

(1957) 05 PAT CK 0010

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 331 of 1954

Shri Parwatiji Mills

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-05-1957

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 13(5), 25(3), 4

Citation : (1957) 8 STC 653

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Shiveshwar Prasad Sinha and K.N. Jain, for the Appellant; The Government Pleader, for the Respondent

Judgement

Ramaswami, C.J. and Kanhaiya Singh, J.—In this case the assessee, namely, Shri Parwatiji Mills, was assessed u/s 13(5) of the Bihar Sales Tax Act for the period from the 1st of July, 1947, to the 30th of September, 1948. The taxable turnover was determined to be Rs. 3,28,647 and the tax payable was Rs. 5,291-6-0. Penalty equal to the amount of the tax was also imposed by the Sales Tax Officer u/s 13 (5) because the assessee had not applied for registration in time.

2. It appears that a surprise visit was paid to the mill of the assessee on the 24th of September, 1948, by the Inspector of Sales Tax Department. It was discovered that the assessee had been carrying on business for a long time and the gross turnover had exceeded the register-able limit fixed by the statute. Notice was served upon the assessee to produce the accounts. The Sales Tax Officer examined the account books and held that they were not reliable. He, accordingly, assessed the tax to the best of his judgment. An appeal was taken by the assessee to the Deputy Commissioner of Sales Tax who allowed the appeal so far as the penalty was concerned, but confirmed the order of assessment. A revision application was filed by the assessee before the Commissioner of Sales Tax and also before the Board of Revenue, but these applications were dismissed.

3. As directed by the High Court, the Board of Revenue has submitted a statement of the case u/s 25 (3) of the Bihar Sales Tax Act, 1947, upon the following question of law :-

Whether in view of the fact that the petitioner had applied for registration on the 2nd January, 1948, the assessment u/s 13 (5) of the Bihar Sales Tax Act, 1947, is valid for the entire period commencing on the 1st July, 1947, and ending on the 30th September, 1948.

4. On behalf of the assessee Mr. Sinha put forward the argument that an application for registration had been actually filed by the assessee on the 2nd of January, 1948, and, therefore, the proceedings taken u/s 13(5) of the statute were illegal and there was no liability upon the assessee either to pay the amount taxed for the period in question or to pay the penalty. In support of his contention, learned counsel referred to Section 13 (5) which is in the following terms :-

13 (5)- If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed to apply for registration, or having applied for registration, failed to furnish any particulars or information required by the prescribed authority for the purposes of Section 9, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess, to the best, of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and the Commissioner may direct that the dealer shall pay, by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

5. The submission of learned counsel for the assessee is that the Sales Tax Officer had no authority to make assessment, of tax u/s 13 (5) unless two conditions were satisfied, namely, (1) that the dealer was liable to pay tax in respect of any period, and (2) that the dealer had wilfully failed to apply for registration. We are unable to accept the argument of learned counsel for the assessee as valid. It is not disputed in this case that there was liability to pay tax imposed upon the assessee because of Section 4 of the Bihar Sales Tax Act which is the charging section. It is necessary to quote Section 4 at this stage :-

4. Incidence of taxation.-(1) Subject to the provisions of Sections 5, 6, 7 and 8 and with effect from the commencement of this Act, every dealer whose gross turnover during the year immediately preceding the date of such commencement, on sales which have taken place both in and outside Bihar exceeded Rs. 10,000 shall be liable to pay tax under this Act on sales which have taken place in Bihar on and from the date of such commencement :

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into by the dealer concerned on or before the 1st day of October, 1944.

(2) Subject as aforesaid every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the commencement of the quarter immediately following a period not exceeding twelve months during which his gross turnover, on sales which have taken place both in and outside Bihar, first exceeded Rs. 10,000.

