(1960) 07 PAT CK 0002

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 872 of 1958

The Singhbhum Tobacco and Biri Merchants'' Association and Another — APPELLANT

Vs

Assistant Superintendent of Sales Tax and Another — RESPONDENT

Date of Decision : 26-07-1960

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1960) 11 STC 808

Hon'ble Judges : Ramaswami, C.J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : B.C. Ghose and A.C. Mitra, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, C.J. and Kanhaiya Singh, J.—In this case petitioner No. 2. Kumar Brothers (Biri) Private Limited, is a firm carrying on the business and trade of biri at Chakradharpur. It is alleged that petitioner No. 2 manufactures biri from tobacco by a process of manual labour and not with the aid of machines. For the period from the 14th December, 1957, till the 30th June, 1958, the Assistant Superintendent of Sales Tax at Chaibasa called upon petitioner No. 2 to submit a return of turnover of biris for the purpose of imposing sales tax under the provisions of the Bihar Sales Tax Act. Petitioner No. 2 objected that no sales tax was leviable on the sale of hand-made biris. The objection was overruled by respondent No. 1. The petitioners have accordingly moved the High Court for grant of a writ under Article 226 of the Constitution restraining the respondents from imposing sales tax for the period from the 14th December, 1957, to the 30th June, 1958, with respect to the sale of hand-made biris.

2. On behalf of the petitioners learned counsel submitted that the sale of hand-made biris was exempt from taxation under the notification of the Government of Bihar, Finance (Commercial Taxes) Department no. STGL-P-601/57-18422 F.T.,

dated the 14th December, 1957, which reads as follows :-

Notification Patna, the 14th December, 1957.

STGL-P-601/57-18422 F.T.-In exercise of the powers conferred by Section 7 of the Bihar Sales Tax Act, 1947 (Bihar Act XIX of 1947), the Governor of Bihar is pleased to order that the class of dealers specified in the second column of the schedule hereto annexed shall be exempt from the payment of sales tax on the sale of goods specified in the third column of the said schedule subject to the restrictions and conditions set out in the corresponding entry in the fourth column of the said schedule.

--- S. Class of dealer. Description of the Restrictions and No. goods. conditions subject to which exemption has been allowed. --- 1 2 3 4 --- 1. Dealers selling Cotton fabrics, rayon Provided the registered cotton fabrics or or artificial silk fab- dealers in the said artificial silk rics, woollen fabrics. goods pay to the State fabrics, woollen sugar and tobacco as Government such amount fabrics, sugar and defined in Additional by such date as is tobacco as defined Duties of Excise (Levy determined by the in the Additional & Distribution) Bill, latter as taxpayable Duties of Excise 1957, read with the on the sale of such (Levy & Distribu- Provisional Collection stock of the said tion) Bill, 1957. of Taxes Act, 1931 goods, held by or for read with the (XVI of 1931) and such dealers, as has Provisional handloom cloth, exclu- not borne the incidence Collection ding pure silk cloth. either of the Bihar of Taxes Act, Sales Tax or of Addit- 1931 (XVI of ional Duties of Excise 1931) and handloom as under Additional cloth excluding Duties of Excise (Levy pure silk cloth. & Distribution) Bill, 1957, read with the Provisional Collection of Taxes Act, 1931 (XVI of 1931) and provided further that for the purpose of such determ- ination the dealers furnish to the Superin- tendent of Sales Tax, within a fortnight of the date of this noti- fication, a correct and complete return, supported by an affidavit in respect of such stock.

3. It was contended on behalf of the petitioners that the expression "tobacco", as defined in the Additional Duties of Excise (Levy & Distribution) Act, 1957, includes all kinds of tobacco manufactured or not and so the petitioners were exempt from being taxed on handmade bins by virtue of this notification. In our opinion, the argument of learned counsel is well-founded and must prevail. The notification of the Government of Bihar, dated the 14th December, 1957, exempts dealers from the payment of sales tax on tobacco as defined in the Additional Duties of Excise (Levy & Distribution) Bill, 1957, read with the Provisional Collection of Taxes Act, 1931 (XVI of 1931)''. Turning to the Additional Duties of Excise (Levy & Distribution) Bill, 1957, we find that Clause 2(c) of the Bill reads as follows :-

2. In this Act,-

* * * * (c) the words and expressions ''sugar'', ''tobacco'', ''cotton fabrics'', ''rayon or artificial silk fabrics'' and ''woollen fabrics'' shall have the meanings respectively assigned to them in items Nos. 8, 9, 12, 12A and 12B of the First Schedule to the Central Excise and Salt Act, 1944.

4. Referring to the provisions of the Central Excise and Salt Act, 1944, we find that item No. 9 defines "tobacco" to mean "any form of tobacco, whether cured or uncured and.whether manufactured or not and includes the leaf, stalks and stems of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth." It is true that sub-item (3) of item No. 9 was introduced into the Central Excise and Salt Act, 1944, by an amendment of the year 1954 and the amendment which was introduced reads as follows :-

(3) Biris in the manufacturing of which any process has been conducted with the aid of machines operated with or without the aid of power.

5. By virtue of this amendment biris, in the manufacture of which machines have been used, are subject to excise duty at a certain rate. But the amendment has no bearing on the question of what is the proper interpretation to be given to the expression "tobacco" in the notification of the Government of Bihar, dated the 14th December, 1957. It was contended by the learned Government Pleader on behalf of the respondents that the policy of the legislation was only to give relief to dealers of those classes of tobacco upon which excise duty has been imposed under the provisions of the Additional Duties of Excise (Levy & Distribution) Bill, 1957, read with the Provisional Collection of Taxes Act, 1931 (XVI of 1931). We do not think that this argument is right. The definition of "tobacco" is given in wide terms in item No. 9 of the First Schedule of the Central Excise and Salt Act, 1944, as "any form of tobacco, whether cured or uncured and whether manufactured or not" including the leaf, stalks and stems of the tobacco plant; but not including any part of the tobacco plant while still attached to the earth. There is no reason for the cutting down of the width of this definition either in the language or in the context of the Bihar Government notification dated the 14th December, 1957. For these reasons we hold that petttioner No. 2 is exempt from payment of sales tax with regard to the sale of hand-made biris for the period from the 14th December, 1957, to the 30th June, 1958 and there is no liability cast upon the petitioner to sales tax on hand-made biris for this period because of the exemption given by the notification of the Goyernment of Bihar dated the 14th December, 1957.

6. For the reasons we hold that this application must be allowed and a writ in the nature of mandamus must be granted under Article 226 of the Constitution, commanding the respondents not to take proceedings for realising sales tax from petitioner No. 2 with regard to the sale of hand-made biris for the period from the 14th December, 1957, till the 30th June, 1958.

7. We accordingly allow this application. There will be no order as to costs.