

(1970) 03 PAT CK 0013
In the Patna High Court
Case No : Tax Case No. 43 of 1967

M/s. Basudeo Prasad Chiranji Lal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-03-1970

Acts Referred:

Constitution of India, 1950 — Article 286(1)(a), 286(2)

Citation : (1970) 03 PAT CK 0013

Hon'ble Judges : S.C. Misra, C.J.;K.B.N. Singh, J

Bench : Division Bench

Advocate : J.C. Sinha and Baidyanath Prasad I, for the Appellant; S. Sarwar Ali, for the Respondent

Judgement

S.C. Misra, C.J.—This is a reference u/s 25(1) of the Bihar Sales Tax Act, 184 (Sic), hereinafter referred to as the Act, arising out of the order of the Commercial Taxes Tribunal, Patna, dated the 11th of May, 1966, passed in Revision Cases No. 112 of 1965. The assessment of sales-tax on M/s Basudeo Prasad Chiranji Lal for the period 1955-56 is the subject-matter of reference. The facts of the case, briefly stated, are that the assessee Basudeo Prasad Chiranji Lal filed a return of their gross turnover of Rs. 2,36,312/9/3. Out of this amount, they stated that the sale to the extent of Rs. 1,07,277/3/6 was made to registered dealers within the State of Bihar and the balance of Rs. 1,29,035/9/3 was made to dealers outside the State. Accordingly, the entire amount was exempt from payment of sales-tax under the provisions of Article 286(1)(a) of the Constitution of India as also u/s 33 of the Act. The Superintendent of Sales Tax, Champaran Circle, Motihari, allowed the claim of the applicant in its entirety so far as the sale to registered dealers inside the State of Bihar was concerned, but in regard to the latter part of the applicant's claim, he held that sales to that extent of Rs. 1,20,466/- were in fact sales within the State of Bihar and as such exigible to sales-tax under the Bihar Sales Tax Act, 1947.

2. The applicant went up in appeal against this order. By order dated the 18th

April, 1957, the Assistant Commissioner of Sales Tax, who heard the appeal, remanded the proceeding to the assessing officer, with a direction that the assessee should be given a chance to produce their books of account to substantiate their case that they had delivered goods at a place outside Bihar as a direct result of the sale on remand, however, the assessee failed to prove their case with reference to their books of account and the assessment originally made was affirmed an appeal preferred by the assessee once more was dismissed. The assessee then filed a revision application from the appellate order before the Deputy Commissioner of Commercial Taxes and there the case was raised for the first time that the sale of the value of Rs. 1,20,466/- was sale of the nature of inter-State trade and commerce and as such exempt from taxation under the Bihar Sales Tax Act by virtue of the provisions of Article 286(2) of the Constitution of India. The Deputy Commissioner remitted the case back once again to the Superintendent of Sales Tax directing that the applicant should be given a chance to establish their claim by producing the purchaser's books of account which might show that the goods moved from Bihar to Silliguri in West Bengal, as stated by the assessee, in pursuance of the sale and, in any view, whether such sale should be treated as sale in the course of inter-State trade and commerce. No books of account, however, of the dealers from Silliguri could be produced and as such original assessment order was affirmed and all subsequent steps by way of appeal and revision were dismissed.

3. On the 13th of April, 1965, the assessee filed a revision before the Commercial Taxes Tribunal. The Tribunal found that the goods sold by the petitioner, no doubt, moved from Bihar to a place in West Bengal but that was not as a result of the sale of goods to outside purchasers. The petitioner was not connected with the movement of the goods from the State of Bihar to a place in West Bengal. In the circumstances, it must be held that the sale of goods in question must be treated as sale inside State of Bihar and not as a sale outside the State, nor a sale in the nature of inter-State trade or commerce as contemplated under Article 286(2) of the Constitution. On an application being filed by the petitioner, however, a number of questions were suggested but the Tribunal formulated the following question for consideration by the High Court:

Whether in the facts and circumstances of the case, the Tribunal was right in holding that the sale of sugar worth Rs. 1,20,466 was neither a sale outside the State within the meaning of Article 286(1)(a) of the Constitution nor sale in the course of inter-State trade or commerce within the meaning of the Article 286(2) of the Constitution?

