

(1958) 03 CAL CK 0040
In the Calcutta High Court
Case No : Matter No. 217 of 1957

Sunil Kumar Roy

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 06-03-1958

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : 62 CWN 397 : (1959) 10 STC 14

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 petitioner is a manufacturer of coke and derivatives from coal having his factory at Bhowra, District Dhanbad in the State of Bihar. He is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941. The petitioner was called upon to file his return of sales tax payable for the year ending 31st March, 1954, and he did so. Copy of the return is Exhibit "A" to the petition. In that return he showed a gross sale to the extent of Rs. 15,53, 117-15-3. Out of this, he claimed certain exemptions u/s 5(2)(a)(v) of the said Act. The exemption claimed under Clause (v) was claimed in the following manner:-

Clause (v)-- to addressees outside Bengal-10,28,874-12-0.

2. It appears, that out of this, about Rs. 2,26,864-12-6 has been disallowed on grounds which I shall presently mention. In the return as filed, there is no claim for exemption in respect of sales in course of export. It appears, however, that subsequent to the filing of the return, the petitioner filed a petition sometime in November, 1956, claiming exemption on this heading to the extent of Rs. 88,847-1-0. This was on the heading "account of sales made outside the territory of India in course of export." This amount was totally disallowed. The order of assessment was made on the 18th of December, 1956, and the assessment order together with the reasons for the findings is Exhibit "B" to the petition. So far as

the exemption u/s 5(2) (a) (v) is concerned, the Commercial Tax Officer states as follows :-

The claim under this section amounts to Rs. 10,28,874-12-0. The dealer claims refund of the tax already paid on sales to B.N. Railway. In the previous year such claim was disallowed as the delivery of the coal was made at Shalimar-a place in West Bengal. So the claim of the dealer for refund of taxes cannot be entertained.

3. Mr. Das Gupta, appearing on behalf of the petitioner, states that this finding is defective because the petitioner delivered the coal at Bhowra to the B.N. Railway according to the orders of the authorities and was not concerned as to where the coal should be eventually delivered. Thus, it is a sale that has taken place outside West Bengal. This is an entirely new case. In his return, the petitioner claimed exemption u/s 5(2) (a) (v) which runs as follows :-

Sales of goods which are shown to the satisfaction of the Commissioner to have been despatched by, or on behalf of, the dealer to an address outside West Bengal.

4. In his return, all that was said was that on this heading, sales have been effected during the return period to addressees outside Bengal. The Commercial Tax Officer considered this item to be the same or similar to claims made in the previous year which were disallowed, as the delivery of the coal was made at Shalimar, a place in West Bengal. The position, therefore, is as follows: According to the petitioner, he made sales outside West Bengal, and these ought to be exempted u/s 5(2) (a) (v). The point to be considered is as to whether the goods were despatched by or on behalf of the petitioner to an address outside West Bengal.

5. According to the Commercial Tax Officer, as is explained in his affidavit-in-opposition, the evidence shows and the officer was satisfied upon the evidence, that the goods were despatched not to a place outside West Bengal, but to places inside West Bengal. He says that the petitioner failed to satisfy the Commercial Tax Officer that he had sold and delivered the goods to the Bengal Nagpur Railway within the State of Bihar. On the contrary, from the records produced by the petitioner it appeared to the Commercial Tax Officer that the petitioner had consigned the quantities of goods actually to Shalimar or Kharidah, both within the State of West Bengal. The Commercial Tax Officer further states that the carriage of goods to Shalimar or Kharidah were done at the instance of the petitioner. Now, if these facts are correct, then undoubtedly the petitioner is not entitled to any exemption u/s 5(2) (a) (v). This Court cannot sit as a Court of appeal on facts, and it has been pointed out on behalf of the respondents that the petitioner did not appeal against the assessment, although an appeal lay. It has now been held by the Supreme Court in *State of U.P. v. Mohammad Nooh* A.I.R 1958. S.C. 86, that there is no rule with regard to certiorari as there is with mandamus that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie

although a right of appeal has been conferred by statute. This, of course, does not mean that if the aggrieved party has another and an adequate remedy, it should not be taken into consideration. So far as the first ground is concerned, namely exemption u/s 5(2) (a) (v), I am unable to interfere. It involves questions of fact which have been found against, the petitioner.

6. The second point which had been raised by subsequent petition and is not to be found in the return, is as follows: According to the petitioner, he made sales outside the territory of India in the course of export. It is not denied that if it is in the course of export, then under Article, 286(1) of the Constitution it is to be exempted. The Commercial Tax Officer, however, has dealt with this point in the following manner:-

The dealer has also prayed for exemption for payment of tax on. account of sales made outside the territory of India in course of export, for Rs. 88,847-1-0 out of the total claim. I have already mentioned in the assessment note of the previous year that the goods (coke) were not despatched by the dealer himself, but by the shipping agent to whom the goods were delivered for shipment outside India.

7. This, as a reason, is quite inadequate in law to turn down the application for exemption. As has been pointed out in several cases, including the case of *State of Travancore-Cochin v. The Bombay Co., Ltd.* 1952 S.C.A. 656, the question whether sales are in the course of export or not is a difficult one. But it must be understood that a sale by export involves a series of integrated, activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Mr. Mukherjee does not contest the proposition that mere delivery to the shipping agents would not take it out of the mischief of the exemption. He says that the case of the respondents is that the delivery was made by the petitioner to the Government of India and the Government of India delivered it to the shipping agents. In other words, the goods were not shipped by or on behalf of the petitioner at all but by the Government of India which had purchased the goods and to whom the title had passed before they were shipped. Now, this is certainly not a reason that has been stated in the order of the Commercial Tax Officer, The position in the present case is not at all simple. By reason of the Colliery Control Order, 1945, the Central Government may from time to time issue such directions as it thinks fit to a colliery owner regulating the disposal of his stock of coal or of the expected output of coal in the colliery, during any period, including directions as to the grade, size and quantity of coal which may be disposed of and person or class or description of persons to whom coal shall or shall not be disposed of, the order of priority to be observed in such disposal, and the stacking of coal on Government account. Therefore, it is clear that in order to find out as to whether in a given case the sale was made (whether voluntarily or by compulsion) by the petitioner to Government or to parties outside India by order of Government, the facts must be investigated. If the position be that the Government purchased the goods and became the owner,

then it would be quite a different thing, because so far as the petitioner is concerned, he would have no further interest in the goods thereafter. On the other hand, if Government directed the petitioner to sell to parties outside India and if the petitioner delivered the goods to shipping agents as directed by Government, that would be an export or a sale in course of export. None of these matters were gone into or taken into consideration by the Commercial Tax Officer. This part of the case was not investigated at all as it should have been, and the decision is erroneous on the face of it. The order is a speaking order, the reasons having been given, which, in law, are not sufficient. The matter must go back and the Commercial Tax Officer must investigate the position, giving the petitioner right to adduce evidence upon this point and the decision must be after a careful consideration of the Colliery Control Order.

8. The result is that the assessment order as made cannot stand. The rule, therefore, is made absolute and the assessment order dated 18th December, 1956, must be quashed and set aside and it must go back to the Commercial Tax Officer to investigate the second point, namely, whether sales were made in course of export or not as indicated in my judgment, and thereafter to make an assessment order in accordance with law. The Commercial Tax Officer will be at liberty to hear the petitioner also on the ground as to exemption u/s 5(2)(a)(v) but will not be compelled to do so. No order as to costs.