(2006) 11 PAT CK 0075

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 735 of 2006

Rameshwara Jute Mills APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Citation : (2006) 11 PAT CK 0075

Judgement

Aftab Alam and Rekha Kumari, JJ.—Heard Mr. Ramesh Kumar Agrawal, counsel for the petitioner and Mr. Raj Nandan Prasad, J.C. to the Advocate General, representing the State.

2. The petitioner is aggrieved by and seeks to challenge the order dated 19.9.2005 passed by the Commercial Taxes Officer, Samastipur by which he re-assessed the petitioner''s liability for payment of sales tax for the period 2000-01. By the impugned order the Commercial Taxes Officer held the petitioner liable to pay an additional amount of Rs. 2,11,77,970.60 P as sales tax for the period in question. Adding to it the amount of penalty, the aggregate comes to Rs. 2,27,53,885/-.

3. The petitioner is a manufacturer of gunny bags and it sells its produce also to buyers outside the State. In course of Inter State Trade and Commerce one of its bulk purchasers for the period in question was the Directorate General of Supplies and Disposal (in short D.G.S. & D). The assessment orders under the Bihar Finance Act and the Central Sales Tax Act for the period in question were initially passed on 5.7.2003. Copies of those orders are at Annexures 4 and 5 to the writ petition. From the assessment order passed under the Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act) it appears that on production of declarations in Form ''D'' issued by the D.G.S. & D, the Assistant Commissioner of Commercial Taxes, Samastipur (who passed the original assessment order) accepted the figures of sales to D.G.S. & D as shown in the petitioner''s return and subjected that amount to levy of Central Sales Tax at the rate of 3% in the light of the notification, dated 13.10.1986 (Annexure 1) issued

by the State Government in exercise of the powers u/s 8(1) of the CST Act. It appears that later some audit objections were raised and on that basis the case of the petitioner was subjected to re-assessment. In the re-assessment proceeding the Commercial Taxes Officer discarded the declarations in Form ''D'' issued by the D.G.S. & D for the defects pointed out in them by the audit and consequently subjected the sale figure to tax at the rate of 10% as provided u/s 8(2) of the CST Act.

4. Mr. Agrawal assailed the re-assessment order coming under challenge on a number of grounds. However, his main ground of attack was that in view of the State Government''s notification, dated 13.10.1986 any Inter State sale, of gunny bags could only be subjected to tax at the rate of 3% regardless of production or non production of the declaration in form ''D''. Mr. Agrawal submitted that it was not in dispute that the sales were made in course of Inter State. Trade or Commerce and pointed out that though the declarations in Form ''D'' produced by the petitioner were not accepted, the Commercial Taxes Officer subjected the sales to tax in terms of Section 8(2) of the CST Act. Learned Counsel pointed out that the State Government Notification, dated 13.10.1986 fixed the rate of tax on sale of jute bags in course of Inter State Trade or Commerce at the rate of 3% both for the purposes of Sub-section (1) and (2) of Section 8 of the CST Act and hence, even in case the sales were not covered by Sub-section (1) of Section 8 and fell under Sub-section (2) of that section, tax could not levied at a rate higher than 3%.

5. In order to appreciate the submission made by the counsel, it would be useful to refer to the provisions of Section 8 of the CST Act. Sub-section (1) of Section 8 provides as follows:

1) Every dealer, who in the course of inter-State trade or commerce --

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3);

shall be liable to pay tax under this Act, which shall be four percent of his turnover.

6. Sub-section (2) of Section 8 of the Act deals with cases that they do not fall under the preceding Sub-section (1) and provides as follows:

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sales of goods in the course of inter-State trade or commerce not falling within Sub-section (1) -

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten percent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

7. It is an admitted position that gunny bags or jute bags are not declared goods and, therefore, the sale of gunny bags or jute bags would be covered by Clause (b) of Sub-section (2) of Section 8 of the Act and, hence, in case the sales are not covered by Sub-section (1) of Section 8, those sales shall be taxable at the rate of 10% as provided u/s 8(2)(b) of the CST Act.

