

(1957) 01 PAT CK 0041

In the Patna High Court

Case No : Miscellaneous Judicial Cases No"s. 411 and 412 of 1952

Mirzamal Prabhu Dayal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-01-1957

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 10(5), 10(6), 2(c)

Citation : (1957) 8 STC 508

Hon'ble Judges : Ramaswami, C.J.;Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Shiveshwar Prasad Sinha, for the Appellant; The Government Pleader, for the Respondent

Judgement

Ramaswami, C.J. and Raj Kishore Prasad, J.—In Miscellaneous Judicial Case No. 411 of 1952 the assessment of sales tax upon the petitioner is for the period from the 1st of April, 1946, to the 31st of March, 1947, and in Miscellaneous Judicial Case No. 412 of 1952 the assessment of sales tax is for the period from the 1st of April, 1947, to the 31st of March, 1948. It is said that the petitioner Mirzamal Prabhu Dayal was carrying on a large business at Barh and that the business was not registered u/s 7 of the 1944 Act. An officer of the Sales Tax Department made a surprise visit to the petitioner's shop at Barh on the 7th of February, 1948, and seized a number of account books and other papers. In spite of several opportunities given to the petitioner, all the relevant account books were not produced and so the Sales Tax Officer made an assessment to the best of his judgment for both the assessment periods in question. A penalty u/s 10 (5) was imposed upon the petitioner in Miscellaneous Judicial Case NO. 411 of 1952 and a penalty was imposed under the corresponding section of the 1947 Act upon the petitioner in Miscellaneous Judicial Case No. 412 of 1952. As directed by the High Court, the Board of Revenue has stated a case upon the following questions of law in Miscellaneous Judicial Case No. 411 of 1952 :-

1. Whether in the circumstances of this case the assessment of tax upon the

petitioner u/s 10 (5) of the Bihar Sales Tax Act, 1944, is legal ?

2. Whether the imposition of penalty u/s 10 (5) of that Act upon the petitioner is legal ?

3. Whether the assessment of tax upon the petitioner for the period from 1st April, 1946, to 31st March, 1947, is barred by limitation under the proviso to Section 10 (6) of the Bihar Sales Tax Act, 1944 ?

2. In Miscellaneous Judicial Case No. 412 of 1952 the Board of Revenue has stated a case upon the following question of law :-

Whether in the circumstances of the case the assessment of tax upon the petitioner u/s 13 (5) of the 1947 Act is legal and valid?

3. We shall, in the first place, deal with the reference in Miscellaneous Judicial Case No. 411 of 1952. As regards the first question, the argument on behalf of the petitioner is that the assessment should have been made u/s 10 (5) of the Act upon the firm of Mirzamal Ram Pratap, located at Jamui, and not upon the firm of Mirzamal Prabhu Dayal, who is the petitioner in this case. It was pointed out on behalf of the petitioner that the Board of Revenue has found that the Barh business of Mirzamal Prabhu Dayal was not an independent business as the petitioner contended, but that the Barh business was financed by the Hindu joint family who also owned the Jamui business carried on in the name of Mirzamal Ram Pratap. It has been observed by the Board of Revenue that the Barh business was "an extension of the Jamui business." The argument of the petitioner is based upon this finding of fact recorded by the Board of Revenue. It was contended that the dealer was the Jamui firm of Mirzamal Ram Pratap and the assessment should be made upon that firm and not upon the petitioner. We are unable to accept this argument as correct. It is the admitted position that the Hindu joint family was carrying on the Jamui business and also the business at Barh. The Hindu joint family consisted of the father, Babu Mirzamal, and his two sons, Prabhu Dayal and Ram Pratap. It is true that the business at Jamui was registered by the Sales Tax Authorities under the name of Mirzamal Ram Pratap. It was contended on petitioner's behalf that the name of the business at Barh was different, namely, Mirzamal Prabhu Dayal but it is not disputed that the Hindu joint family was the owner of both the Jamui business and the Barh business and, therefore, the Hindu joint family was the dealer carrying on both the businesses within the meaning of Section 2(c) of the Bihar Sales Tax Act, 1944. Under this section, a "dealer" means "any person who carries on the business of selling or supplying goods in Bihar whether for commission, remuneration or otherwise and includes any firm or a Hindu joint family and any society, club or association which sells or supplies goods to its members". It is not contended by the petitioner in this case that there are two different partnerships under the Partnership Act, carrying on the business at Jamui and at Barh. On the contrary, it is admitted that the businesses at Jamui and Barh were Hindu family businesses and that the owner of both the businesses was the same

