(1973) 06 PAT CK 0001

In the Patna High Court

Case No : Tax Case No. 41 of 1967

Minerva Printing Works APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 29-06-1973

Acts Referred:
Bihar Sales Tax Act, 1959 — Section 33(1), 4(3)(a)

Citation : (1973) 32 STC 258

Hon'ble Judges : N.L. Untwalia, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : Balbhadra Pd. Singh, Ramgopal Khandelia, Lalit Mohan Bejla and Krishna Mohan, for the Appellant; Udai Sinha, for the Respondent

Judgement

N.L. Untwalia, C.J.—This is a reference u/s 33(1) of the Bihar Sales Tax Act, 1959 (Bihar Act 19 of 1959), hereinafter called the Act, by the Commercial Taxes Tribunal, Bihar, on the following two questions of law:

(1) Whether all or any of the articles, namely, blank registers, exercise books, letter-pads, labels, loose printed forms are exempted from special sales tax as coming within the purview of the word ''books'' under item No. 18 of Schedule III of Notification No. STGL-AR-107/59-9134 F.T. dated the 1st July, 1959 ?

(2) Whether on a proper construction of item No. 2 in Notification No. STGL-11687 F.T. dated the 27th August, 1959, all or any of the articles, namely, blank registers, exercise books, letter-pads, labels, loose printed forms, envelopes, cards, flat files are ''paper'' and as such exempt from payment of special sales tax ?

2. The assessee is a press carrying on business under the name and style of Minerva Printing Works. It deals in printing and selling of printed articles and stationeries. The assessee returned a gross turnover of Rs. 3,37,417 and claimed various exemptions to the tune of Rs. 2,75,585. Exemption to the tune of Rs. 29,526 was allowed, but the assessee''s claim of exemption from taxation on the

turnover on account of sale of articles, such as blank registers, exercise books, letter-padsj labels, loose printed forms, envelopes, cards and flat files was not allowed by the Assessing Officer. The assessment order is dated 29th June, 1964 and is annexure 1 to the statement of the case. The assessee went up in appeal before the Deputy Commissioner of Commercial Taxes. The Deputy Commissioner by his order dated 31st August, 1965 (annexure C), confirmed the order of disallowance of the claim of exemption on account of the sale of the above goods by the assessee. It went up in revision before the Tribunal. The Tribunal by its order dated 20th August, 1966 (annexure E), did not accept the contention of the assessee and confirmed the orders passed by the authorities below. The claim of exemption, both from the general sales tax and special sales tax in regard to the articles aforesaid is based upon Notification No. STGL-AR-107/59-9134 F.T. dated 1st July, 1959. This is a notification issued by the Governor of Bihar in exercise of the powers conferred by Clause (a) of Sub-section (3) of Section 4 of the Act. Goods mentioned in Schedule III appended to the notification were exempted from the levy of both general sales tax and special sales tax. Item 18 of Schedule III is "books and periodicals". Thus, there is a complete exemption from tax so far as books and periodicals are concerned. The question for determination, however, is whether the goods dealt with by the assessee in this case could be characterised as books within the meaning of item 18 of Schedule III of the notification dated 1st July, 1959.

There is a direct decision of the Allahabad High Court on the point at issue in the case of Industrial and Commercial Service, Allahabad v. Commissioner of Sales Tax [1963] 14 S.T.C. 299 PAT. On a consideration of the meaning of the words "book" and "diary" given in three of the standard dictionaries, Desai, C. J., gave a restricted meaning to the word "books" given in Section 4 of the Act which was under consideration in that case. The learned Chief Justice further said that exercise books are books according to the wider meaning, but the State Government by including exercise books in the notification interpreted the word in a restricted sense so as not to include exercise books. Here also, while dealing with the second question of law, I would refer to another notification which includes exercise books and all other kinds of articles dealt with by the assessee. The term "book", therefore, given in the notification dated 1st July, 1959, has to be given a restricted meaning. The word "books" would thus mean a collection of sheets of papers written or printed, strung or bound together from which one may read and find instructions or lessons. It is clear that the intention of the Governor by the use of the word "book" in item 18 along with the word "periodical" was book as we understand them in a restricted sense. Periodicals and books are meant for reading purposes and to derive lessons from and gather informations. The exercise books or blank registers or letter-pads, etc., cannot be called books. The argument before the Allahabad High Court was that diary was also a book. This argument was repelled. I am in respectful agreement with the principle of law decided by the Allahabad High Court and hold that the assessee''s case is rather on a weaker footing than that of the case before the

Allahabad High Court. It may also be added that exercise books were also added in this notification as item 29 on 15th May, 1964, by Notification No. STGL/RT-22/64-5700 F.T. In this case we are concerned with the period prior to that notification. This also explains that exercise books are not covered by the word "book" in item 18. The view taken by the Tribunal in this regard is correct and the first question of law referred to this court must be answered in favour of the Commercial Taxes Department and against the assessee.

