(1963) 04 CAL CK 0005

In the Calcutta High Court

Case No : Civil Rule No. 650 (W) of 1961

Merchant and Traders (Private) Ltd. APPELLANT

Vs

State of West Bengal and Another RESPONDENT

Date of Decision : 01-04-1963

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1963) 14 STC 798

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : B.C. Dutta and S.K. Bhattacharya, for the Appellant; J. Majumder and Provash Chandra Base, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Banerjee, J.—The petitioner-company carry on business as commission agents and are dealers registered under the Bengal Finance (Sales Tax) Act. The registration certificate granted to the petitioner company bears the date 10th December, 1941. Under the said registration certificate the petitioner was authorised to purchase for resale, free of tax, the following goods : (1) spices ; (2) chemicals ; (3) dyes and kusum flower ; (4) indigo; (5) textiles ; (6) hardware ; (7) iron ; (8) gunny bags and (9) other general merchandise as and when required for resale.

2. On or about 6th June, 1961, there was a notice served on the petitioner calling upon it to produce the certificate of registration before the respondent-Commercial Tax Officer for the purpose of the amendment of the certificate, by deleting therefrom the item "general merchandise". A relevant extract from the said notice is set out below :-

It is decided to delete'' general merchandise''. In lieu thereof goods which you actually deal in and not included in the R. C. will be included if you so desire, subject to your production of satisfactory evidence. Please send the R. C. on any week-day during office hours but not later than 19th June, 1961, for this purpose. In case of non-compliance the amendment by way of deletion of the word ''general merchandise'' will be given effect ex parte without further reference to you.

3. The petitioner objected to the notice on the grounds that there was no occasion for the amendment of the registration certificate and that the respondent-Commercial Tax Officer had no right to effect the amendment. Not having received any favourable reply to the objections, the petitioner moved this Court, under Article 226 of the Constitution, praying for mandate on the respondent for cancellation and withdrawal of the notice and obtained this Rule.

4. On behalf of the petitioner a two-fold argument was advanced in support of the Rule. It was contended, in the first place, that there was power in the Commissioner, u/s 7(4) of the Bengal Finance (Sales Tax) Act (hereinafter referred to as the Act) to amend a certificate of registration only in accordance with information furnished u/s 16 of the Act, or otherwise received. Section 16, to which reference is made in Section 7 (4) of the Act, reads as follows :-

If any dealer to whom the provisions of Sub-section (2) of Section 10 apply,-

(a) sells or otherwise disposes of his business or any part of his business or any place of business or effects or comes to know of any other change in the ownership of the business, or

(b) discontinues his business or changes his place of business or opens a new place of business, or

(c) changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which is or are specified in his certificate of registration, he shall within the prescribed time inform the prescribed authority accordingly; and if any such dealer dies, his legal representative shall in like manner inform the said authority.

5. It was contended, in the next place, that the respondent-Commercial Tax Officer had no jurisdiction to effect any amendment in the registration certificate, such a power being vested only in the Commissioner.

6. It is no doubt true that none of the contingencies for amendment of the certificate of registration, as mentioned in Section 16 of the Act, arises in this case. Nevertheless, there is power in the Commissioner to amend the certificate of registration on information "otherwise received". The question is did the respondents otherwise receive any information justifying amendment of the certificate of registration ? The occasion for the issue of the notice is stated in paragraph 8 of the affidavit-in opposition in the following language :-

The deponent submits that as it was detected ''general merchandise'' in the original application for certificate of registration by the petitioner was introduced afterwards by writing in lead pencil and as the said words conveyed the sense of wide and various kinds of collective goods and are against the provision of the Act, the petitioner by Memo. No. 5567 dated 6th June, 1961, was called upon to explain and state the specific class of goods out of the commodities of ''general merchandise'' for the purpose of amending the certificate of registration....

