(1951) 03 PAT CK 0018

In the Patna High Court

Case No : Misc. Judicial Case No''s. 46 and 47 of 1949

Md. Amin Brothers APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 07-03-1951

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 20(2)
Bihar Sales Tax Rules, 1949 — Rule 58

Citation : AIR 1951 Patna 197

Hon'ble Judges : Sarjoo Prasad, J;Ramaswami, J

Bench : Division Bench

Advocate : S.N. Dutta and S.C. Sinha, for the Appellant; Govt. Advocate, for the Respondent

Judgement

Ramaswami, J.—These cases are stated by the Board of Revenue u/s 21(3), Bihar Sales Tax Act.

2. The following question of law has team referred in both the statements:

"Whether in order dated 30-4-48 dismissing the appeal for default without deciding the question raised by the appellant in his memo, of appeal to the Commissioner is intra vires & in accordance with law."

3. On behalf of the assessee, Mr. S. N. Dutt sited Section 20 of the Act which provides that within sixty days from the passing of an order of assessment, with or without penalty, u/s 10, any dealer may, in the prescribed manner, appeal to the prescribed authority against such assessment or penalty for both. u/s 20(2) the appellate authority, in disposing of any appeal under Sub-section (1), may confirm, reduce, enhance or annul the assessment or penalty, if any, or both, "subject to such rules as have been prescribed." Reference was made to Rules 57, Bihar Sales Tax Rules, which is to the-following effect:

"Summary rejection of appeal.--If the memo, of appeal is not in Form XXIV or if all the requirements of the form are not duly complied with, the appeal may be summarily rejected after giving the appellant such opportunity as the appellate officer thinks fit to amend such memo. The appeal may also be summarily rejected on other grounds which should be reduced to writing by the appellate officer; Provided that before an order rejecting the appeal is passed, the appellant shall be given a reasonable opportunity of being heard."

It was argued on behalf of the assessee that in this case the Commissioner has not purported to act under Rules 57 of the Rules but instead fixed a date for hearing u/s 58 which states:

"If the appellate officer does not reject the appeal summarily, he shall fix a date for hearing the appellant or his agent."

From the order sheet of the Commissioner printed at p. 6 of the paper-book it appears that on 9-2-1948 after the memo, of appeal was presented the Commissioner fixed 12-4-1948 for hearing. On the same date he called for a report & asked the Sales Tax Officer to inform the parties of the date fixed. The order sheet dated 29-4-1948 shows that cm that date no lawyer appeared for the appellant but a petition for time was presented on the ground that certain documents were filed before the High Court & they had not yet been returned. Thereupon the Commissioner dismissed the appeal for default on the ground that the lawyer should have been present to show "how he was justified in asking for time." It was contended by the learned counsel that since the commissioner did not summarily reject the appeal u/s 57, but had fixed a date for hearing u/s 58 the appeal should have been decided upon merits & the Commissioner ought to have given reasons for confirming the assessment made by the Sales Tax Officer. Since no reasons have been given by the Commissioner it was argued that the order of dismissal for default was ultra vires & not in accordance wife law. In this context reference should be made to M.X. de Nornha and Sons Vs. Commissioner of Income Tax, , in which a notice fixing the date of hearing of a appeal was sent by the Appellate Tribunal by registered post to the address given by the assesses firm. The notice was received by an employee of the firm, who used the seal of the firm, on its behalf. On the day fixed for hearing of the appeal & on the next day to which the case was adjourned by the Appellate Tribunal, the assessee did not appear & the Tribunal dismissed the appeal for default. On these facts it was held by the Allahabad High Court that the Tribunal should have decided the case on merits & the dismissal of the appeal for default could not be said to be hearing of the appeal & its determination. The provisions of Section 20, Bihar Sales Tax Act, are in pari materia with Section 31, Income Tax Act. In my opinion the word "determination" in Section 20 (2), Bihar Sales Tax Act, must be construed to mean a decision on the point raised in the case & not merely an order of dismissal for default. It is clear that the Commissioner acted illegally is dismissing the appeal for default & confirming the assessment without giving reasons in support of this order. For these reasons I would answer the question referred to the High Court in negative. There will be no order for costs.

Sarjoo Prasad, J.

4. I agree. The reference in both the cases should be answered in the manner indicated & for the reasons stated by my learned brother.