

(2002) 09 PAT CK 0065
In the Patna High Court
Case No : C.W.J.C. No. 9901 of 2002

Pro Agro Seeds Co. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:

Citation : (2002) 09 PAT CK 0065

Judgement

1. The petitioner, a seeds company, registered under the Companies Act, 1956, having its registered office at Gurgaon and which deals in selling maize seeds and other products on wholesale basis in the State of Bihar and other States, has filed the present writ application for quashing the notices dated February 21, 2002, contained in annexure 1 series, asking the petitioner to pay sales tax at 9 per cent on the maize seeds. The amount demanded on making calculation on the said basis has been mentioned in the aforesaid notice.

2. The petitioner's case is that the maize seeds sold by the petitioner are being assessed to sales tax at 4 per cent and the demand of tax at 9 per cent has been made by the respondent-assessing authorities on the basis of a letter of the Commissioner of Commercial Taxes being instruction No. 198 dated May 7, 2002. The said notification is contrary to the earlier Notification No. 1026/ 77/14545 dated December 26, 1977, according to which the rate of sales tax payable is 4 per cent on maize in all its forms and, thus, maize seeds are also included in the maize and the tax liability is only to the extent of 4 per cent. The further case of the petitioner is that the direction issued by the Commissioner has no support in law in the sense that he has no power under the provisions of the Bihar Finance Act, 1981 (for short "the Act") to issue such directions to the assessing authority exercising quasi-judicial function. The petitioner has already filed a return and has paid amount of sales tax due on the basis of the return. The authority without any assessment under the provisions of the Act cannot demand more tax than what has been paid on the basis of the return.

3. The stand of the State, on the other hand, is that the maize seeds are not

covered by the notification dated December 26, 1977 and the seeds are not covered by the word "cereal" as defined u/s 14 of the Central Sales Tax Act, 1956. It is also not a certified seeds or vegetable seeds and as such the rate of tax payable is 9 per cent.

4. Learned counsel for the petitioner submitted that the impugned notices are vitiated in law for the simple reason that the authorities have determined the sales tax in pursuance of the direction issued by the Commissioner of Commercial Taxes, who is not authorised under the provisions of the Act to issue such notification. Secondly, it was submitted that the petitioner has already paid the tax due according to the return filed by it and any additional amount of tax thereafter cannot be demanded unless the assessment proceedings are carried out under the provisions of the Act.

5. Learned counsel for the State did not point out any provision, which authorises the Commissioner to issue such a direction to the authority exercising quasi-judicial function. However, he submitted that the demand of tax at 9 per cent has been made by the authorities in terms of the relevant provision contained in the notification. The notification dated December 26, 1977 prescribed rate of 4 per cent only in the case of maize and not in the case of maize seeds. In the case of maize seeds, the rate of tax is 9 per cent, which, admittedly, has not been paid by the petitioner while filing the return and as such the authorities were justified in making demand of sales tax vide annexures 1 series.

6. Before advertng to the submissions advanced at the Bar, it would be appropriate to refer in brief the statutory provisions of the Act having relevancy to the point in issue. Section 3 is the charging section, which provides that the sales tax shall be paid by every dealers subject to the provisions of the Act. Section 4 deals with the levy of purchase tax and Section 12 deals with the rate of tax. Proviso to Sub-section (1) of Section 12 provides that the State Government may, from time to time, by notification and subject to such conditions and restrictions as it may impose, fix higher rate or lower rate of tax as mentioned therein. Section 14 provides that no dealer, who is liable to pay tax u/s 3 or Section 4 shall sell or purchase goods unless he has been granted and is in possession of a valid registration certificate. The said section also contains a provision for grant of registration as well as circumstances for refusal of grant of registration. Section 16 deals with the filing of returns, rebate and payment of admitted tax. Every registered dealer under the Act or a dealer liable to pay tax, who has been refused grant of a registration certificate under the third proviso to Sub-section (2) of Section 14 is required to furnish a true and complete return in respect of all his transactions in the manner as provided under the aforesaid provision. Rule 25 of the Rules framed under the Act contains a provision with regard to filing of the return, its verification, etc. Under the said provisions, the dealers are required to furnish monthly abstract statement and in case their monthly amount of tax exceeds rupees two thousand five hundred then to deposit each month tax according to the statements on or before the 15th of the

