

(1976) 02 CAL CK 0010
In the Calcutta High Court
Case No : C.R. No. 3264 (W) of 1970

Sitaram Sree Gopal

APPELLANT

Vs

Certificate Officer

RESPONDENT

Date of Decision : 20-02-1976

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 4, 5, 6, 7, 9
Central Sales Tax Act, 1956 — Section 3, 6, 8, 9
Constitution of India, 1950 — Article 226, 269
Income Tax Act, 1961 — Section 226

Citation : (1977) 40 STC 124

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : S.K. Ghose and G. Saha, for the Appellant; S.N. Dutta, for the Respondent

Judgement

Sabyasachi Mukharji, J.—The subject-matter of challenge in this application under Article 226 of the Constitution is a certificate filed u/s 7 of the Bengal Public Demands Recovery Act, 1913. In view of the fact that several contentions were urged in respect of the said certificate it is relevant to refer to the said certificate, which is as follows :

"Certificate of public demands (See Sections 4 and 5) Certificate No. 190 STCR 68-69. Filed in the Office of Certificate Officer, 24-Parganas.

Name
and address of State of West Bengal certificate-holder

Amount
of the public demand Rs. P. Period (including interest), if any, Year ended and including the fee paid 15th Kartick under Section 5, sub-section 14, 361.93 bodi 2020 (2), if any for which this certificate is signed and period for which such demand is due.

Name and
address Gouri Prosad Modi, Sree Gopal of certificate- Agarwala, Sitaram

Agarwala, Mahabir debtor Prosad Agarwala and Hanuman Prosad Modi carrying on business under the trade name of Sitaram Sree Gopal. 67B, Netaji Subhas Road, Calcutta.

Further particulars Tax due under section of the public 11(1) of the B/F(ST) Rs. 13,161.93 demand for which Act, 1941 Penalty u/s 200.00 this certificate 11(1) Penalty u/s 1,000 00 is signed. 11(4B) _____ Rs. 14,361.93

Name of district: 24-Parganas.

I certify that the sums mentioned hereinbefore are due to the certificate-holder by the certificate-debtor(s) and that they are justly recoverable, the recovery by suit not being barred by law.

Dated this 26th day of November, 1968.

2. The said certificate is being challenged as without jurisdiction on three grounds. It was, firstly, contended that the certificate was wrongly filed in the name of the State of West Bengal. In the impugned certificate, the name and address of the certificate-holder has been indicated to be the State of West Bengal. It was contended that inasmuch as the said certificate related to the claims arising out of the dues under the Central Sales Tax Act, 1956, the certificate-holder would not be the State of West Bengal. It was contended that the said certificate covered claims for penalty payable on account of late submission and non-submission of the return under the Central Sales Tax Act, 1956 and imposition of penalty for non-submission or late submission under that Act was without authority of law. It was, thirdly, submitted that the certificate was filed u/s 4 as well as u/s 5 of the Bengal Public Demands Recovery Act, 1913, which was irregular and not in accordance with law.

3. The first question, therefore, that requires consideration in this case is whether in the certificate the name of the certificate-holder was properly indicated or in other words whether the State of West Bengal was the certificate-creditor in this case. As mentioned hereinbefore the dues in respect of the said certificate arose out of the assessment made under the Central Sales Tax Act, 1956. Section 9 of the Central Sales Tax Act, 1956, provides as follows :

9. Levy and collection of tax and penalties.-(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within Clause (a) or Clause (b) of Section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of Sub-section (2), in the State from which the movement of the goods commenced:

Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fall within Sub-section (2) of Section 6, be levied and collected in the State from which the registered dealer

effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of Clause (a) of Sub-section (4) of Section 8 in connection with the purchase of such goods.

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.

(3) The proceeds in any financial year of any tax, including any penalty, levied and collected under this Act in any State (other than a Union territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India.

4. Article 269 of the Constitution deals with the taxes that are levied and collected by the Union but which are assigned to the States and tax on sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce, is one of them. The Central Sales Tax Act, 1956, is in respect of such transaction. The authority, jurisdiction and the power to levy the said Central sales tax is with the Centre and the Union Parliament. It is a levy by the Central Government. Section 9 of the Central Sales Tax Act, 1956, which I have already quoted, also makes the position clear. Sub-section (1) of Section 9 indicates that the tax under that Act shall be levied by the Government of India and the tax so levied by the Government shall be collected in accordance with the provisions of Sub-section (2) in the State from which the movement of goods commenced. Therefore, the levy is by the Government of India and the collection is also by that Government that is to say by the Government of India. But it is in accordance with the provisions of Sub-section (2) in the State from which the movement of goods commenced. Sub-

