(1978) 02 CAL CK 0056

In the Calcutta High Court

Case No : Appeal No. 173 of 1974

The Assistant Superintendent of Sales Tax and Another — APPELLANT

Vs

Sunil Kumar Roy — RESPONDENT

Date of Decision : 16-02-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 9
Constitution of India, 1950 — Article 226

Citation : (1978) 42 STC 367

Hon'ble Judges : S.C. Ghose, J;R.N. Pyne, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Pyne, J.—This appeal is directed against a judgment and order of Masud, J., dated 14th February, 1971, allowing the application of the respondent (who was the petitioner in the court of the first instance) under Article 226 of the Constitution praying for a writ of mandamus directing the appellant to recall, cancel and/or withdraw the order of assessment dated 8th August, 1969 and the notice of demand dated 12th December, 1969 and to forebear from giving any effect to the said order of assessment and the said notice of demand as also a writ of certiorari for quashing the said assessment order and the said notice of demand on the ground that the same were without jurisdiction. The said order of assessment was made by the Assistant Superintendent of Commercial Taxes, Central Circle, Bihar, under the Central Sales Tax Act, 1956, at his office at No. 13, Camac Street, Calcutta. The short point that was before the court of the first instance, as also before us in this appeal is whether the said order of assessment could be validly made by the appellant outside the State of Bihar. For a proper appreciation of this point it is necessary to refer to some of the relevant facts of this case and the same are briefly set out hereinafter.

2. At the relevant time the respondent was carrying on business under the name and style of "Bhowra Coke Company" as the sole proprietor thereof and his

factory and plant and works were all situated at Bhowra in the District of Dhanbad in the State of Bihar. The office of the said company was, however, situated at the relevant time, at 3-B, Garstin Place, Calcutta. The impugned order of assessment relates to the assessment year 1966-67 in respect of the appellant''s said business under the Central Sales Tax Act, 1956. After hearing the assessee, the respondent herein, appellant No. 1, passed the impugned order of assessment on 15th December, 1967, at No. 13, Camac Street, Calcutta. Thereafter, by a notice of demand dated 23rd December, 1967, appellant No. 1 demanded from the respondent a sum of Rs. 78,178.40 on account of Central sales tax payable by him for the aforesaid period as also a further sum of Rs. 6,400 as penalty under the said Act. Thereafter, by an order dated 10th July, 1968, appellant No. 1 informed the respondent that there were some mistakes in the calculation and the correct amount of tax and penalty would be Rs. 70,766.78 and Rs. 6,400 respectively. Thereafter, a fresh notice of demand was issued on 26th March, 1970. Upon the receipt of the said demand the respondent made an application under Article 226 of the Constitution challenging the said order of assessment and the said notice which are the subject-matter of this appeal as stated hereinbefore.

3. The only question that arises for consideration in this appeal, as stated earlier, is whether the said order of assessment could be validly made by appellant No. 1, the Assistant Superintendent of Sales Tax, outside the State of Bihar. As the determination of the said question would mainly depend on the relevant provisions of the Central Sales Tax (Bihar) Rules, the Bihar Sales Tax Act, 1959 and Notification No. STGL-AR-106/59-9143- F.T. dated 1st July, 1959, the same may be set out here.

4. The material portions of the Central Sales Tax Act, 1956, read as follows:

Section 9. (1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce... shall be levied and collected by the Government of India in the manner provided in Sub-section (3) in the State from which the movement of the goods commenced....

(3) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected ; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly....

Section 13. (3) The State Government may make rules, not inconsistent with the provisions of this Act and the Rules made under Sub-section (1), to carry out the purpose of this Act.

5. Rule 12 of the Central Sales Tax (Bihar) Rules, 1957, framed for carrying out the provisions of the Central Sales Tax Act provides as under :

Rule 12. The provisions of the Bihar Sales Tax Act, 1959 and the Rules framed thereunder shall...mutatis mutandis apply in respect of all procedural and other matters incidental to the carrying out of the purposes of the Act for which no provision is made in these rules or in the Central Sales Tax (Registration and Turnover) Rules, 1957.

6. The portion of Section 8 of the Bihar Sales Tax Act, 1959, which is material for this appeal is as follows :

8. (1) There shall be the following classes of authorities, to be appointed by the State Government, for carrying out the purposes of this Act, namely :-

(a) Commissioner of Commercial Taxes,....

(f) Assistant Superintendent of Commercial Taxes.

(2) The authorities appointed under Sub-section (1) shall, within such areas as the State Government may, by notification specify, exercise such powers as may be conferred and perform such duties as may be imposed, by or under this Act.

