(1956) 12 PAT CK 0005

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 225 of 1955

S.C. Coondoo and Co. APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 05-12-1956

Acts Referred:
Constitution of India, 1950 — Article 286

Citation : (1957) 8 STC 650

Hon'ble Judges : Ramaswami, C.J;Raj Kishore Prasad, J

Bench : Division Bench

Advocate : S.K. Mazumdar and R.K. Mukherjee, for the Appellant; The Government Advocate and L.S. Sinha, for the Respondent

Judgement

Ramaswami, C.J. and Raj Kishore Prasad, J.—In this case the petitioner, Messrs S.C. Coondoo and Co., was required by the Superintendent of Commercial Taxes, Patna, to register itself as a dealer under the provisions of the Bihar Sales Tax Act. The case of the petitioner was that it had no place of business or shop or showroom in Bihar though goods were supplied to various parties within the territorial limits of Bihar. The objection of the petitioner was rejected by the Superintendent of Commercial Taxes and it was held that the petitioner should be treated as a dealer liable to registration and payment of sales tax under the. Bihar Sales Tax Act, 1947. The Superintendent of Commercial Taxes made his order on the ground that the petitioner supplied goods in Bihar where the goods were consumed as a direct result of the sale. Thereafter the petitioner made an application u/s 21 of the Bihar Sales Tax Act to the Commissioner of Sales Tax and prayed for a declaration that it should not be treated as a dealer under the Bihar Sales Tax Act firstly because it had no business premises in Bihar and secondly because all the sales effected in Bihar should be deemed to be inter-State sales within the meaning of Article 286(2) of the Constitution. The petition was rejected by the Commissioner of Sales Tax on the basis of the decision of the Patna High Court in Bengal Immunity Co. Ltd. Vs. State of Bihar and Others, and also the decision of the Supreme Court in The State of Bombay and Another Vs.

The United Motors (India) Ltd. and Others, .

2. Against the order of the Commissioner of Sales Tax, the petitioner applied in revision before the Board of Revenue. The petition was rejected by the Board of Revenue on the 20th of May, 1954, on the ground that no revision lay against the order of the Commissioner passed u/s 21 of the Bihar Sales Tax Act.

3. u/s 25 (1) of the Bihar Sales Tax Act, the Board of Revenue has submitted the following question of law for the opinion of the High Court :-

Whether, in the circumstances of the case, the Board has jurisdiction to entertain a petition against the order of the Commissioner of Sales Tax, passed u/s 21 of the Act ?

4. On behalf of the petitioner the argument put forward by Mr. Mazumdar is that the order of the Commissioner in this case holding that the petitioner was liable to be registered as a dealer and to pay sales tax was an order subject to revision by the Board of Revenue u/s 24 (5) of the Bihar Sales Tax Act, which states thus :-

24. (5) Subject to such rules as may be prescribed, any order passed under this Act or the rules made thereunder by any person appointed u/s 3 may be reviewed by the person passing it, or by his successor-in-office.

5. The opposite view point was put forward by the learned Government Advocate who submitted that the order of the Commissioner made u/s 21 was an order of a consultative or an advisory nature and was not a judicial order which can be made subject to revision by the Board of Revenue u/s 24. It was stated by the learned Government Advocate that the order of the Commissioner u/s 21 was not a judicial order but was an administrative order and that the Sales Tax Officer was not even bound as a matter of law to carry out. that order. We do not consider the submission made by the learned Government Advocate is right. We do not accept the argument that the jurisdiction conferred upon the Commissioner u/s 21 of the Bihar Sales Tax Act is an advisory or a consultative jurisdiction. Section 21 of the Bihar Sales Tax Act is in the following terms:-

21. Power of Commissioner to determine disputes,-If any question arises (otherwise than in a proceeding before a Court) whether or not for the purposes of this Act-

(a) any person or firm or any branch or department of any firm is a dealer, or

(b) any transaction is a sale or contract, or

(c) any particular goods purchased by a registered dealer are covered by his certificate of registration, or

(d) any tax is payable in respect of any particular sale or contract, or

(e) any goods or classes of goods should be specified in the certificate of registration of any dealer under Sub-section (3) of Section 9, the Commissioner shall determine such question :

Provided that the Commissioner may direct that any such determination shall not affect the liability of any dealer under this Act in respect of any contract entered into or sale effected prior to such determination.

6. It is manifest that this section empowers the Commissioner to determine questions arising between the assessee and the Sales Tax Department and it is equally manifest that the determination of the question would, in almost all cases, affect the liability of the assessee or the quantum of the tax. The power of the Commissioner u/s 21 is, therefore, a power of a quasi judicial character and the order of the Commissioner made u/s 21 is, in our opinion, an order covered by Section 24(5) and Rule 36(5) (a) which states :-

36. (5) (a) The Commissioner may, of his own motion, revise any order passed by the Deputy Commissioner, Assistant Commissioner, Superintendent or Assistant Superintendent, and the Board of Revenue may, likewise, revise any order passed by the Deputy Commissioner or Commissioner.

7. It is true that the word "order" is not used in Section 21, but the formal determination of any question by the Commissioner u/s 21 is undoubtedly an order within the meaning of Section 24(5) and Rule 36(5) (a). It is also true the Commissioner may not determine u/s 21 the liability of the dealer to pay sales tax, but the determination of the question u/s 21 by the Commissioner has an indirect bearing on the liability of the dealer or on the quantum of assessment. As a matter of construction, therefore, we think that the determination by the Commissioner u/s 21 is an order which the Board of Revenue is competent to revise u/s 24(4) of the Bihar Sales Tax Act read with Rule 36(5) (a) of the rules made under that Act. In this connection reference should also be made to Section 22 of the Bihar Sales Tax Act which empowers the Commissioner to take evidence on oath and force the attendance of any person, compel production of documents, etc. Section 22 states as follows:-

22. Power of Commissioner to take evidence on oath, etc.-The Commissioner or any person appointed to assist him under SubSection (1) of Section 3 shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely :-

(a.) enforcing the attendance of any person and examining him on oath or affirmation ;

(b) compelling the production of documents ; and

(c) issuing commissions for the examination of witnesses ;

and any proceeding under this Act before the Commissioner or any person appointed to assist him under Sub-section (1) of Section 3 shall be deemed to be a ''judicial proceeding'' within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code (XIV of 1860).

8. The language of Section 22 also lends support to the view that we have expressed that the power of the Commissioner u/s 21 to determine a question is a power of a judicial or quasi judicial character and the determination of a question by the Commissioner in exercise of that power u/s 21 is liable to be revised by the Board of Revenue.

9. For these reasons we hold that the Board of Revenue has jurisdiction to entertain a petition against the order of the Commissioner of Sales Tax passed u/s 21 of the Act. We, accordingly, answer the question of law in favour of the petitioner and against the State of Bihar. We assess the hearing fee at Rs. 200.