lucknow, had no jurisdiction to make the order of assessment.

4. Apart from this ground of challenge to the jurisdiction of the Sales Tax Officer, at one stage it was faintly suggested that a second sale effected while the goods are in movement from one State to another by a dealer, who is not a registered dealer as is the case of the petitioners, is not liable to payment of any tax at all and as such the Sales Tax Officer had no jurisdiction to make the assessment. This ground, however, is without substance. Section 6 of the Act makes every dealer liable to pay tax under the Act on all sales effected by him in the course of inter-State trade during any year. It is not disputed that sales which are being sought to be brought to tax were effected in the course of inter-State trade. The liability to pay tax on such sales flows from Section 6 which is the charging section. The proviso to Section 9(1) on which reliance was placed for the proposition that it was only a registered dealer who would be liable to pay tax on such subsequent sales, does not appear to be sound. The proviso to Section 9(1) has been enacted only for the purposes of determining the State which will have jurisdiction to collect the tax in respect of such subsequent sales, and as such cannot be read so as to absolve a dealer who is not registered, from all liability for payment of tax in respect of such sales. This argument, if accepted, would lead to the startling result that, while a registered dealer would be liable to pay tax on such subsequent sale, the dealer who is not so registered, would be completely absolved from any such liability. This would be plainly against the scheme of the Act, inasmuch as in fixing the rate of tax u/s 8 of the Act, a registered dealer pays lower rates than that paid by an unregistered dealer. This argument as such must fail.

5. The question as to whether the authorities in this State had the jurisdiction to impose the tax in question now needs consideration. The provision fixing the jurisdiction of the particular State for levy and collection of the tax is contained in Section 9(1). By this section, the tax is levied and collected by the Government of India in the State from which the movement of the goods commenced. The procedure for making the assessment is contained in Sub-section (3) of that section which adopts the relevant sales tax law of that State for the purpose. Thus if the movement of the goods commenced from Bihar, it would be the State of Bihar that would levy and collect the tax on behalf of the Government of India, in accordance with the procedure laid down by the sales tax laws prevailing in that State. It is undisputed in this case that the movement of the goods commenced from the State of Bihar and as such on a plain reading of Section 9(1) of the Act, it would be the sales tax authorities in Bihar which would make the imposition.

6. Counsel for the State has, however, urged that u/s 9, Sub-clause (3), it is the law of the "appropriate State" under which the assessment has been made, and inasmuch as u/s 2, Sub-clause (a), the "appropriate State" in relation to the assessee is the State of Uttar Pradesh, the concerned Sales Tax Officer was fully

competent to make the assessment. This argument proceeds on an omission to consider the opening words of Section 2 which is the definition clause, and which makes the definitions given thereunder subject to the context. We have already seen that Section 9, Sub-clause (1), confers jurisdiction to make the levy and collection of the tax, on the State where the movement of the goods commenced, and so the determinative test for discovering the jurisdiction of a particular State, is the place where the movement of the goods commenced. The words "appropriate Government" given in Sub-section (3) of that section must necessarily refer to the State which by Section 9(1) has been conferred jurisdiction to levy and collect the tax. The definition of the words "appropriate Government" as contained in Section 2(a) cannot be applied to Section 9 without creating an inconsistency. It is well settled that a definition clause has to give way to the substantive provision of the Act, in a case where the adoption of the meaning given in such a clause is inconsistent and out of context in the substantive provision. This argument as such cannot avail the State.

7. It has next been contended that the case of the petitioners-firm fell within the ambit of the proviso to Section 9(1). Before this proviso can apply, the sale must be by a registered dealer. We have already seen that the petitioners are not such dealers as they have not obtained any registration as is required by Section 7 of the Act. Counsel for the State has, however, urged that inasmuch as Section 7 of the Act requires every dealer to obtain registration within a prescribed period and in the event of not obtaining such a registration, penal consequences ensue u/s 10 of the Act, the words "registered dealer" as used in the proviso to Section 9 does not refer necessarily to a dealer who has obtained registration u/s 7, but to a dealer who should have obtained such a registration. This argument does not appeal to us at all. There is no provision in the Act by virtue of which, every dealer whether he has obtained a certificate of registration or not, in law is deemed to be a "registered dealer". In fact, Sections 8 and 10 of the Act clearly indicate that the Act had in view both dealers who were registered, and also dealers who were not so registered. It is thus not possible to uphold this contention.

8. As a last resort, in order to sustain the jurisdiction of the Sales Tax Officer, Lucknow, it has been urged that there was a fresh movement of the goods at the time when the petitioners effected the second sale, and the probability in the circumstances was that the goods were, at that point of time in this State, and as such the Sales Tax Officer could validly make the assessment order. This argument appears to us to be misconceived, for if the goods were in this State, the sales admittedly having been effected to parties resident here, the sales would be taxable not under the Central Sale Tax Act but under the U.P. Sales Tax Act and as such, the Sales Tax Officer would have no jurisdiction at all to proceed under the Central Sales Tax Act. It is thus clear that inasmuch as the movement of the goods commenced in Bihar, it was the State of Bihar which could levy and collect the impugned tax and the Sales Tax Officer, Lucknow, had no jurisdiction to make the assessment. We are fortified in this view by a

decision of this court, in the case of Karam Chand Thapar and Bros. (Coal Sales) Ltd. v. The Sales Tax Officer, Moradabad, and Ors. Civil Misc. Writ No. 4356 of 1969 decided on 24th July, 1970 in which the facts were strikingly similar.

9. Counsel for the State has also urged that, inasmuch as the petitioners-firm had an alternative remedy by way of appeal, and had in fact resorted to such a remedy by filing an appeal, we should relegate the petitioners to their remedy under the statute and not exercise our jurisdiction under Article 226 of the Constitution. The existence of an alternative remedy is not a bar to the exercise of powers under Article 226 of the Constitution, and the court in an appropriate case can grant relief. The lack of jurisdiction to take the assessment proceeding is plainly apparent on the face of the record. Having regard to the circumstances, we are satisfied that we should interfere under Article 226 and grant relief to the petitioners.

10. The petition succeeds. It is allowed with costs. A writ in the nature of certiorari shall issue quashing the impugned assessment order dated 28th March, 1970. The respondents are restrained from recovering the sum of Rs. 18,170.98 assessed thereby. In case the amount has been realized it shall be refunded to the petitioner.