
(1959) 01 CAL CK 0014

In the Calcutta High Court

Case No : Civil Revision Case No. 632 of 1956

Nandi Charan Paul and Bros. Ltd.

APPELLANT

Vs

Certificate Officer, Alipore and Others

RESPONDENT

Date of Decision : 08-01-1959

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 17

Citation : 64 CWN 484

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Nani Coomar Chakravarty and Sudhindra Kumar Kar, for the Appellant; N.C. Chakravarty and D.N. Basu, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows:

One Chandi Charan Paul and one Nandi Charan Paul, two brothers, carried business in Calcutta in partnership under the name and style of Nandi Charan Paul and Brothers, as dealers in enamel, glassware, etc. On the 16th July 1952, the said two brothers executed a deed of transfer in favour of one Arabinda Majumdar, whereby they transferred their tenancy right in portion of premises No. 189, Old China Bazar Street and the goodwill and assets of the business, carried on under the name and style of Nandi Charan Paul & Brothers. It appears that the firm had a very large amount of sales tax in arrears. On the 11th September, 1952, upon the requisition of the Commercial Tax Officer, Lyons, Range Charge, a certificate case was started against the said firm, for the dues of sales tax to the extent of Rs. 110821/8/3. On that date, the certificate was issued as well as notice u/s 7, and also a distress warrant. The notice was served on the 14th November 1952, but there was very great difficulty in serving the distress warrant. However, the distress warrant was served after a while, and it appears that on the 16th January 1953, certain movables belonging to the Pauls were sold, producing only a sum of Rs. 126/-. Meanwhile, it was found that the business had been transferred and sometime on the 14th July 1953, the

Certificate Officer asked the Commercial Tax Officer as to whether the Company could be treated as transferee. What had happened was that in the meanwhile, Arabinda Majumdar had in his turn transferred the business to the Company, which is the petitioner before me. Upon receiving the intimation from the Certificate Officer, the Commercial Tax Officer, on or about the 21st April 1955, issued a show cause notice upon the petitioner company asking it to show cause why it should not be treated as the transferee. This is presumably a procedure taken u/s 17 of the Bengal Finance (Sales Tax) Act 1941 (hereinafter referred to as the "Sales Tax Act"). In January 1956 the Company preferred an objection. On the 7th February 1956, the objection was over-ruled. The order of the Commercial Tax Officer is not annexed to the affidavits, but a plain copy has been handed over to me at the hearing and I direct that it may be kept in the record. It appears that the Commercial Tax Officer, after considering the facts, has held that the Company was a transferee u/s 17 of the Sales Tax Act. This decision was communicated to the petitioner on or about the 15th February 1956. On the 8th February 1956, the Commercial Tax Officer intimated to the Certificate Officer that the Company has been treated as the transferee. The Certificate Officer, without issuing any notice upon the petitioner, or without hearing the petitioner, simply added in the certificate the words "transferee:-- Messrs. Nandi Charan Paul & Brothers Ltd. (L.R. 2366A) vide: C.T.O.'s letter No. 1506 dated 8-2-56". No notice u/s 7 was issued, but this certificate is being sought to be executed against the petitioner company straightaway. I might mention here that so far as the company is concerned, it got itself registered under the Sales Tax Act and the certificate of registration is dated the 23rd November 1952. In that certificate, however, it was mentioned that the certificate was granted subject to section 17, that is to say, subject to any liabilities that the Company may have as a transferee u/s 17.

So far as this application is concerned, two questions may be said to arise. The first question is as to whether u/s 17 of the Sales Tax Act, the petitioner company could be considered as a transferee of the firm, which was originally the certificate debtor. Mr. Chakravarty on behalf of the petitioner argues that a transferee u/s 17 means the first transferee. In other words, if a registered dealer transfers his business either absolutely or by way of a lease, then the transferee can be made liable, but if he transfers in his turn to somebody else, then the second transferee cannot be held to be a transferee from the original registered dealer, and therefore is not a transferee within the meaning of the expression used in section 17. I am unable to agree to this contention. The transfer, as mentioned therein, relates to the transfer of the business, and therefore, irrespective of the fact as to how many times the transfer was effected, the transferee remains liable u/s 17, as a transferee from the original registered dealer. This section must have been introduced in order to protect the revenue against sudden transfers of the business of a registered dealer, effected in order to defeat the payment of taxes. I refuse to believe that what was contemplated was only the first transfer and not the later transfers, because in

that event, the provisions can be easily defeated. Apart from that question of law, the question as to whether the Company is really a transferee or not is a pure question of fact and in these proceedings I am not in a position to decide that matter. If the petitioner wanted to establish that it was not the transferee, it should have appealed against the decision of the Commercial Tax Officer or made an application for revision or taken such other steps as were open to it under the Sales Tax Act.

2. The second question relates to the certificate proceedings. In this case the original certificate was issued in the name of the firm. Proceedings were taken but nothing was realised excepting the amount of Rs. 126/-. Then the certificate Officer wrote to the Commercial Tax Officer about the information as to whether the Company could be treated as a transferee. After sometime, the Commercial Tax Officer intimated that it can be treated as a transferee. I do not find any warrant for the Certificate Officer adding the words that I have mentioned above, without notice to the petitioner company and thus treat it as the certificate debtor. In section 3(1) of the Public Demands Recovery Act "a certificate debtor" has been defined to mean the person named as debtor in a certificate filed under the Act and includes any person whose name is substituted or added as debtor by the Certificate Officer. The learned Government Pleader argues that the petitioner company became liable as certificate debtor because its name was added and/or substituted. Surely, the definition clause cannot or does not govern the procedure. The procedure whereby a person is to be added or substituted is to be found in the body of the Act. It cannot be argued that the Certificate Officer has unlimited rights to add anybody he likes without notice and without giving him an opportunity of being heard.

3. u/s 42 of the Act, the death of the certificate holder does not cause a certificate to cease. But then, there is a procedure to be adopted in such a case, to substitute the legal representative. In such a case, notice has to be given. I do not see how a transferee could be substituted without any notice whatsoever being served. Indeed, the learned Government Pleader has not been able to show any substantive provision by which a transferee, under circumstances such as prevail in this case, could at all be substituted. But in any event, no such substitution could be done without notice. In my opinion, simply by adding those words in the certificate, behind the back of the company, the company could not be turned into a certificate debtor and consequently I think the certificate proceedings is not being carried on in accordance with the law.

4. The position therefore is that I am unable to give the petitioner any remedy with regard to the determination of the Commercial Tax Officer that it is a transferee u/s 17 of the Sales Tax Act, but with regard to the certificate proceedings I must quash the same by a Writ in the nature of Certiorari, save and except this that I am not quashing the original certificate issued in the name of the firm. I am not called upon to indicate here as to the procedure to be adopted in order to make the company liable. The parties must proceed in

accordance with law.

5. The Rule is made absolute to the extent indicated above. There will be no order as to costs. The respondents will now proceed in accordance with law and if the petitioner company is sought to be made liable on the certificate, then the proper procedure should be adopted, in accordance with law.