7. In exercise of the powers conferred u/s 8 of the Bihar Sales Tax Act, 1959, the Government of Bihar issued Notification No. STGLAR- 106/59-9143-F.T. dated 1st July, 1959 and the material portion thereof is as follows:

In exercise of the powers conferred by Sub-sections (1) and (2) of Section 8 of the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959), the Governor of Bihar is pleased to appoint the authorities specified in the second column of the Table hereto annexed to exercise and perform the powers and duties respectively conferred and imposed upon such authorities by or under the said Act within the local limits of the areas mentioned in the corresponding entry in the third column of the said Table.

TABLE Serial Designation of authorities Areas within which powers No. and duties are to be exercised 1 2 3 66 Assistant Superintendent of The whole of the State of Commercial Taxes, Central Bihar. Circle, Bihar.

8. According to the learned Judge of the court of first instance the scheme of the Central Sales Tax Act, 1956, was that a dealer was to be assessed in respect of his transactions in the State from which the movement of goods of the assessee commenced. But the authorities who are empowered to assess such tax while making the said assessment on behalf of the Government of India would be determined in accordance with the general sales tax law of the appropriate State where such movement takes place. As, in the instant case, the movement of the assessee''s goods took place from the State of Bihar, the relevant provision applicable to this case is Rule 12 of the Central Sales Tax (Bihar) Rules, 1957,

quoted earlier. In view of the said rule the provisions of the Bihar Sales Tax Act, 1959 and the Rules framed thereunder would govern the field in the instant case. Therefore, in the instant case, as the movement of the goods took place in the State of Bihar for the purpose of making assessment under the Central Sales Tax Act, the provisions of the Bihar Sales Tax Act, 1959, would apply and Section 8 of the State Act mentions authority to be appointed by the State Government for carrying out the purposes of that Act and one of such authorities is the Assistant Superintendent of Commercial Taxes. Section 2 empowers the State Government to specify by notification the area within which the authorities mentioned in Sub-section (1) would exercise powers as may be conferred or perform the duties as may be imposed by and under the Act. Masud, J., after considering the relevant provisions of the aforesaid Acts and the said notification was of the view that appellant No. 1 could validly make the order of assessment only at places within the limits of the State of Bihar and no further notification was produced before the court to show that the said officer could validly make the assessment at his office in Calcutta. In the aforesaid view of the matter, Masud, J., held that the said order of assessment being beyond the jurisdiction of appellant No. 1 was invalid.

9. In this appeal before us the contentions advanced on behalf of the parties were the same as those advanced before the court of the first instance and, therefore, to avoid prolixity it is not necessary to state the same in any detail. It was also submitted on behalf of the appellant that the Assistant Superintendent of Commercial Taxes, Bihar, had the jurisdiction to assess for the whole of the State of Bihar under the said notification and inasmuch as the transaction in the instant case arose in the State of Bihar the said Assistant Superintendent had jurisdiction to assess the respondent. It was further submitted that as the officer concerned had the jurisdiction, the place where such officer made the assessment was immaterial and irrelevant. It was also the submission of the appellant''s counsel that as the respondent himself wrote a letter to the assessing officer asking him to make the assessment in Calcutta it is not now open to the appellant to contend that the order of assessment was not validly made. According to the appellant''s counsel, the officer concerned had jurisdiction to make the assessment in the instant case and at the most the assessment made in Calcutta by the said officer, who admittedly had the jurisdiction under the relevant statute to make the assessment, was merely an irregularity and the officer concerned did not lack jurisdiction.

10. On behalf of the respondent it was contended that the said provisions of the statute referred to earlier and the said notification make it clear that the powers and duties of the aforesaid officer could be exercised and performed only within the limits of the State of Bihar and inasmuch as in the instant case the power was exercised outside the said territory, the said assessment was beyond the jurisdiction of the said officer.

11. In our view, the learned Judge of the court of the first instance came to a

correct finding. We are also in respectful agreement with the findings of the learned Judge of the court of the first instance as also with the reasonings for the findings. It also appears to us that the relevant portion of the aforesaid notification specifies the area within which the said officer can exercise his powers and perform his duties. The language of the notification is : "Areas within which powers and duties are to be exercised and performed." It does not, in our view, specify the area in respect of which the powers and duties of the specified officer can be exercised and performed. The expression is "within"; that only specifies and limits the area of operation of the officer concerned. In other words, the area within which the officer concerned can act or exercise his power and discharge his duties under the Act. The "area" does not mean the area where the transactions which are the subject-matter of assessment are to take place. In the above view of the matter the judgment and order appealed against should be upheld. Hence, this appeal is dismissed but there shall be no order as to costs.

S.C. Ghose, J.

12. I agree.