6. In our opinion, Section 13 (5) must be read in the context and background of Section 4 which imposes the charge of sales tax. If the argument of learned counsel for the assessee with regard to the interpretation of Section 13 (5) is accepted, the result would be that the effect of Section 4 would be completely nullified. In other words, though Section 4 imposed charge of tax upon the assessee, there would be no machinery provided for the Sales Tax Department to determine that liability or to assess the tax in the hands of the unregistered dealer. Such a result could not have been in the contemplation of the Legislature. In our opinion, therefore, the proper interpretation of Section 13 (5) is that the imposition of the penalty is subject to the condition precedent that the dealer had wilfully failed to apply for registration for the period in question. But the assessment of an unregistered dealer u/s 13 (5) is not subject to any such condition. The only condition for making that assessment upon an unregistered dealer u/s 13 (5) is that the Commissioner should be satisfied upon information which has come into his possession that the unregistered dealer has been liable to pay tax in respect of any period. It is also important in this connection to notice Section 12 (1) which gives power to the Commissioner to require any dealer, registered or unregistered, to furnish a return in the prescribed manner. Rule 20 of the Rules framed by the State Government under the Statute also states that in the case of unregistered dealers the Commissioner may serve a notice in Form XV requiring them to furnish a return in Form VI for such period as may be specified in the notice within one calendar month of the receipt of the notice. These provisions obviously contemplate that returns should be furnished by unregistered dealers whenever the Commissioner requires them to do so, giving the necessary information in Form VI, which is also the form used by registered dealers for submitting returns. If the argument of learned counsel on behalf of the assessee is to be accepted, it would mean that, though an unregistered dealer's accounts were disbelieved and held to be not genuine, he could not be assessed by the Sales Tax Officer to the best of judgment or in fact assessed at all though there is liability imposed upon the dealer to pay tax by the charging section. In other words, an unregistered dealer would be placed in a better position than a registered dealer, who, in the same circumstances, would be subject to an assessment u/s 13 (4) of the Act to the best of judgment of the Sales Tax Officer. Such an interpretation of Section 13 (5) would lead to absurd results and ought not to be adopted.

7. The view that we express is borne out by two authorities. In *Chatturam and Ors. v. Commissioner of Income Tax, Bihar* [1947] 15 ITR 302, it was held by the Federal Court that the liability to pay Income Tax and the jurisdiction to assess to Income Tax are not conditional on the validity of the notices issued u/s 22 of the

Income Tax Act. It was observed in that case by the Federal Court that the Income Tax assessment proceedings commence with the issue of a notice, but the issue or receipt of a notice is not the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of the assessee to pay the tax. It was further observed that the liability to pay the tax is founded on Sections 3 and 4 of the Income Tax Act which are the charging sections and that, Section 22 and others are the machinery sections to determine the amount of tax. The matter is very clearly put by Kania, J., at page 307 of the report as follows:-

This contention is founded on a misunderstanding of the jurisdiction of the Income Tax Officer and the operation of the Income Tax Act. The Income Tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of the assessee to pay the tax. It may be urged that the issue and service of a notice u/s 22 (1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. Suppose a person, even before a notice is published in the papers u/s 22 (1), or before he receives a notice u/s 22 (2) of the Income Tax Act, gets a form of return from the Income Tax Office and submits his return, it will be futile to contend that the Income Tax Officer is not entitled to assess the party or that the party is not liable to pay any tax because a notice had not been issued to him. The liability to pay the tax is founded on Sections 3 and 4 of the Income Tax Act, which are the charging sections. Section 22 etc., are the machinery sections to determine the amount of tax. Lord Dunedin in *Whitney v. Commissioners of Inland Revenue* [1926] A.C. 37, stated as follows :-Now, there are three stages in the imposition of a tax. There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment, that *ex hypothesi* has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay. In *W. H. Cockerline and Co. v. Commissioners of Inland Revenue* (1930) 16 Tax Cas. 1, at p. 19, Lord Hanworth, M.R., after accepting the passage from Lord Dunedin's judgment quoted above, observed as follows:-"Lord Dunedin, speaking, of course, with accuracy as to these taxes, was not unmindful of the fact that it is the duty of the subject to whom a notice is given to render a return in order to enable the Crown to make an assessment upon him; but the charge is made in consequence of the Act, upon the subject; the assessment is only for the purpose of quantifying it".

8. In the other case, namely, *Harmukh Rai Jairam Das v. The State* [1954] 3 S.T.C. 153 also a similar principle has been laid down by a Bench of this High Court. It was held there that Section 13 of the Bihar Sales Tax Act, 1947, imposed no charge on the subject and it was merely a part of the machinery of

assessment and that the liability to pay sales tax was founded upon Sections 4 and 5 which were the charging sections. It was also held that the jurisdiction to assess and the liability to pay tax did not depend on the issue or non-issue of the notice u/s 13.

9. For the reasons we have attempted to express, we are of opinion that in the circumstances of this case the assessment u/s 13 (5) of the Bihar Sales Tax Act was validly made for the period from the 1st of July, 1947, to the 30th of September, 1948, and the question referred to the High Court by the Board of Revenue must be answered against the assessee and in favour of the State of Bihar.

10. The assessee must pay the cost of this reference: hearing fee Rs. 250.