4. In order to answer the question, it is relevant to refer to the evidence on which the authorities below affirmed the conclusion of the Superintendent of Sales Tax, Motihari, that although the consignments of sugar in question were booked from Motihari to Kishanganj by the petitioner, and it is also established that they were delivered at Silliguri to local merchants such as M/s Sohanlal Ramjilal and Badri Narain Rameshwar Lal of Silliguri, nevertheless there was no

evidence on record to show that the movement of the consignments of sugar from Kishanganj to Silliguri was made at the instance of the petitioner. The transaction of sale being treated as inter-State sale or a sale outside the State so as to render it exempt from liability under the Sales Tax Act of a particular State can only arise when purchased goods are transported by the seller from the State of supply at his cost, i.e. when transport charges are paid by the seller and not by the purchaser.

If transport charges are met by the purchaser, it is obvious that the sale is completed within the bounds of the State where the sale takes place and thereafter it is the concern of the purchaser to transport the goods to another State to which he belongs. The legal position is well-settled and, in my opinion, reliance was rightly placed upon the decision of the Madras High Court in (1) *The Indian Coffee Board Vs. The State of Madras*, . This matter has also been reviewed fully in (2) *Tata Engineering and Locomotive Company Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Others*, . Therefore, question of law does not involve any particular difficulty so far as the transport of the goods from the State of the seller to a State outside at the instance of the purchaser is concerned. The answer to the question will depend mainly upon the facts of the case. While the case was last remanded by the Deputy Commissioner of Commercial Taxes to the assessing authority to give the assessee a chance to establish their case as to who paid the transport charges, a clear direction was given that it should be done with reference to the books of account of the dealers at Silliguri. The assessee failed to produce them before the Superintendent of Sales Tax, Motihari. The ground on which they seek to justify their failure to do so is that the Silliguri merchants refused to deliver their books of account to the assesses and as such the correct procedure to follow was to issue a direction to the Sales Tax Officer at Silliguri to examine the books of accounts of the purchasers to ascertain as to who paid the transport charges. The sales tax authorities, however, rejected this plea on several grounds, one of which is that this was the direction given in the order of remand and it was not open to the Superintendent or the Assistant Commissioner to rely upon any other material to decide that the goods were transported from Kishanganj to Silliguri on transport charges being paid by the assessee. It cannot be held that the ground is unreasonable. If, however, the matter had rested only on this, the position might have been arguable, but even the certificates granted by the Silliguri merchants that they received the goods and the certificate granted by the railway authorities at Kishanganj only show that goods were transported in some case by goods train and in some case by truck from Kishanganj to Silliguri. They do not show as to who paid the transport charges. The assessee did not produce even any agreement between their firm and the purchasers as to who was to transport the sold goods from Motihari to Silliguri. The burden to establish this in order to claim exemption would certainly lie upon the assessee because the document would be in the assessee's possession. The following observation in the judgment of the Tribunal of Commercial Taxes is significant in this connection:

It is now a settled proposition that only where the goods involved in a sale moved from one State to another as an incident of the sale itself, that the sale can be treated in the course of inter-State trade. In the first place we must observe that there are certain mis-statements in regard to facts by the applicant. Both before the Deputy Commissioner as well as in his revision application filed before the Tribunal, he has claimed that the goods were sent by him to the purchasers at Silliguri. This is not borne out by the evidence on record. Even the certificates produced by the applicant from his purchasers do not show that the goods were dispatched by him to Silliguri. In fact as far as the dispatch of goods by rail is concerned the certificate of the Station Master produced by the applicant himself shows that the goods were dispatched from Kishanganj by the purchasers to Silliguri. In face of these definite evidences, we do not see how the applicant has claimed that the goods were sent by him from Kishanganj to Silliguri. In view of the fact that the books of account of the applicant did not contain any evidence to the effect that the applicant had incurred any expenditure on dispatching the goods, the assessing officer, in our opinion, had rightly held that the applicant was in no way concerned with the movements of the goods from Kishanganj to Silliguri, and this being the fact the irresistible conclusion would be that the sale and the transport of goods were two different transactions and one had nothing to do with the other.

In view of this clear finding of fact and there being nothing on record to the contrary, it is difficult to hold that the sales were in the nature of inter-State sales and as such exempt from liability. We have examined the certificates granted by the purchasers of Silliguri and the sales-tax authorities were right in holding that none of them states that the transport from Kishanganj to Silliguri was made and the assessee paid the transport charges, which would entitle them to claim that the sale was an inter-State sale.

In the result, therefore, the question formulated by the Tribunal must be answered against the assessee and in favour of the department. Hearing fee is assessed at Rs. 250/-.

K.B.N. Singh, J.

I agree.