(1954) 03 CAL CK 0011

In the Calcutta High Court

Case No : Criminal Revn. No. 717 of 1953

Rameswar Agarwalla APPELLANT

Vs

The State and Another RESPONDENT

Date of Decision : 30-03-1954

Acts Referred:
Bengal Finance (Sales Tax) Act, 1941 — Section 21, 4, 7

Citation : AIR 1955 Cal 464 : (1955) 25 CompCas 341 : (1955) CriLJ 1177

Hon'ble Judges : K.C. Das Gupta, J;Debabrata Mookerjee, J

Bench : Division Bench

Advocate : A.N. Roy and Bimal K. Chatterjee, for the Appellant;J.M. Banerjee, for the Respondent

Judgement

K.C. Das Gupta, J.—This Rule was issued on the Chief Presidency Magistrate, Calcutta, and the opposite party to show cause why the proceedings now pending against the petitioner under Sections 22(1)(a) and 22(1)(g), Bengal Finance Sales Tax Act of 1941 should not be quashed.

2. As regards the proceedings u/s 22(1)(a) of the Act it is contended on behalf of the petitioner that whatever business was carried on -- whether in contravention of provisions of Section 7(1) of the Act, or not -- was carried on by the Calcutta Woollen Agency Ltd. and not by him personally. Section 7(1) provides that no dealer shall, while being liable to pay tax (under Section 4 of this Act) carry on business as a dealer unless he has been registered and possesses a registration certificate.

Under Section 22(1) whoever carries on business as a dealer in contravention of Sub-section (1) of Section 7 shall be punishable with simple imprisonment which may extend to six months or with fine or with both. The challan which was sent up in this case states that the petitioner was charged with carrying on business at 76 Cotton Street in the name of M/s. Calcutta Woollen Agencies Ltd. It is not alleged that he did carry on business himself apart from what he did in the name of M/s. Calcutta Woollen Agencies Ltd. That a Company was registered as

Calcutta Woollen Agencies Ltd. is not disputed and from the certified copy of the list of shareholders in Form E that has been produced before us it appears that Rameswar Agarwalla holds only 5 shares.

It may or may not be that he takes a leading part in the business but, in our opinion, neither he nor any of the other share-holders can be considered to be the ''dealer''. It is the company which is the dealer within the meaning of Sections 4, 7 and 21 of the Act. If the company has carried on business in contravention of Section 7(1) of the Act it will be open to the authorities to start proceedings against the Company. The present proceedings u/s 22(1)(a) against Rameswar Agarwalla must however be quashed, as clearly he is not a ''dealer'' who carried on business.

3. In so far as the proceedings arc u/s 22 (1)(g) for knowingly producing incorrect accounts, registers or documents of the Firm, we see no reason to interfere at this stage. Mr. Ray suggested that it may very well be that the sanction of the Commissioner that is required u/s 22(2) has not been given as regards this offence, namely, u/s 21(1)(g) of the Act. The materials on the record arc not however sufficient for a decision on this question. This point was not raised in the application on which the rule was issued. If there be no sanction the proceedings will fail; but at the present stage it is not possible for us to order quashing of the proceedings on that supposed ground.

4. We accordingly quash the proceedings under. Section 22(1)(a), Bengal Finance Sales Tax Act of 1941, but discharge the Rule as regards the proceedings u/s 22(1)(g) of the Act. The prayer for stay of the proceedings is refused.

Debabrata Mookerjee J.

5. I agree.