following month. Other dealers, who are liable to file quarterly or annual return, are required to deposit the tax due before the returns are filed. Sub-sections (8) and (9) of the said section contain provision for imposition of penalty for non-filing of the returns or for the late or non-payment of the tax due as per the returns. Section 17 deals with the assessment of tax. Section 21 deals with the taxable turnover and Section 25 contains a provision with regard to payment and recovery, of tax. It provides, inter alia, that the amount of tax estimated in advance under Sub-section (10) of Section 3, or the tax due according to the return filed by a dealer where full payment of such amount has not been made, or tax assessed or reassessed u/s 17 or 18 or 19 or in pursuance of or as a result of an order on appeal, revision, reference or review, less the sum, if any, already paid by the dealer, or penalty, if any, imposed under any of the provisions of the Act, shall be paid by the dealer or the person concerned into a Government treasury, or in such other manner, as may be prescribed by such date as may be specified in a notice issued by the prescribed authority. It further provides that on failure to pay the amount of tax by the date specified in the demand notice, the dealer is liable to pay penalty mentioned therein and the amount of tax and penalty shall be recovered as arrears of land revenue in addition to any other mode of recovery available under the law. Section 20 contains a provision with regard to escaped turnover detected before assessment. In that case, apart from the tax, which is liable to be paid by the dealer after assessment u/s 17, he has also to pay penalty in case of detection of the escaped turnover.

7. Thus, from a perusal of the aforesaid provisions, it is clear that there is an elaborate provision under the Act for determining the liability to pay tax and the machinery to make the liability effective. It also provides for assessment of the liability as mentioned therein and then provides for mode of recovery or collection of tax. It also contains a penal provision in case of default in payment of tax in terms of the provisions of the Act. According to the provisions of the Act, the dealer is required to file a return in the manner prescribed under the Act, read with the Rules and also to pay the tax due according to the return. In case the tax due according to the return is not filed then a demand notice is issued u/s 25 of the Act and on failure to pay the same, the dealer is liable to pay the penalty under the provisions of the Act. Once the return is filed then assessment has to be made under the provisions of the Act determining the liability of the dealer to pay the tax and if at the time of assessment, the dealer's liability is found to be more than what is shown in the return, then he is liable to pay amount in terms of the demand made u/s 25 of the Act and on failure the consequences mentioned therein would follow. In course of any proceeding or otherwise if the assessing authority is satisfied that the dealer has concealed any sales or purchases or any particulars thereof, or has furnished a wrong information in the return furnished under Sub-section (1) of Section 16, then after giving an opportunity of hearing to the dealer, the penalty is to be imposed and the dealer has to pay the tax in addition to any tax which is or may be assessed u/s 17 of the Act. There is no provision under the Act, which

empowers the assessing authority to demand tax more than what has been due according to the return prior to the assessment proceeding.

8. At this stage, it is clarified that if at the time of assessment, it is found that the statement made in the return filed u/s 16 of the Act is incorrect or false and the sales tax, which is due according to the assessment, has not been paid, then the authorities are empowered to pass an appropriate order under the provisions of the Act, but so long the assessment is not made under the provisions of the Act, the authorities are not empowered under the Act to demand additional amount of tax as per their own estimation, except the tax, which, according to the dealer, is due as per the return.

