(1963) 07 CAL CK 0008

In the Calcutta High Court

Case No : Civil Revision Case No. 1094 (w) of 1961

New Found Syndicate APPELLANT

Vs

Prosanta Gopal Sikdar and Others RESPONDENT

Date of Decision : 02-07-1963

Acts Referred:
Bengal Finance (Sales Tax) Act, 1941 — Section 16, 7(3), 7(4)

Citation : 67 CWN 852

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Arun Prokash Sarkar for Arun Prokash Chatterjee, for the Appellant;N.C. Chakravarti and Bhawani Sankar Chowdhury and Susil Kumar Biswas, Amicus Curiae, for the Respondent

Judgement

Banerjee, J.—One Swapan Kumar Bhattacharyee used to carry on business under the trade name "New Found Engineering Works". Later on Swapan Kumar took a partner and constituted themselves into a firm under the name of "New Found Syndicate". The firm took over the old business without break in its continuity. The firm was registered as a dealer both under the Bengal Finance (Sales Tax) Act and under the Central Sales Tax Act. Thereafter on May 17, 1961, the firm applied before the Commercial Tax Officer, Sealdah Charge, for addition of certain additional items of goods in the certificate of registration. A material portion from the said application is set out below:

We have secured order for supply of Machine and Machinery parts, Hardwares, Chemicals, Aluminum Products, Oils, Paper, Stationery, Toilets, Confectionary, Provisions and Paraffin Wax. We have also secured order for the supply of Oils and Hardwares from provinces outside West Bengal.

Hope you would be kind enough to amend both the R.C. submitted herewith by inserting the above items of goods in the re-sale column of the R.C. and oblige.

2. The Commercial Tax Officer partly granted the application and added only

some of the several items, as applied for in the registration certificate. It is alleged that the Commercial Tax Officer did not give any reason why the remaining items were disallowed and not added to the registration certificate.

3. By a letter dated July 21, 1961, the petitioner firm again applied for the addition of the remaining items, as it alleges, in the registration certificate but to no purpose. It is in these circumstances that the petitioner firm moved this Court, under Article 226 of the Constitution for relief and obtained this Rule.

4. In showing cause to the Rule the Commercial Tax Officer stated in his affidavit-in-opposition as follows:

5 * * * *

The usual practice in the matter of amending Certificates of Registration in this respect is that on application by the party it is called upon to produce evidence of dealings in articles in respect of which inclusion is sought and on such evidence prayers are granted. The evidence is mentioned in the office file and proper order made thereon. In Registration Certificates only names of new items are included. Parties are given certified copies of orders made in files if applied for and they are allowed inspection also at their prayer. The same procedure was followed in respect of the application of the petitioners in this case.

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6. * * I say that the petitioner''s second application was duly disposed of and items included for which evidence of transactions were again available. The two applications are separate and should be separately treated. There are no prayers in the second application for inclusion of articles not included in the first occasion.

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8. * * * *

5. That on 17.5.61 the firm applied for inclusion of other items in their registration certificate.

6. That for the disposal of that application the firm was asked to produce necessary books of account on 9.6.61 and they actually produced their books on 12.6.61. On inspection of their purchase vouchers it was found that the firm actually had transactions in hardwires, caustic soda, citri acid, Capstan (Sic.) parts, air compressor, cocoa-nut oil, ground-nut oil, mohua oil and linseed oil and these items were added to their Registration Certificate on 29.6.61. But as there was no proof of any dealings in respect of the other items sought to be included the prayer in respect of their inclusion was refused.

7. On another application made by the petitioner firm on 21.7.61 for the inclusion of another group of articles in addition to those left out of their list of 17.5.61 we followed the same procedure and added four more items, namely, paraffin wax, lozenges, cycles and cycle parts. Items in respect of which no

dealings could be shown were again not included.

8. Mr. Arun Prokash Sarkar, learned Advocate for the petitioner, contended that the Commercial Tax Officer had no jurisdiction to ask for production of books of accounts, if a registered dealer wanted amendment of the registration certificate and that the Commercial Tax Officer must allow such a prayer as a matter of course. In support of his contention he relied upon sub-sections (3) and (4) of section 7 and upon section 16of the Bengal Finance (Sales Tax) Act, which are set out below:

Sec. 7 (3). If the said authority is satisfied that an application for registration is in order, he shall in accordance with such rules as may be prescribed, register the applicant and grant him, a certificate of registration in the prescribed form which 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.

(4) The Commissioner may from time to time amend any certificate of registration in accordance with information furnished u/s 16 or otherwise.

Sec. 16. 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.

9. The power to amend certificates of registration is exercisable on information furnished or otherwise received. If a Commercial Tax Officer wants to test the veracity of the information received, by examining the books and documents of the dealer, he cannot be said to be acting in excess of his jurisdiction. Therefore there was nothing irregular done by the Commercial Tax Officer when he examined the books and papers of the petitioner firm in trying to ascertain the truth of the allegation made in the application for amendment of the registration certificates.

10. I, however, desire to make one point clear. Carriage of business in a particular commodity, for a length of time, is not a condition precedent to the application for amendment of registration certificate. A dealer may satisfy the Commercial Tax Officer by other evidence that he really intends to do business in

that commodity and ask for an amendment. The absence of entries relating to such commodities in the books of account, showing transactions in such commodities, need not be emphasised.

11. The petitioner firm is still at liberty to apply for further amendment of his registration certificate, on satisfying the Commercial Tax Officer about the bona fides of the application.

12. I need not, in this Rule, deal with the allegations made by the Commercial Tax Officer in the affidavit-in-opposition that the petitioner firm is guilty of irregularly carrying on its business and therefore a notice had to be issued upon it to show cause why its registration as a dealer should not be cancelled. At this stage I need not express any opinion on the aforesaid allegations.

13. For the reasons given above, I am not inclined to make any order in favour of the petitioner in this Rule excepting that the petitioner is at liberty to apply again for amendment of its registration certificate; if it can satisfy the Commercial Tax Officer about the bona fides of the application, the Commercial Tax Officer shall deal with the application according to law, if in the meantime the Registration of the petitioner firm, as a dealer, be not cancelled. The Rule is discharged without any order as to costs.

