(2008) 05 CAL CK 0071

In the Calcutta High Court

Case No : CRR No. 1263 of 2006

Sunita Jain and Another — APPELLANT

Vs

State of West Bengal and Another — RESPONDENT

Date of Decision : 13-05-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 8(1), 9(2), 9(2A)
Penal Code, 1860 (IPC) — Section 120B, 403, 405, 409, 420
West Bengal Sales Tax Act, 1994 — Section 17(2), 17(3), 3(1), 6(2), 65

Citation : (2008) 4 CHN 555

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : Bidyut Kumar Roy, for the Appellant;Swapan Kumar Mallick, for the Respondent

Final Decision : Dismissed

Judgement

Partha Sakha Datta, J.—The two petitioners pray for quashing of a proceeding being Siliguri PS Case No. 73 of 2006 dated 17.03.2006

u/s 88(5)/88(C) and 88(7) of the West Bengal Sales Tax Act, 1994 read with Section 10(e) of the Central Sales Tax Act 1956 and under

Sections 409/468/471/420 and 120B of the IPC corresponding to G.R. Case No. 222 of 2006 pending before the learned Additional Chief

Judicial Magistrate, Siliguri.

2. Assistant Commissioner, Commercial Taxes, Siliguri charge, lodged and FIR with the OC, Siliguri PS being Siliguri PS FIR No. 73 of 2006

dated 17.03.2006 against the present two petitioners alleging the following facts:

Susmita Jain, the petitioner No. 1 wife of the petitioner No. 2 had been carrying on business under the name and style of M/s. Jain Sons and Bros.

at Siliguri and submitted a return for the period from 01.04.2001 to 31.03.2002 under the Central Sales Tax Act 1956 and claimed inter-State

sale of tea u/s Tax Act 1956 and claimed inter-state sale of tea u/s 8(1)(b) of the said Central Sales Tax Act 1956, to the tune of Rs.

2,42,89,389.05p and produced some form C under that Act. Fifteen such forms issued by M/s. Neha Enterprises holding R.C. No.

425001/C/1261 were fake and fabricated as the issuing dealer and R.C. No. both were found to be bogus as per report received. Thus, Smt. S.

Jain willfully produced incorrect accounts, registers and documents and furnished incorrect information and suppressed material information to

defeat the interest of the State revenue by evading huge quantum of tax payable by her. The fake ''C'' forms covered a turnover of Rs.

60,87,064.79p and the act of Smt. S. Jain resulted in loss of State revenue to the tune of Rs. 4,89,965.18p during the financial year 01.04.2001 to

31.03.2002. It was further noticed that for the assessment period ending with 31.03.2001 she also produced ''C'' forms covering transactions of

Rs. 10,61,295.lip resulting loss of Government revenue to the extent of Rs. 63,677.lip. ''C'' forms were printed on papers which were different

from the papers ''C'' forms commonly used by Sales Tax Authorities and such ''C'' forms have no water marks. Further 81 ''D'' forms in

connection with the assessment period ending with 31-03-1997 were found to possess similar physical characteristics. Thus Smt. S. Jain

committed offence u/s 88(5)/88(6) and 88(7) of the West Bengal Sales Tax Act, 1994 read with Sections 9(2) and 9(2A) for the Central Sales

Tax Act, 1956 apart from commission of offences under the provisions of the IPC. When the offence was allegedly committed the petitioner No.

2, the husband of Smt. S. Jain was responsible to the dealer for the conduct of the business of the dealer and hence the said Shri Kamal Jain, as

well as, the dealer are deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly u/s 89 of the West

Bengal Sales Tax Act, 1994. This complaint was addressed to Special I.G. of Police, Bureau of Investigation, Directorate of Commercial Taxes of

the Government of West Bengal and the office of the I.G. of Police in the Bureau of Investigation forwarded the same to the O.C. Siliguri PS

which drew up a formal FIR.

3. It has been contended in the revisional application that the question of wrong information and evasion of tax does not arise in view of the fact

that all along the petitioner No. 1 had been submitting returns and paying taxes as per the said returns, as well as, as per the assessment of

subsequent event for the respective years, that returns were accepted after assessment for the relevant periods and as such the allegations made in

the FIR regarding evasion of tax does not arise without making any revision of assessment by the O.P. No. 2 (Assistant Commissioner,

Commercial Taxes, Siliguri), that the returns for the period of 4 Qrs. ending with March, 1997 was submitted along with payment of tax long back

after assessment was made in the year 1999 and as such the Sales Tax Authority cannot reopen the case for the period of 4 Qrs. ending with

March, 1997 which is barred by limitation and in view thereof the entire FIR, as well as, the proceeding being Siliguri P.S. Case No. 73 of 2006 is

liable to be quashed, that without affording opportunity to the petitioner No. 1 to explain alleged evasion of tax and without revising the assessment

the lodgment of complaint was bad in law, that without giving notice for revising the assessment of tax for the period of 4 Qrs. ending with March,

2002 and 4 Qrs. ending with March, 2001 and after the limited period the reopening of the case for the period of 4 Qrs. ending with March, 97

the complaint lodged by the O.P. No. 2 before the Bureau of Investigation was bad in law, that the petitioner No. 1 already paid Rs. 1 lac as an

instalment out of 50 per cent of the claimed amount of Rs. 5,50,108.50p, but payment of such amount was not called for without prior revising the

assessment of the Sales Tax for the relevant period as alleged in the FIR and under all such circumstances the prosecution against the petitioners

was not maintainable and is accordingly liable to be quashed.