8. One of the conditions for application of Sub-section (1) of Section 8 is provided in Sub-section (4) which is as follows:

(4) The provision of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner --

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government.

Provided that the declaration referred to in Clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

9. In the present case, as the sales were made to D.G.S. & D the certificate/ declaration was required under Clause (b) of Sub-section (4) of Section 8 of the Act which in common parlance is called as Form ''D''.

10. It is seen above that the sales tax authorities found and held that the declarations in form D produced by the petitioner were defective and for that reason held that the turn over in question would fall under Sub-section (1) and consequently subjected the turn over to tax at the rate of 10% as provided in Clause (b) of Sub-section (2) of Section 8 of the CST Act.

11. The next provision to be noted, at this stage, is contained in Sub-section (5) of Section 8. At the material time (that is to say before its amendment by Act 20 of 2002 with effect from 11.5.2002) Sub-section (5) of Section 8 of the Act read as follows:

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, and subject to such conditions as may be specified therein, direct, --

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales be calculated at such lower Rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

12. There are two things of which note must be taken in the provisions as quoted above. The first is that it begins with the non obstante clause and the second is that it empowers the State Government to fix rates of tax applicable both to cases falling under Sub-section (1) or Sub-section (2) of Section 8 of the CST Act.

13. In exercise of the powers conferred u/s 8(5) of the CST Act, the State Government issued notification, dated 13.10.1986 (Annexure-1). For the sake of convenience the entire notification is reproduced below:

In exercise of the power conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Act 74 of 1956) the Governor of Bihar is pleased to direct that tax payable under Sub-section (1) or (2) of Section 8 of CST Act in respect of sales of Jute Bags in the course of inter State trade or commerce from the place of business in the State of Bihar shall be calculated at the rate of three percentum.

2. This notification shall come into force with effect from 15th October, 1986.

14. It is thus clear that the State Government fixed the rate of tax on sales of jute bags in course of inter-State trade or commerce at the rate of 3% both for cases falling under Sub-section (1) or (2) of Section 8 of the CST Act.

15. That being the position the submission made on behalf of the petitioner appears to have much substance. Even if it is held that the sales turn over relating to jute bags to D.G.S. & D fell outside the purview of Sub-section (1) of Section 8 of the CST Act for failure to produce proper and valid certificate/ declaration in form ''D'', it would fall under Sub-section (2) of Section 8 of the CST Act. But by virtue of the notification the rate of tax under that sub-section too would only be 3% and not 10% as applied by the Commercial Taxes Officer in the impugned order.

16. Here it may be noted that Mr. Raj Nandan Prasad, J.C. to A.G. submitted that even for taking the benefit under a notification issued by the State Government

u/s 8(5) of the CST Act, it was imperative for the dealer to comply with the provisions of Sub-section (4) of Section 8 of the Act. In support of his submission, he relied upon a decision of the Supreme Court in State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., At the first sight the decision appears to fully support the submission advanced by Mr. Prasad but Mr. Agrawal pointed out that the basic differences between the reported decision and the case in hand was that in the case before the Supreme Court, the notification issued by the State of Rajasthan fixed a lower rate of tax (1.5%) only for cases falling under Sub-section (1) of Section 8 of the CST Act. The Rajasthan government notification did not fix any separate or lower rate of tax u/s 8(2) of the CST Act. Hence, once the case fell out of Section 8(1) of the CST Act for failure to produce proper and valid declaration in form ''D'', it naturally attracted the higher rate of 10% as provided under Sub-section (2) of Section 8 of the Act. In the case in hand, however, the State Government notification fixed the rate of tax also under Sub-section (2) of Section 8 of the CST Act and, therefore, even if the certificates/declarations in Form ''D'' were discarded and consequently the turn over fell u/s 8(2) of the CST Act, the rate of tax would remain un-changed at the rate of 3%.

17. For the reasons discussed above, we are satisfied that the impugned order of the Commercial Taxes Officer is not in conformity with the law. It is accordingly, set aside.

18. In the result, this writ application is allowed but with no order as to costs.