Hindu joint family consisting of Mirzamal and his two sons Prabhu Dayal and Ram Pratap. We are, therefore, satisfied that the dealer of the Jamui business is identical with the dealer of the Barh business and the assessment u/s 10(5) has been validly made upon the petitioner in this case. It was then argued that the provisions of Section 10 (5) would not be applicable because the firm at Jamui had been registered in the name of Mirzamal Ram Pratap and the provisions of Section 10 (5) would apply only in the case of an unregistered firm. We do not accept this argument as correct. Rule 6 at page an of the Bihar Commercial Taxes Manual, Volume II, is in the following terms :-

6. Application for registration :-An application for registration u/s 7 shall be made to the Sales Tax Officer in Form II not less than one month before the date from which the dealer becomes liable to pay tax under the Act. It shall be signed by the proprietor of the business, or, on his behalf, by a partner or director of the firm or by the principal officer managing the business, and shall be verified in the manner indicated therein :

Provided that a dealer having places of business in the jurisdiction of different Sales Tax Officers shall make one separate application to each such officer in respect of the place or places of business within the jurisdiction of that officer.

4. Rule 7 also provides as follows :

7. Grant of certificate of registration:-When the Sales Tax Officer, after making such enquiry as he may think necessary, is satisfied that the applicant has correctly given all the required information and that the application is in order, he shall register the applicant and shall issue a certificate of registration in Form III which shall be prepared on the basis of the particulars furnished by the dealer in Form II as far as possible.

5. In the present case the provisions of these rules apply and it was, therefore, incumbent upon the Hindu joint family to make an application to the Sales Tax Officer before starting the business at Barh. It is admitted in this case that the Hindu joint family had not made an application for registration as required by Rule 6 with regard to the business carried on at Barh. In these circumstances we consider that the provisions of Section 10 (5) are attracted. Section 10 (5) is in the following terms:-

10 (5). If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and half times that amount.

6. It is clear upon the facts stated in this case that the Hindu joint family was liable to pay tax with regard to the business carried on at Barh and had nevertheless wilfully failed to apply for registration of that branch of the business at Barh. It follows, therefore, that the assessment has been made properly by the Sales Tax Authorities upon the petitioner u/s 10 (5) of the 1944 Act.

7. It was also argued on behalf of the petitioner that the business at Barh was started on the 1st of April, 1946, and so the petitioner was not liable to pay any tax for the period from the 1st of April, 1946, to the 31st of March, 1947. Reliance was placed in this connection upon the provisions of Section 4 (2) which is in the following terms:-

4. (2) Every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under this Act with effect from three months after the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000.

8. Section 4 (1) is in the following terms :-

4. Incidence of taxation:-(1) Subject to the provisions of Sections 5 and 6 and with effect from such date as the Provincial Government may, by notification in the Official Gazette appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under this Act on sales effected after the date so notified :

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into by the dealer concerned on or before the date so notified.

9. We do not think that the provisions of Section 4 (2) apply to this case because we have held already that the dealer carrying on the Barh business and the dealer carrying on the Jamui business are one and the same person and, therefore, the business at Barh cannot be regarded as a new business started for the first time and, accordingly, the finding of the Board of Revenue that the Barh business was merely an extension of the Jamui business was correct. The argument of learned Counsel for the petitioner on this point cannot be accepted as correct.

10. In view of our answer to the first question, it must be held that the imposition of penalty u/s 10 (5) of the Act upon the petitioner is legal. We accordingly answer the second question in favour of the Sales Tax Department and against the petitioner.

11. As regards the third question, we consider that the assessment for the period from the 1st of April, 1946, to the 31st of March, 1947, is not barred by limitation u/s 10 (6) of the Bihar Sales Tax Act, 1944.

12. Section 10 (6) of the 1944 Act is to the following effect:-

10. (6) Any assessment made under this section shall be without prejudice to any prosecution instituted for an offence under this Act:

Provided that no order assessing the amount of tax due from a dealer in respect of any period shall be passed later than 24 months from the expiry of such period.

13. The period of assessment in this case is from the 1st of April, 1946, to the 31st of March, 1947, and the date of assessment is the 21st of June, 1948. It is obvious that the assessment has been made well within the period of limitation prescribed by Section 10 (6) of the Act, and there is no question of limitation involved in this case.

14. We accordingly answer all the three questions formulated by the Board of Revenue in Miscellaneous Judicial Case No. 411 of 1952 against the petitioner and in favour of the Sales Tax Department.

15. In Miscellaneous Judicial Case No. 412 of 1952 the sole question is whether the assessment of sales tax upon the petitioner u/s 13 (5) of the 1947 Act is legal and valid. We have already dealt with the argument of the petitioner on this point in considering the same question referred in Miscellaneous Judicial Case No. 411 of 1952. For the reasons already given we hold that the assessment of sales tax upon the petitioner is legal and valid also for the period from the 1st of April, 1947, to the 31st of March, 1948, and this question must also be answered against the petitioner and in favour of the State of Bihar.

16. The petitioner must pay the costs of these references. Hearing fee Rs. 100 in each case.