9. In the case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, the question was with respect to payment of interest on tax on the amount of freight charged in respect of sale of cement under the relevant Cement Control Order. The appellant before the apex Court filed a return, not paying tax on the amount of freight charges on the ground that they did not form part of the sale price for the payment of sales tax. The apex Court in the case of Hindusthan Sugar Mills Vs. State of Rajasthan and Others, which is also referred to in the case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, held that the freight element also formed part of the price of cement and the sales tax was leviable on the sale price inclusive of the freight amount. Thereafter, a dispute arose as to whether the appellant was required to pay interest on the additional amount of sales tax, which had to be paid on the inclusion of the freight amount in calculating the sale price. Section 11B of the Rajasthan Sales Tax Act, as it stood prior to the amendment in 1979, contains a provision with regard to payment of interest on failure to pay tax, fee or penalty. It further provided that if the amount of tax payable under Sub-sections (2) and (2A) of Section 7 is not paid within the period allowed, or if the amount specified in any notice of demand, whether for tax, fee, or penalty, is not paid within the period specified in such notice, or in the absence of such specification, within 30 days, the dealer shall be liable to pay interest as mentioned therein. The dispute was as to whether the appellant was required to pay interest on the amount of additional sales tax or not. The contention of the appellant-assessee was that interest can be charged for the period subsequent to the determination of sales tax under the final assessment and that too after the expiry of the period allowed under the notice of demand whereas, the contention of the Revenue was that the interest was to be charged from the date when the original return was filed u/s 7(2) or 7(2A) of the Act. Section 7 of the Rajasthan Sales Tax Act is similar to Section 16 of the Bihar Finance Act, which provides for filing of the return. Sub-sections (2) and (2A) of Section 7 contain provision for deposit of the amount of tax due on the basis of the return or full amount of tax due shown in the return. The apex Court held that so long the assessee pays the tax, which is due on the basis of the return, he is not liable to pay interest in terms of Clause (a) of Section 11B of the Act. It was further held that the said

provision did not envisage the assessee to predict the final assessment and expect him to pay the tax with a view to avoid the liability to pay interest. Relevant portion of the decision of the apex Court reads as follows :

"Therefore, the conjoint reading of Sections 7(1), (2) and (2A) and 11B of the Act leaves no room for doubt that the expression "tax payable" in Section 11B can only mean the full amount of tax which becomes due under Sub-sections (2) and (2A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation u/s 7 of the Act and, therefore, it would be difficult to hold that "tax payable" by him "is not paid" to visit him with the liability to pay interest under Clause (a) of Section 11B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult on the plain language of the section to hold that the law envisages the assessee to predict the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible."

10. Though the question in the said case was as to from which date interest was to be paid but from the law laid down in the said case, it is settled that once the dealer pays tax due according to the information furnished in the return then he cannot be penalised if subsequently after assessment proceedings are finalised amount of tax is determined. In that case, the amount determined has to be recovered according to the provisions of the Act.

11. Coming to the facts of the present case, it is clear that there is no dispute that for the last several years the petitioner has been filing return and paying tax due according to the information furnished in the return at 4 per cent. It is also an admitted position that no final assessment has been made u/s 17 of the Act nor any step has been taken u/s 20 of the Act (escaped turnover detected before assessment). The only material before the assessing authority to direct the petitioner to pay the sales tax at 9 per cent was a direction of the Commissioner, as contained in annexure 3 to the writ application. Under the Act and the Rules, the Commissioner is not empowered to issue a direction to the authority exercising quasi-judicial function. In that view of the matter, the aforesaid direction issued by the Commissioner cannot be a ground to issue a notice demanding sales tax at 9 per cent without assessment as provided under the provisions of the Act. The assessing authority, in our view, has exceeded its jurisdiction in making a demand, vide annexures 1 series, regarding amount of tax without making an assessment under the provisions of the Act. It is not a case that the aforesaid amount is due according to the information furnished in the return. It is also not the case that return has not been approved and action has been initiated u/s 20 of the Act after giving opportunity of hearing to the petitioner. Thus, the impugned notices, as contained in annexures 1 series, are

quashed. It is made clear that this Court is not expressing any opinion as to the rate of tax, which is to be paid by the petitioner. It is for the assessing authority to consider the matter in terms of the provisions of the Act and determine the rate of tax in terms of the statutory provisions/instructions by taking independent decision without being influenced by the direction issued by the Commissioner, who, as we have held, has no authority in law to issue the said direction. It is also made clear that in case the assessing authority on final assessment finds that the information furnished in the returns were incorrect then the authority may take actions as provided under the Act.

12. In the result, this writ application is allowed and the impugned notices, as contained in annexures 1 series, are quashed.