4. I have heard Mr. Bidyut Kumar Roy, learned Advocate appearing for the petitioner and Mr. Swapan Kumar Mallick, learned Advocate

appearing for the State of West Bengal.

5. Having gone through the FIR we find that the allegations against the petitioner No. 1 is with respect to submission of ''C'' forms which according

to the complainant were fake and fabricated as the issuing dealer and the R.C. No. were found to be bogus. Therefore, it is intended to convey

that there was evasion of tax because of submission of fake ''C forms covering a turnover of Rs. 60,87,064.79p for which that State is said to have

suffered revenue loss of Rs. 4,86,965.18p during the financial year 01.04.2001 to 31.03.2002. Bogus ''C'' forms were produced by the petitioner

No. 1 in respect of the assessment period 4 Qrs. ending with 31.03.2001 bearing the name of M/s. Neha Enterprises as a concerned buyer

showing transaction of Rs. 10,61,295.lip resulting in loss of Government revenue of Rs. 63,677.71p. Again the ''C'' forms did not have any water

marks and were printed on papers which are apparently different from the genuine ''C'' forms commonly issued by the Sales Tax Authorities.

Similarly, for the assessment year 04 Qrs. ending with 31.03.1997 bogus ''C'' forms were produced covering inter-State transaction of Rs.

1,11,88,604.85p causing revenue loss to the Government of Rs. 6,71,316.24p. In the context of the allegations as above the grounds in the

revisional application that as per return taxes were being paid regularly and there was no evasion of tax until assessment is revised are the defence

case and this ground does not directly answer the charge levelled in the FIR. Denial of evasion of tax in the revisional application cannot be the

ground of negation of the FIR. The ground that without revising the assessment of tax the complaint should not have been lodged is merely a

defence plea which can hardly be taken into consideration while quashing the proceeding.

6. It is the basic case of the complainant that the ''C'' forms purported to have been issued by M/s. Neha Enterprises covering inter-State

transaction are all fake and fabricated. It is simply not a case of reopening a case as alleged by the accused persons. It is a case alleging submission

of fabricated documents on the basis of which fake transactions were shown ultimately resulting loss of revenue to the Government.

7. It has been submitted by Mr. Roy, learned Advocate appearing for the petitioner that Bureau of Investigation, Directorate of Commercial Taxes

has no authority to investigate offences u/s 409/468/471/420/120B of the IPC and the function of the Bureau is to investigate the offences under

the West Bengal Sales Tax Act, 1994 alone. My attention has been drawn to Section 7 of the West Bengal Sales Tax Act, 1994 in which the

Bureau has been entrusted with the power to carry out investigation or hold enquiry into any case of alleged or suspected evasion of tax, as well as, malpractices connected therewith.

8. The relevant provision of the Act in this connection are reproduced below:

(3) The Bureau may, on information or of its own motion, or when the State Government or the Commissioner so directs, carry out investigation or

hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith and send a report in respect thereof

to the Commissioner.

(4) The Bureau may, for the purpose of holding investigation or inquiry under Sub-section (3), exercise all the powers u/s 65, Section 66, Section

67, Section 69, Section 70, Section 71, Section 72 and Section 73.

Provided that the Commissioner may, on receipt of a report under Sub-section (3), require the Bureau to transfer to him any accounts, registers or

documents relating to the said report seized by the Bureau and, on such transfer, such accounts, registers or documents shall be retained by him

subject to the provisions of Section 66.

(5) The Bureau may, with the prior approval of the Commissioner, require any person appointed under Sub-section (1) of Section 3 to assist the

Commissioner to transfer to it any accounts, registers or documents seized by him from any dealer or person u/s 66 and, on such transfer, such

accounts, registers or documents shall, subject to the provisions of Section 66, be retained by the Bureau for carrying out the purposes referred to

in Sub-section (3) and Sub-section (6).

(6) The Bureau may, after a case has been investigated or inquired into by it, by Order, assess or re-assess tax, impose penalty, determine interest,

or collect or enforce payment of tax penalty or interest in respect of such case under this Act.

