

(1956) 08 PAT CK 0018

In the Patna High Court

Case No : Misc. Judl. Case No's. 318 and 405 of 1954

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 31-08-1956

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 2

Citation : AIR 1957 Patna 218 : (1957) 8 STC 26

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : Baldeva Sahai and R. Prasad, for the Appellant; A.G. and R.J. Bahadur, for the Respondent

Judgement

1. In these two cases the Board of Revenue has referred the following questions of law u/s 25 of the Bihar Sales Tax Act for the opinion of the High Court:

"(1) Whether in the circumstances of the case the sum of Rs. 16,39,74,598/4/- being the amount of valuable consideration for goods contracted to be sold, sold, delivered and consumed outside the State of Bihar, could be legally included in the petitioners' turnover and taxed under the Bihar Sales Tax Act" of 1947?

2. Whether the definition of sale in Section 2(g) of the Bihar Sales Tax Act of 1947, as amended by Bihar Act 6 of 1949, was ultra vires the Bihar Legislature?

3. Whether the Bihar Sales Tax Act 1947 in so far as it imposed tax on sale of goods outside Bihar became void on 26th January, 1950, being inconsistent with Article 286 of the Constitution of India and whether on the date of the judgment of the learned Commissioner the void part of it could govern the case in appeal?

4. Whether on and after 26th January, 1950, sales tax could lawfully be levied or collected in accordance with the void part of the Bihar Sales Tax Act, 1947, on sales outside the State of Bihar during the period in question in view of Article 265 of the Constitution of India?

5. Whether the amount of sales tax collected by the petitioner during the period was covered by the definition of "sale price" in Section 2 (h) or the definition of "turnover" in Section 2 (i) of the Bihar Sales Tax Act, 1947?

6. Whether the amount of sales tax collected during the period had been legally included in the

assessee's turnover and taxed under the Bihar Sales Tax Act? -

7. Whether the addition of the amount of railway freight collected by the petitioner along with the price of materials sold by him had been legally included in his turnover and taxed under the Bihar Sales Tax Act?"

2. Six of these questions have been examined by the High Court in a previous case, namely, *Tata Iron and Steel Co. Ltd. Vs. State of Bihar*, . The constitutional question has been elaborately discussed and the conclusion was reached that the provisions of Section 2 (g) of the Bihar. Sales Tax Act (Bihar Act 19 of 1947) as amended by Bihar Act 6 of 1949 were constitutionally valid. The High Court also expressed the opinion that it was not necessary for the purpose of legislative jurisdiction that all the legal ingredients of sale or even the transfer of title should have taken place within the State.

It is sufficient if there was some territorial nexus or connection between the taxing authority and the transaction sought to be taxed. The High Court also reached the conclusion that the fact that the goods are manufactured in Bihar constitutes a sufficient territorial nexus or connection which confers jurisdiction upon the State Legislature to impose the tax.

The High Court also expressed the view that the authority of the decision of the Supreme Court in the *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, and *Poppatlal Shah Vs. The State of Madras*, , on the doctrine of nexus has not been affected in any way by the subsequent decision of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . We reiterate and affirm the principles of law expressed by the Division Bench of this High Court in 1956 7 STC 158: (*Tata Iron and Steel Co. Ltd. Vs. State of Bihar*, .

On the basis of the authority of that decision we hold that questions (1), (2), (3) and (4) referred by the Board of Revenue must be answered against the assessee and in favour of the State of Bihar. In that case, the High Court also held that the amount collected by the registered dealer from the customers as sales tax and paid over to the Government cannot be treated as part of the sale price u/s 2 (h) and so does not constitute part of the taxable turnover of the registered dealer. For the same reasons we answer questions (5) and (6) in the present case in favour of the assessee and against the State of Bihar.

3. As regards question No. 7, Mr. Baldeva Sahay put forward the argument that the amount of railway freight collected by the petitioners ought not to be included in the taxable turnover of the petitioners. In support of his argument

learned Counsel referred to Section 2 (h) of the Bihar Sales Tax Act which defines ""sale price" to mean

"the amount payable to a dealer as valuable consideration for

1. the sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sura charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged,

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4. I think the argument of the learned Counsel is correct. If the cost of freight or delivery is separately charged to the petitioners, the taxing authorities are not legally right in including the cost of freight in the taxable turnover of the assessee. It was argued by the Advocate General that the petitioners have been unable to show before the taxing authorities that the freight was separately charged. This position is controverted by Mr. Baldeva Sahay on behalf of the petitioners.

This is manifestly a question of fact and we do not propose to go into that question in this reference, but we are of the view that if the petitioners satisfy the taxing authorities as to what amount was spent towards the cost of freight and collected as such, the petitioners are entitled to the deduction of that amount from the calculation of the turnover. That is our answer to the seventh question referred by the Board of Revenue to the High Court.

5. As the State of Bihar has succeeded in the reference only in four out of the seven questions, we do not propose to pass any order as to costs of the hearing of this reference.