
(1986) 02 CAL CK 0011
In the Calcutta High Court

Sukumar Chandra Roy

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 67 STC 87

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : S.C. Bose and G.C. Mukherjee, for the Appellant; S.N. Bose, for the Respondent

Judgement

Suhas Chandra Sen, J.—On 13th September, 1976, the petitioner applied for registration under the Bengal Finance (Sales Tax) Act, 1941, as a reseller. From records it appears that the petitioner appended a list of 20 items which the petitioner claimed to be reseller of. These items included cast steel components, bearings, bushings and valves, EMU coach fittings, train lighting and head lighting components. I am mentioning the above items only to show the diversity of the goods the petitioner claims to be reseller of. There was an inspection on the application made by the petitioner. The report of the local enquiry was to the effect "the dealer is a reseller". This report was dated 16th October, 1976.

2. Ultimately, on 8th December, 1976, an order was passed in which the petitioner was granted registration as a manufacturer of roller path. In the order sheet dated 8th December, 1976, which was handed up to the court and the copy of which has also been annexed to the petition, there does not appear to be any mention of the application mentioned by the petitioner for grant of registration as reseller. There is no finding that the petitioner did not do any resale as claimed by the petitioner.

3. The case of the writ petitioner was that the petitioner was doing mostly resale business. He was also doing some manufacturing activity. The petitioner should have been granted registration both as manufacturer and reseller. By

inadvertence, the registration as reseller was not granted to the petitioner. But this mistake was overlooked both by the petitioner as well as by the department and the petitioner was allowed to obtain declaration form No. XXIV (sic) (resale) and also form No. XXIVA (sic) (manufacture). The contention of the petitioner is that this mistake was discovered later on and the petitioner was eventually granted registration both as reseller and manufacturer. Further contention is that this should have been given retrospectively from the date of the application, and that the respondents have jurisdiction and authority to grant retrospective registration. On behalf of the respondents, it has been contended that the question of retrospective registration can only arise when there was a mistake, but the petitioner, with full knowledge of the fact that he had not been allowed registration as reseller had obtained the declaration form No. XXIV (sic) (resale). Therefore the penalty proceedings have been properly initiated. The question of retrospective amendment of the registration really would have arisen had there been any case of inadvertence and omission which is not the case here. Additionally, it has been argued on behalf of the respondents that this being a case of penalty, penalty order having already been passed, the court should not interfere in this matter and the petitioner should go on appeal.

4. Normally in a case of penalty, the court does not interfere in exercise of its jurisdiction under Article 226 of the Constitution. Moreover, in this case, the facts are in dispute and have to be gone into. But, one thing stands out on which there is no dispute, that is, that the application of the petitioner for registration made on 13th September, 1976, was not dealt with at all. I am not deciding the question whether the order that was passed on 8th December, 1976, was by inadvertence or not, but the fact remains that the petitioner had applied for registration as a reseller and the list of items was appended to the application, which items the petitioner intended to sell or were selling. The respondents could have rejected the application or could have accepted the same. It appears that neither of those two things have been done.

5. The penalty order that was passed is also very cryptic. Mr. Bose, learned Advocate for the petitioner, has contended that there is no deliberateness on the part of the petitioner in evading payment of any tax. The whole situation has been created by a mistake on the part of the department and overlooking the same on the part of the petitioner.

6. I am not expressing any final opinion about any question of fact and law. But, in my view, in the peculiar facts of the case, the penalty order must be set aside. The respondents are directed to go into those questions afresh and decide the questions in accordance with law. The respondents will have liberty to pass fresh order in accordance with law. The penalty order dated 25th November, 1984 is set aside with a direction upon respondent No. 2, the Commercial Tax Officer, to pass a fresh order in accordance with law. I am also directing respondent No. 2 to consider the question of granting retrospective amendment of the registration certificate afresh in accordance with law in view of the facts stated hereinabove

within a period of thirty days from the date of communication of this order.

7. The writ petition is thus disposed of without costs. I am making it clear that the respondents will be at liberty to pass any order as they think fit.