section (2) of Section 9 provides that the appropriate Government, that is to say, the Government of the State from which the movement of the goods commenced, shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax as if the tax or penalty was payable under the general sales tax law of that State. Therefore, the right given to the State Government is to assess, reassess, collect and enforce payment as if the same was a tax payable under the said State's sales tax law. It creates the State authorities an agent for assessment and collection of the said dues of the Central Government and authorises the State Government to realise the said dues in the same manner as it would realise its own dues in respect of the sales tax. But it does not make the said dues the dues of the State. It still is a levy by the Central Government and the levy is made by the State Government on behalf of the Central Government. The fiction that is created for the purpose of assessment and levy by Sub-section (2) is a fiction created for the purpose of collection and realisation but does not transform the levy to be a levy by the State Government nor does it make the amount due an amount due to the State Government. The character of the liability, in my opinion, remains as the liability to the Central Government. The fiction of Sub-section (2) to Section 9 has not the effect of transforming the liability under the Central Sales Tax Act as the liability to the State Government or a debt due to the State Government, because, if that is so, then Sub-section (3), which says that the proceeds collected on behalf of the Government of India shall be assigned to the State and retained by it would become unnecessary. Counsel for the revenue drew my attention to the statement of objects of the Central Sales Tax Act, 1956, which was, inter alia, to help the States to get the revenue. The object may be to augment the State's revenue but it is only by realising the revenue itself and assigning it to the State in the manner contemplated by Sub-section (3) of Section 9, which is in consonance with Sub-clause (g) of Clause (1) of Article 269 of the Constitution, that the object of the Central Sales Tax Act, 1956, is fulfilled. In the aforesaid view of the matter, I am of the opinion that the certificate-holder in this case was not the State of West Bengal and, as such, the certificate filed in the name of the State of West Bengal as the certificate-holder is bad and without authority of law. This view which I am taking is in consonance with the observations of the Division Bench of this Court in the case of *Abanindra Kumar Maity v. A.K. Biswas* (1954) 58 C.W.N. 573 at 578. The first ground of challenge to the certificate must therefore be upheld.

5. It was then contended that the said certificate was bad because it contained claims for penalty on account of late submission of return and non submission of return under the Central Sales Tax Act, 1956. It is indisputable that penalty cannot be imposed for late submission of return or non-submission of return and this position under the Central Sales Tax Act is now beyond dispute in view of the decision of this court in the case of *Shri Mohan Lal Chokhany v. Commercial Tax Officer, Lyons Range* [1971] 28 S.T.C. 367 and the decision of the Supreme Court in the case of *Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra*, .

6. The next question, however, is whether, if the certificate includes claims which are partly valid and partly invalid the whole certificate becomes bad or without jurisdiction. The Bengal Public Demands Recovery Act, 1913, as it stood at the time, contained Section 9, which was to the following effect:

9. (1) The certificate-debtor may within thirty days from the service of the notice required by Section 7, or where the notice has not been duly served, then within thirty days from the execution of any process for endorsing the certificate, present to the Certificate Officer in whose office the certificate is filed, or to the Certificate Officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying, his liability, in whole or in part.

(2) If any such petition is presented to a Certificate Officer other than the Certificate Officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

7. Therefore, under that section a certificate-debtor was entitled to object denying his liability in whole or in part. Therefore, the Act contemplated filing of a certificate which contained claim which the certificate-debtor was not liable to pay either in whole or in part. Therefore, in my opinion, the fact that part of the claim included (sic) cannot lawfully be imposed upon the certificate-debtor is not a ground, which invalidates the certificate as such. Counsel for the petitioner drew my attention to an unreported decision of T.K. Basu, J., in Matter No. 211 of 1967 (Template Agarwalla v. Income Tax Officer, A Ward), in aid of the proposition that if the certificate included partly valid and partly invalid claim the whole certificate was liable to be quashed. I am unable to accept this contention. The decision referred to hereinabove does not also deal with that question. That was a case where a garnishee notice had been issued u/s 226(3) of the Income Tax Act, 1961, which included the claim part of which was not recoverable against the assessee. The learned Judge held that the entire notice was bad. The learned Judge had no occasion to consider the provisions of Section 9 of the Bengal Public Demands Recovery Act or even a provision similar to that. Section 226 of the Income- tax Act, 1961, does not contain any provision similar to Section 9 of the Public Demands Recovery Act. Sub-section (3) of Section 226 authorises a person to whom a garnishee notice has been issued to file an objection that no sum is due to the assessee from the garnishee. But it does not contemplate an objection that no amount is due from the assessee to the revenue. What is the effect of the absence of such a clause in Sub-section (3) of Section 226 of the Income Tax Act, 1961, does not, however, fall for my consideration in the instant case. T.K. Basu, J., in his judgment, referred to above, has referred to the case of S. Santosha Nadar Vs. First Additional Income Tax Officer, Tuticorin, and Another, . There, whether the certificate as such becomes liable to be quashed because it includes sum not legally recoverable did not also fall for consideration. In the aforesaid view of the matter and in the view I have taken with regard to Section 9 of the Bengal Public Demands Recovery

Act, I am unable to accept the contention that because the claim included a claim which was not legally recoverable, the entire certificate was vitiated. Counsel for the petitioner contended, however, that in a certificate proceeding the petitioner was not entitled to go behind the certificate. That is true but he was entitled to contend that the claim included dues which were not legally recoverable. The second objection to the certificate is, therefore, rejected.

8. It was, thirdly, contended that the certificate was bad because it was issued in accordance with both the provisions of Sections 4 and 5 of the Act. It is true that the certificate in so far as it indicated that it was filed both under Sections 4 and 5 of the Act was irregular. This irregularity, in my opinion, has not vitiated the certificate. It is a defect or irregularity being one in form and in view of the provisions of the Bengal Public Demands Recovery (Validation of Certificates and Notices) Act, 1961, does not make the certificate bad. Section 2 of the said Act provides as follows :

2. Notwithstanding any decision of any court and notwithstanding anything to the contrary contained in the Bengal Public Demands Recovery Act, 1913 (hereinafter referred to as the said Act), or in the rules made or forms prescribed thereunder, no certificate filed u/s 4 or Section 6 of the said Act and no notice served u/s 7 of the said Act shall be deemed to be invalid or shall be called in question merely on the ground of any defect, error or irregularity in the form thereof.

9. In that view of the matter, the third objection to the certificate cannot be accepted.

10. In the view, however, I have taken on the first objection this certificate must be quashed and set aside. But this will not prevent the respondents from proceeding afresh in accordance with law.

11. The rule is made absolute to the extent indicated above. There will be no order as to costs.