

(1955) 03 PAT CK 0014

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 457 of 1953

The State of Bihar

APPELLANT

Vs

Katihar Jute Mills Ltd.

RESPONDENT

Date of Decision : 16-03-1955

Acts Referred:

Bihar Sales Tax Act, 1944 — Section 21(1), 5(2)(a)(v)

Citation : (1956) 7 STC 177

Hon'ble Judges : Sahai, J; Ramaswami, J

Bench : Division Bench

Advocate : The Government Advocate, for the Appellant; Nandlal Untwalia and Shankar Kumar, for the Respondent

Judgement

Ramaswami and Sahai, JJ.—In this case the assessee is a limited company, called Katihar Jute Mills Ltd., and the period of assessment corresponds to the financial year 1946-47. The assessee did not make a return as regards his turnover within the prescribed time limit. He was, therefore, served with a notice u/s 10(4) of the Act of 1944 to file a return and produce the books of account for the period in question. On 2nd December, 1948, the assessee filed a return in Form VI. The Sales Tax Officer determined the gross turnover to be Rs. 48,11,281-11-6 and the taxable turnover to be Rs. 32,44,813. The amount of tax payable by the assessee was determined as Rs. 50,700 and odd. The assessee claimed that he was entitled to deduct from his gross turnover (1) sale of jute despatched by the assessee outside the limits of Bihar, and (2) sale of jute products despatched similarly outside the limits of Bihar. The assessee claimed a deduction of Rs. 16,00,000 and odd under the first item and a deduction of Rs. 24,78,890 and odd under the second item. The Sales Tax Officer disallowed the first item for certain reasons which it is not necessary to consider in the present case. We are concerned in this reference only with the second item, namely, the claim of a deduction of Rs. 24,78,890 and odd on account of sale of jute products despatched outside the limits of Bihar. With regard to this claim the Sales Tax Officer observed that the assessee could not produce any

evidence that the jute products were so despatched. The Sales Tax Officer, however, made an estimate and held that the assessee should be given a deduction of Rs. 12,40,493-8-6 u/s 5(2)(a)(v) of the Act of 1944 on account of jute products despatched outside the limits of Bihar. The assessee preferred an appeal before the Commissioner, but the appeal was dismissed, and the order of the Sales Tax Officer was confirmed. The matter was then taken to the Board of Revenue in revision. The Board also observed that the assessee "could not produce any evidence in spite of the numerous opportunities allowed to him" in order to support his claim of deduction u/s 5(2)(a)(v). The revision application was accordingly dismissed, and the Board of Revenue affirmed the order passed by the Sales Tax Officer. The assessee then applied to the Board of Revenue for making a reference to the High Court u/s 21(1) of the Sales Tax Act of 1944. The point taken by the assessee was that evidence was actually produced before the Sales Tax Officer to substantiate the claim of the assessee that jute products worth Rs. 24,78,890 and odd were sold and despatched outside the limits of Bihar. It was argued on behalf of the assessee that the Sales Tax Officer was confused and made an erroneous observation that evidence was not produced on behalf of the assessee to support his claim. The Board of Revenue passed an order on 8th May, 1951, remanding the case for investigation to the Sales Tax Officer on the question whether the assessee had actually produced documentary evidence to support his claim. The matter was then examined, and on 23rd May, 1951, the Superintendent of Commercial Taxes submitted a report that the assessee had produced the abstract statement book for the year 1946-47 and R. R. book for jute products for the same period before Mr. C. P. Singh, Assistant Superintendent on 4th February, 1949. On receipt of this report the Board of Revenue drew up a statement of the case u/s 21(1) of the Bihar Sales Tax Act, 1944, and referred the following question of law for determination of the High Court:-

Whether the petitioner was entitled, u/s 5(2)(a)(v) of the Act of 1944, to a deduction of Rs. 24,78,890-8-6 instead of only Rs. 12,40,493-8-6, which had been allowed on the basis of an estimate ?

2. On behalf of the assessee Mr. Nandlal Untwalia made the submission that the Board of Revenue had committed an error of record in saying that the assessee did not produce documentary evidence to support his claim of a deduction of Rs. 24,00,000 and odd u/s 5(2) (a)(v) from the taxable turnover. Learned counsel argued that the revision application was heard by Mr. M. M. Philips. The order sheet dated 2nd December, 1948, and the inspection notes of the Sales Tax Officer were produced on behalf of the assessee to show that documentary evidence had been produced in proof that jute goods worth Rs. 24,00,000 and odd had been despatched by the assessee to addressees outside Bihar. The revision application was argued on 4th July, 1950, but in the judgment of the Board dated 18th July, 1950, there is no reference to this fact. The Board has observed, on the contrary, that the assessee "could not produce any evidence in spite of the numerous opportunities allowed to him" regarding the claim of Rs.

24,00,000 and odd. It was also contended on behalf of the assessee that Mr. N. Baksi had accepted the report of the Suprintendent of Commercial Taxes dated 23rd May, 1951, and had reached the finding that "the R. R. books and the abstract sale registers for the period were duly produced by the assessee before the Inspector and the Taxing Officer". It was, therefore, submitted that the assessee was entitled to the full deduction of Rs. 24,78,890 and odd u/s 5(2)(a) (v) instead of the sum of Rs. 12,00,000 and odd which has been allowed by the Sales Tax Officer on the basis of an estimate. On behalf of the State of Bihar, the learned Government Advocate conceded that on merits the assessee had a good case and that he was entitled to the deduction of the full amount of Rs. 24,78,890 and odd. The learned Government Advocate made this concession in view of the report of the Superintendent of Commercial Taxes and in view of the order of Mr. Baksi accepting that report as correct.

3. In our view, the question referred to the High Court is a question of law, since the Sales Tax Officer and the Commissioner as well as the Board of Revenue had refused to give the deduction claimed by the assessee on a wrong assumption of facts. The taxing authorities, including the Board of Revenue, had proceeded upon the view that the assessee had not produced documentary evidence to substantiate his claim of deduction to the extent of Rs. 24,00,000 and odd. The Board of Revenue now admits that this assumption has been proved to be completely unfounded and therefore the order of the Board of Revenue dated the 18th July, 1950, refusing the claim of deduction to the full extent is a legally invalid order. We hold, therefore, that the question referred to the High Court must be answered against the State of Bihar and in favour of the assessee, and it must be held that the assessee is entitled u/s 5(2)(a)(v) to a deduction of Rs. 24,78,890-8-6 instead of the amount of Rs. 12,40,493-8-6 which has been allowed on the basis of an estimate.

4. As the assessee is also to blame for not producing documentary evidence before the Commissioner we do not think we should make an order for costs in this case.