7. The statement hereinbefore quoted is not revealing. It does not state that any information, as contemplated by Section 7(4) of the Act, was received by the Commissioner. It states that it was detected that the words "general merchandise" had been subsequently added to the application in pencil; who made this detection is not stated, although the paragraph is affirmed as true to the knowledge of the respondent Commercial Tax Officer. It does not also specifically state when subsequently the addition of the words "general merchandise" was made in the application, that is to say, whether before the application was filed or thereafter. In my opinion, nothing turns on the fact that the addition of the words "general merchandise" had been afterwards made, in pencil, on the application. Whenever such addition may have been made, it must have been made before the application was granted, otherwise the said words could not find place in the certificate of registration itself.

8. Now assuming for the sake of argument that the detection mentioned in the affidavit-in-opposition was made by the Commercial Tax Authorities, the point that arises for my consideration is whether "detection" amounts to receiving of information, as contemplated by Section 7(4) of the Act. Ordinarily the words "information received" mean information received from an outside source. When a man detects something he discovers it. Self-information is not, in ordinary parlance, information received. But in the context of Section 7(4) of the Act, I do not think that the power of amendment of registration certificates is delimited by information supplied by dealers, u/s 16, or by information received from outside sources. The words "information otherwise received" have been used in Section 7(4) of the Act, in contradistinction to information supplied by the dealer u/s 16 of the Act and are wide enough to include informations supplied by others as also matters discovered by the authorities themselves. Otherwise, patently irregular or unlawful entries in registration certificates must have to be ignored until and unless dealers or others care to draw the attention of the Commercial Tax Authorities thereto. In my opinion, this must not have been intended in Section 7(4) of the Act and I should not be justified in interpreting the words "otherwise received" by their meaning in common or parochial parlance, irrespective of the intendment of the statute.

9. In the case of Bhartia Electric Steel Co. v. Commercial Tax Officer [1956] 7 S.T.C. 527 a situation similar to the situation in this case, arose. In that case the petitioner-company was carrying on the business of manufacturing steel castings, ingots, bars, rounds, flats and squares. It obtained a certificate of registration in which it was stated that sales to the petitioner-company of "building or plumbing materials or fixtures required for construction, fitting out or repair of any building would be tax free. A Commercial Tax Officer amended the

certificate, by deleting the above entries, on the ground that the same had been made on a wrong notion of Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act and that the Government had decided to grant the exception only to those goods which were actually used in the manufacture of goods for sale. The petitioner-company objected to the amendment, inter alia, on the ground that the Commissioner did not receive any information but had been really ordered by the Government to do something and pursuant to that an error was being corrected in the registration certificate. This argument was repelled by this Court with the following observations :

Mr. Kar argues that in this case the Commissioner did not receive any information but he has been ordered by the Government to do something and, in any event, an error is being corrected. This in my view is too narrow an interpretation of the words ''otherwise received''.

10. Giving the words "otherwise received" a board interpretation, I hold that it is within the competence of the Commercial Tax Authorities to correct errors or meaninglessness in certificates of registration, on detection or discovery thereof.

11. The next question for my consideration is whether the Commercial Tax Officer was at all justified in trying to amend the registration certificate on the ground he tried to do. The word "merchandise" is a word of generic import and means goods bought and sold for gain. The addition of the word "general" before such a generic word only extends the meaning thereof to the fullest, if it does serve any purpose at all. Section 7(3) of the Act requires that the certificate of registration shall specify the class or classes of goods for the purposes of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act. If specification is needed, that object is not certainly served by using words of generic import. In that sense the certificate of registration was irregular and called for amendment.

12. I turn now to the last argument advanced on behalf of the petitioner. u/s 15 of the Act, the Commissioner can delegate his power, in writing, to any person appointed u/s 3 to assist him. Under Rule 71, made under the rule-making powers conferred by the Act, the Commissioner can delegate the power of amending a certificate of registration to the Commercial Tax Officers. Therefore, the Commercial Tax Officer has the power to amend registration certificate. That being so, the last argument made on behalf of the petitioner must fail.

13. In the result this Rule must be discharged with costs, hearing fee assessed at three gold mohurs.

