

**(1958) 08 CAL CK 0005**  
**In the Calcutta High Court**  
**Case No : Matter No. 22 of 1958**

Sunil Kumar Roy

APPELLANT

Vs

Commercial Tax officer and Another (No. 2)

RESPONDENT

**Date of Decision :** 22-08-1958

**Acts Referred:**

Bengal Finance (Sales Tax) Act, 1941 — Section 11, 14(1)

**Citation :** 62 CWN 919 : (1959) 10 STC 18

**Hon'ble Judges :** Sinha, J

**Bench :** Single Bench

**Advocate :** A.K. Das Gupta and M.N. Roy, for the Appellant; K. Mukherjee, for the Respondent

## **Judgement**

SINHA, J.—The facts and the law involved in this case are more or less similar to the facts and law involved in Matter No. 217 of 1957, Sunil Kumar Roy. v. Commercial Tax Officer and Anr. [1959] 10 S.T.C. 14. The petitioner is a manufacturer of coke and derivatives from coal and has his factory situate at Bhowra in the district of Dhanbad in the State of Bihar. He is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941. On or about the 20th November, 1956, the Commercial Tax Officer, respondent No. 1, issued a notice to the petitioner in Form VI under Sections 11 and 14(1) of the said Act, in respect of the year 1955-56. As will appear from the notice, which is Exhibit "A" to the petition, what the petitioner was asked to do was to make a return in respect of the period ending on the last day of March, 1956, and also to show cause why in addition to the amount of tax to be assessed, there should not be a penalty imposed under Sub-section (1) of Section 11 of the Act. On or about the 4th of April, 1957, the petitioner submitted a revised return, copy whereof is Exhibit "B" to the petition. This revised return was accompanied by a covering letter which is also included in Exhibit "B". In this case we are not concerned with the other items save and except 3 items, two of which relate to sale of hard coke to the Bengal Nagpur Railway and to the Calcutta Port Commissioners respectively. The third item is sale of other commodities to Calcutta Chemicals and Minerals

etc. In respect of this, the covering letter said as follows:-

The aforesaid sales took place at Bhowra in the State of Bihar, i.e., outside West Bengal. It appears that the purchasers caused carriage of the goods from Bhowra to different places in West Bengal but that fact does not make us liable for payment of sales tax on the aforesaid sales.

2. Unfortunately, however, in the body of the return itself the deductions in respect thereof have been claimed to be deductions u/s 5 (2) (a) (v) of the said Act. Obviously, if the statement in the covering letter is true, then the matter cannot possibly come under Clause (v) of Section 5(2) (a). This is an aspect of the matter which I have discussed in Sunil Kumar Roy's case [1959] 10 S.T.C. 14. That clause can only apply in respect of sales of goods which have been despatched by or on behalf of the dealer to an address outside West Bengal. If the statement in the covering letter is to be taken at its face value, then it means that the sale was completed at Bhowra which is in Bihar, and it is the purchasers who brought it to West Bengal. Thus, prima facie, it would not be liable to sales tax in West Bengal at all. Upon this revised return, an assessment order was made by respondent No. 1 on the 10th of April, 1957. A copy of the assessment order is Exhibit "C" to the petition. The relevant part of the assessment order is under the heading "exemption" and runs as follows :-

U/s. 5(2)(a)(v): A sum of Rs. 11,67,888-0-3 is the claim under this Section. It appears that coal and other commodities worth Rs. 1,37,044-3-3 were brought into the State of West Bengal by the purchasers namely, (1) Bengal Nagpur Railway, (2) Calcutta Port Commissioners and (3) Calcutta Chemicals and Minerals and Others. This amount is disallowed from the total claim as the goods were delivered in West Bengal.

3. A proper reading of this will make it clear that there are two findings involved, which are inconsistent with each other. If the Commercial Tax Officer accepted the statement of the petitioner in the revised return or the covering letter thereto, to the effect that the commodities were sold at Bhowra but brought into West Bengal by the purchasers, then indeed it would not be subject-matter of sales tax at all in West Bengal. The first part of the finding seems to indicate that the Commercial Tax Officer accepted this statement but unfortunately he disallows the total claim for exemption on this heading on the ground that the goods were delivered in West Bengal. Surely, he could not mean that goods sold outside West Bengal but brought into West Bengal by the purchaser would be liable for payment of sales tax in West Bengal. Indeed, the matter has been sought to be made clear in the affidavit-in-opposition affirmed by Syed M. A. Meerza, the Commercial Tax Officer, in which he tries to make the case that in respect of the amounts for which exemption was disallowed, the petitioner had failed to prove that the goods were sold outside the State of West Bengal, but, on the other hand, the Commercial Tax Officer was satisfied that the goods were in fact delivered within West Bengal which of course would clearly make the claim for exemption bad. If this is the real state of facts, then I must say that the

assessment order is bad on the face of it, as there is a finding included therein which the Commercial Tax Officer never intended to arrive at. In any event, there is a patent inconsistency. That being so, this Rule must be made absolute to this extent that the assessment order dated the 10th of April, 1957, being Exhibit "C" to the petition must be set aside and quashed by a writ in the nature of certiorari and the matter sent back to the Commercial Tax Officer, who must reconsider the matter under Clause (2) of the heading "exemption". He must come to a clear finding as to whether the exemption that he has disallowed relates to goods which are amenable to sales tax, in view of the observations made above, that is to say whether the goods have been delivered in West Bengal or outside West Bengal. So far as the rest of the assessment order is concerned, the correctness thereof has not been challenged. The assessment order will now be made in accordance with law. There will be no order as to costs.