3. The second question is concerned with Notification No. STGL(MPT) PT2/59-11687 F.T. dated 27th August, 1959. This was a notification issued by the Governor of Bihar in exercise of the powers conferred by the proviso to Section 5 of the Act. It provides that special sales tax leviable under the Act on the sale of goods specified in the second column of the schedule annexed to the notification shall be levied at the stage specified in the third column of the said schedule subject to the conditions and restrictions set out in the fourth column thereof. Item 2 of the schedule reads as follows : "Paper including all kinds of paste-board, mill-board, straw-board, card-board, blotting paper, newsprint, cartridge paper, packing paper, paper bags, cartons, cards and blank registers, note-books, exercise books, envelopes, labels, letter-pads, writing tablets and flat files made out of paper." The stage where tax is to be levied on these goods is provided in the third column. Two stages are given : "(a) If the goods are imported from a place outside Bihar, at the point of sale by the importer and (b) if the goods are manufactured in Bihar, at the point of sale by the manufacturer." The condition mentioned in column 4 is the production by the assessee of a cash memo or bill issued to him by the dealer from whom he purchased the goods containing a true declaration in writing that the goods in question had been already subjected to the special sales tax at any of the stages specified is column 3. In this case it is not disputed, rather accepted, that the condition mentioned in column 4 was fulfilled. The assessee had produced the necessary papers to show that it had paid special sales tax at the time of its purchase of paper from the dealer-paper in the ordinary sense leaving out the inclusive enumeration given in column 2 of item 2. The question for consideration before the Tribunal was whether the assessee was liable to pay special sales tax on the sale of blank registers, exercise books, letter-pads, labels, loose printed form, envelopes, cards and flat files, which it had prepared from the papers purchased by it from the dealer; in other words, whether these articles were different within the meaning of the notification attracting the incidence of taxation at the point of sale by the manufacturer, namely, the assessee. The Tribunal''s view seems to be that the special sales tax paid by the assessee on paper was in accordance with Clause (a) mentioned in the third column and since from the paper purchased by it from the dealer it manufactured other articles, therefore, it is liable to pay special sales tax within the meaning of Clause (b). The question is whether this view is correct in law.

4. The Tribunal seems to be of the opinion that the various articles enumerated in the second column of the notification dated 27th August, 1959, if purchased

from a dealer or a manufacturer and sold by the assessee as such, then and then only he is not liable to pay further special sales tax. The inclusive definition, according to the view of the Tribunal, must be confined to this aspect of the matter only. But, if the assessee had manufactured other articles from the paper purchased by it, then it cannot take advantage of this notification and must pay special sales tax in accordance with Clause (b) mentioned in the third column. In my opinion, the Tribunal has committed a clear error of law in this regard. The various articles in the second column have not been enumerated separately as one distinct from the other. The use of the word "including" connotes that the other articles mentioned thereafter may not be paper in the dictionary sense or in the common parlance sense, or some of them may be so. But the use of the word "including" means that whether they are so or not, all articles enumerated after that word must be deemed to be paper for the purpose of the notification dated 27th August, 1959. That being so, it is clear to me that the assessee in this case purchased paper and sold paper within the meaning of the notification, although the articles sold were not paper in the strict sense of the term. That being so, it was not liable to pay any special sales tax on its own sales in regard to the various articles which are all included in the word "paper" in column 2 of the schedule annexed to the notification.

5. Learned Advocate-General, who appeared for the assessee, has cited before us a decision of the Gujarat High Court in Vaiswaner Trading Co. v. The State of Gujarat [1964] 15 S.T.C. 586PAT and a decision of the Supreme Court in The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji, . In this case, however, I do not think it advisable to go into the question as to whether exercise books, envelopes, letter-pads, blank registers, etc., could be characterised as paper in the light of the principle of law laid down in the two cases referred to above. Here, on a plain reading of the language of the notification in column 2 it is clear that all these articles have been included in the word "paper". That being so, the assessee was not liable to pay sales tax at the second stage when at the first stage it had paid sales tax on paper, merely because at the second stage the sale was of paper, (sic) not paper as such but of some articles manufactured from the paper.

6. For the reasons stated above, the second question must be answered in favour of the assessee and against the Commercial Taxes Department. Since the success is divided in this case, there will be no order for costs.

S.K. Jha, J.

7. I agree.