9. The aforesaid provisions clearly reveal that the Bureau of Investigation attached to the Directorate of Commercial Taxes has the power to

investigate into alleged or suspected evasion of tax and malpractices and Section 88 of the Act deals with prosecution of the offenders for

contraventions of the provisions of the Act. Sub-sections (5), (6) and (7) of Section 88 of the Act are as follows:

(5) Whoever has in his possession any prescribed form referred to in the first proviso, or the second proviso, to Sub-section (2), or the proviso to

Sub-clause (ii), or Sub-clause (vii), of Clause (a), of Sub-section (3), of Section 17, not obtained by him or by his principal or agent in accordance

with the provisions of this Act or any rules made thereunder, shall be deemed to have committed the offence of criminal breach of trust u/s 405 of

the Indian Penal Code (45 of 1860), and every such person who commits such criminal breach of trust, shall, on conviction, be punishable with

imprisonment of either description which shall not be less than three months but which may extend to three years or with fine not exceeding ten

thousand rupees or with both.

(6) Whoever wilfully attempts in any manner to evade or defeat any tax imposed under this Act, shall, in addition to any other penalty provided by

any law for the time being in force, be liable also for the offence of dishonest misappropriation of property u/s 403 of the Indian Penal Code, and

shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine

not exceeding ten thousands rupees or with both.

(7) Whoever knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information or suppresses material

information shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years

or with fine not exceeding ten thousand rupees or with both.

10. It is, therefore, clear that the Bureau of Investigation cannot be said to be denuded of powers to prosecute offender under the West Bengal

Sales Tax Act, 1994, notwithstanding the fact that the West Bengal Sales Tax Act, 1994 has not given power to the Bureau of Investigation to

investigate into offences under the IPC. My attention has been drawn to an unreported judgment of Division Bench of this Court in WPTT No.

168 of 2007 but that decision does not help the petitioners in any way. Their Lordships of the Division Bench of this Court referred to the decision

of the Hon''ble Supreme Court in State of West Bengal Vs. Narayan K. Patodia, where Their Lordships held as follows:

Section 7(1) of the Sales Tax Act empowers the State Government to constitute a Bureau of Investigation for discharging the functions referred to

in Sub-section (3) thereof. It empowers the Bureau to carry on the investigation or hold enquiry into any case or alleged or suspected case of evasion of tax or malpractice created thereof and send a report of it to the Commissioner. A reading of Section 7 makes it clear that creation of

Bureau of Investigation for the purpose of discharging the function envisaged in Sub-section (3) which of course, includes investigation also. But

there is nothing in Section 7 that such investigation can be carried on ""only"" by the bureau and not any other investigating agency. It is open to the

Bureau to get the assistance of any other legally constituted investigating agency for effectively inquiring into all the ramifications of the offence. As

in this case if offences falling under the Indian Penal Code or any other enactment are also detected during the course of investigation conducted by

the Bureau there is no inhibition to pass over the investigation to the regular police.

11. Therefore, the submission of the learned Advocate for the petitioner that the police cannot investigate into the case involving offences under the

West Bengal Sales Tax Act, 1994 cannot be accepted. Their Lordships of this Division Bench in the unreported case observed that there cannot

be any doubt that the officers of the Bureau of Investigation or the Sales Tax Authority has the power only to pass the bucket to the concerned

police officers by lodging complaint against the persons in question before the appropriate authority and in turn they will proceed with the matter in

accordance with the provisions of criminal law. The decision of the Division Bench of this Court and the decision of the Hon''ble Supreme Court

make it clear that there is no inhibition to pass over the investigation to the regular police when offences fall under the IPC. Similarly, the Bureau of

Investigation can investigate into the offences under the West Bengal Sales Tax Act, 1994.

12. It appears to me that the Bureau is the creature of the statute and it assumes jurisdiction to discharge functions specifically entrusted with it

under the Special Law which in the instant case is West Bengal Sales Tax Act, 1994 and it cannot surpass its jurisdiction to travel beyond that. On

the other hand as observed by Their Lordships of the Supreme Court in Patodia (supra) there is no legal bar to the police for investigation of the

offences following under the IPC by the regular police. In Commissioner of Commercial Taxes, West Bengal v. West Bengal Taxes and Tribunal

2000 120 STC 453 a Division Bench of this Court observed that Sub-section (2) of Section 6 ousts the jurisdiction of the Tribunal to deal with any proceeding triable by any Court or Courts in accordance with the provisions of the Code.

13. It was further held in that decision that jurisdiction of the Tribunal must be exercised in terms of the notification issued by the State. Such

notification can be issued only in respect of matters relating to levy, assessment, collection and enforcement of any tax under any specified State

Act and matters connected therewith or incidental thereto. Though in the reported decision this Court considered the jurisdiction of Tribunal, the

principle of law is to some extent applicable in the present case also. The Bureau of Investigation must exercise its jurisdiction within the four-

corners of the powers enjoyed by it under the Sales Tax Act and Bureau cannot investigate into serious offences under the IPC which was

reflected in the FIR and Bureau could not have conducted investigation in respect of serious offences under the IPC as Bureau has no authority to

investigate into such offence. In any view of the matter I find no ground to quash the proceeding as the FIR prima facie discloses commission of

offence.

14. Subject to the jurisdiction of the police, vis-a-vis the Bureau of Investigation as has been discussed in the preceding paragraph, I dismiss the

revisional application. All interim Orders are vacated.

15. Copy of the Order shall be sent to learned ACJM, Siliguri for information and necessary action.