
(1974) 05 PAT CK 0004
In the Patna High Court
Case No : Tax Case No's. 19 and 20 of 1970

Malpani Brothers

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-05-1974

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 33(1), 7

Citation : (1974) 34 STC 234

Hon'ble Judges : S.N.P. Singh, Acting C.J.; S.K. Jha, J

Bench : Division Bench

Advocate : Ramanugrah Prasad, for the Appellant; Shreenath Singh and Guru Sharan Sharma, for the Respondent

Judgement

S.N.P. Singh, Ag. C.J.

1. These two references have been heard together and they are being disposed of by this common judgment.

2. At the instance of the dealer, the Commercial Taxes Tribunal, Bihar, Patna, has stated the case and made these two references u/s 33(1) of the Bihar Sales Tax Act, 1959 (hereinafter to be called "the Act"), for the decision of the following question of law:

Whether, in the facts and circumstances of the case, the rejection of the applicant's claim for deducting the sums of Rs. 27,235 and Rs. 46,070 from the gross turnovers of the respective years 1963-64 and 1964-65 on account of sales tax to compute the taxable turnover u/s 7 of the Bihar Sales Tax Act, 1959, is legal and valid ?

3. The dealer returned gross turnovers of Rs. 9,59,812 and Rs. 15,66,411 for the periods 1963-64 and 1964-65. The assessing officer found that the dealer had deducted Rs. 27,235 and Rs. 46,070 during the two years in question on account of sales tax realised from the customers though the cash memos and bills did not indicate that such amounts towards sales tax had been realised from the

customers in addition to the sale price of the goods. The dealer took the stand that for the purpose of taxation sales tax even though not separately realised by him can be deducted from the gross turnovers by a pro forma calculation for the purpose of working out the taxable turnover. The assessing officer rejected the contention of the dealer and added the two amounts in the taxable turnovers by his orders of assessment dated 29th April, 1966, and 27th June, 1966. The dealer then filed two appeals against the orders of assessment, but those appeals were dismissed by the learned Deputy Commissioner. The dealer then filed applications in revision before the Tribunal. One of the points raised before the Tribunal was, whether the assessing officer was justified in adding the two amounts for the two years which represented the amounts of sales tax as calculated by the dealer on the sale price charged from his customers.

4. It appears that before the Tribunal some of the bills were produced to show that though the price was noted as a single amount, there was a rubber-stamp affixed to the effect that the amount was inclusive of sales tax. It was, therefore, urged that in his accounts the dealer used to calculate the amount of sales tax payable on the sale price in each case and he had deducted this amount from the total turnover for working out the taxable turnover. It was urged on behalf of the dealer before the Tribunal that the bills showed that the dealer actually collected the sales tax though it was included in the sale price shown in the bills and that, u/s 7(2)(a)(ii), the amount of sales tax should have been deducted for working out the taxable turnover for assessing the special sales tax. The Tribunal held that only the sales tax which had been collected in addition to the sale price of the goods can be deducted from the gross turnover u/s 7 for working out the taxable turnover of the dealer. It further took the view that the dealer is not entitled to deduct certain amount on account of sales tax even though he may not have collected any tax as such in addition to the sale price received or receivable by him. Accordingly, the Tribunal rejected the claim of the dealer for deduction of the two amounts, namely, Rs. 27,235 and Rs. 46,070 from the gross turnovers for the two years in question.

5. Mr. Ramanugrah Prasad, the learned Counsel appearing for the dealer, submitted before us that there is nothing in the Sales Tax Act or in the Rules to compel a dealer to mention the collection of sales tax, both general and special, in the cash memos. The dealer can, therefore, show otherwise, namely, from his account books, etc., that he had collected tax separately from the buyers. According to the learned Counsel, the Tribunal has erred in law in rejecting the claim of deductions of the two amounts from the gross turnovers for the two years in question. In support of his contention that the dealer can show the collection of sales tax from the buyers otherwise than separately showing the collection in the cash memos, relied on a decision of the Supreme Court in the case of *Ashoka Marketing Ltd. v. State of Bihar and Anr.* [1970] 26 S.X.C. 254 (S.C.). In that case, it was observed by the Supreme Court as follows:

Under Section 7, it is true, the taxable turnover of a dealer is determined to be

that part of the gross turnover which remains after deducting several items including the amount of sales tax actually "collected as such", along with the sale price received or receivable in respect of sale of goods. It is implicit that the dealer may recover from the purchaser in addition to the value of the goods a certain amount which he will have to pay as tax on that value. The price payable by the purchaser on that account is the value of the goods and the amount paid for recouping the dealer for payment of tax. The Act enables the dealer to pass on the liability of sales tax to the purchaser and if by invoice or otherwise the dealer charges in respect of the goods sold by him the value of the goods and the tax which he may have to pay on the value, sales tax will be computed on the value of the goods and not on the total amount paid by the purchaser. The amount payable by the purchaser is, however, the consideration paid by him for purchasing the goods. The dealer may apportion the value of the goods and the sales tax payable by him on the sales to the State. If he does so, he is liable to pay sales tax only on the value and not on the amount of tax collected by him which is payable as sales tax to the State. If he does not apportion the value and the tax, he is liable to pay sales tax on the total amount received by him, calculated at the appropriate rate.

The above observation made by the Supreme Court supports the contention which has been raised on behalf of the dealer. In the case of *Spencer & Co. Ltd. v. The State of Mysore* [1970] 26 S.T.C. 283, a Bench of the Mysore High Court also took the view that even in the absence of evidence furnished in the cash memos or bills it is possible for a dealer to establish that he has collected the amount by way of tax under the Act. The difficulty, however, in the way of the dealer in the instant cases is that, according to the finding of the Tribunal, the dealer has not separately collected the sales tax as such from the buyers. In that view of the matter, the rejection of the dealer's claim for deducting the sums of Rs. 27,235 and Rs. 46,070 from the gross turnovers of the respective years 1963-64 and 1964-65 on account of sales tax cannot be said to be illegal or invalid. The order of the Tribunal does not show that it rejected the claim of the dealer for deduction of the two amounts merely on the ground that the collection of special sales tax was not separately shown in the cash memos, but the Tribunal came to the conclusion that no special tax was separately collected by the dealer from his customers. In view of the aforesaid finding, the question must be answered in the affirmative.

6. Accordingly, I answer the question against the dealer and in favour of the department. In the circumstances, there will be no order as to costs.

S.K. Jha, J.

I agree.