

(2008) 03 PAT CK 0074
In the Patna High Court

Vijay Kumar Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Citation : (2008) 03 PAT CK 0074

Judgement

Chandramauli Kumar Prasad, Actg. C.J.

1. In this writ application filed under Article 226 of the Constitution of India, the prayer of the petitioner is to quash the order dated March 16, 2006 passed by the Commissioner, Commercial Taxes in Revision No. 75/05-06, whereby it had dismissed the revision application filed by the petitioner. Further prayer made by the petitioner is for quashing the assessment orders dated February 20, 2004 and September 16, 2004 passed by the Assistant Commissioner of Commercial Taxes as also the consequential notices for payment of the amount assessed (annexure 3 series). The petitioner's further prayer is to declare Section 46(4) of the Bihar Finance Act, 1981, hereinafter referred to as "the Act" as substituted by Section 7 of the Bihar Taxation Law (Amendment) Act, 2004 to be ultra vires.

2. Shorn of unnecessary details, facts giving rise to the present application are that the petitioner is a proprietary concern dealing mainly in fertilizers and maize seeds in the name and style of M/s. Vijay Kumar and its place of business is at Musarak in the district of Saran. According to the petitioner, it is carrying on the business of fertilizers, etc., which is tax-paid goods and entire purchases have been made after paying sales tax from M/s. Hindustan Lever Chemicals Ltd., from its sale point at Patna. According to it, the entire purchases are supported by form IX-C and as such, no tax was payable by it. Ex parte assessments for the years 1999-2000 and 2000-01 were made by the Assistant Commissioner of Commercial Taxes having tax demand of Rs. 3,54,588. According to the petitioner, since its business was closed in the year 2004, it was not in a position to deposit 20 per cent of the tax assessed in order to invoke the remedy of appeal and as such, filed revision application before the Commissioner of

Commercial Taxes u/s 46(4) of the Act, who dismissed the revision application by order dated March 16, 2006 on the ground that the order of the assessing officer, is not prejudicial to the interest of the Revenue. Accordingly, it held that the case does not fall within the purview of Section 46(4) of the Act. He has given liberty to the petitioner to approach the appropriate forum.

3. Section 46(4)(a) of the Act, before its amendment by Section 7 of the Bihar Taxation Law (Amendment) Act, 2004 (Bihar Act 4 of 2004) read as follows:

46. Revision.-

(4)(a) The Commissioner may, on his own motion call for and examine the records of any proceeding in which any order has been passed by any other authority appointed u/s 9, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such enquiry as he may deem necessary, pass such order as he thinks proper.

4. Section 7 of the Bihar Taxation Law (Amendment) Act, 2004, has substituted Sub-section (4) of Section 46 of the Act and after its substitution, the same reads as follows:

46. Revision.-

....

(4) The Commissioner may suo motu call for and examine the record of any proceeding recorded by any authority, officer or person subordinate to him under this Act and if he considers that any order passed therein is erroneous in so far as it is prejudicial to the interest of Revenue, pass such order as he deems fit after giving the dealer or the person concerned an opportunity of being heard.

....

5. We have heard Mr. S.K. Sharan, appearing for the petitioner and Ms. Nilu Agrawal, Standing Counsel XIX for the State. Mr. S.D. Sanjay has also rendered assistance as *amicus curiae*.

6. It is contended that the view taken by the Commissioner of Commercial Taxes, while dismissing the revision application that Section 46(4) of the Act, is not fit to be entertained as the order of assessment being prejudicial to the interest of the revenue, is erroneous in law. It has been pointed out that in the facts of a given case, the Commissioner may not invoke its power u/s 46(4) of the Act, but its substitution by the Bihar Taxation Law (Amendment) Act, 2004, in no way truncates its power. In support of the submission, reliance has been placed on a decision of this court in the case of *Rakesh Kumar v. State of Bihar* [1995] 2 PLJR 743.

9. Negation of that right of an assessee which was there in Bihar Finance Act, 1984 does not tantamount to in any way restrict the suo motu power of the

Commissioner under Sub-section (4)(a) and that power could be exercised by the Commissioner where he himself has on his own motion called for and examined the records of any proceeding or certain irregularities and illegalities in respect of an order passed in a proceeding are brought to his notice by an assessee. Ultimately the Commissioner may refuse to exercise his jurisdiction under Sub-section (4)(a) on the ground that the assessee had not exhausted the remedy by way of an appeal under the statute or on any such germane ground which is an altogether different matter. But to hold that the Commissioner is debarred from exercising his suo motu power solely on the ground that the information brought to the notice at the instance of an assessee would be contrary to the wide language used in Sub-section (4)(a) of the Act, would be contrary to the normal principle of construction of statute which we have already discussed.

7. Ms. Nilu Agrawal, Standing Counsel XIX, however, submits that the language of Section 46(4) of the Act, being plain, clear and unambiguous, its effect has to be given. She points out that the condition precedent for exercise of power u/s 46(4) of the Act, is that the order passed has to be prejudicial to the interest of the Revenue. Accordingly, she submits that the Commissioner did not err in rejecting the revision application on the ground that the order of assessment impugned before it, was not prejudicial to the interest of the Revenue.

8. Having appreciated the rival submission, we do not find any substance in the submission of Mr. Sharan. From a plain reading of Section 46(4) of the Act, it is clear that the Commissioner has been conferred with the suo motu power to call for and examine the records of any proceeding and in case, he considers that any order passed therein is erroneous and prejudicial to the interest of the Revenue, pass such order as he deems fit after giving the dealer an opportunity of hearing.

9. The guiding rule for construction of statutory provision is that its words have to be understood in their natural, ordinary or popular sense. The words of Legislature have to be given a meaning which it naturally implies. Natural and ordinary meaning of words can be departed only when it is found that the context in which the words have been used, requires a different meaning. If the words are precise and unambiguous those words have to be expounded in their natural and ordinary sense. In such circumstance, it is not the duty of the court to busy itself with supposed intention of the law givers.

10. Bearing in mind, when I consider the language of Section 46(4) of the Act, I find that the power of the Commissioner is hedged and it can exercise its power not only on its satisfaction that order is erroneous but he has to further satisfy that the same "is prejudicial to the interest of Revenue". Any other interpretation would render the words of Legislature "prejudicial to the interest of Revenue" superfluous. The Legislature does not waste its words and construction which attributes redundancy is not accepted except for compelling reasons. In the face of clear and plain language and in the absence of any compelling reason to

render the words of the Legislature redundant, there is no escape from the conclusion that the Commissioner can exercise its power u/s 46(4) of the Act only when it is satisfied that the order is prejudicial to the interest of the Revenue. In other words, condition precedent for exercise of power of revision u/s 46(4) of the Act is that the order has to be prejudicial to the interest of Revenue.

11. The Commissioner has dismissed the revision application without going into its merit on the ground that it is not prejudicial to the interest of the Revenue. Nothing has been shown to establish that the order in fact is prejudicial to the interest of Revenue.

12. In the face of it, I am of the opinion that the Commissioner did not err in dismissing the revision application.

13. Now, reverting to the decision of this Court in the case of Rakesh Kumar v. State of Bihar [1995] 2 PLJR 743, the same is clearly distinguishable. In the said case, this Court was considering the Commissioner's power of revision u/s 46(4) (a) of the Act before its amendment by Bihar Taxation Law (Amendment) Act, 2004. Section 46(4) of the Act before and after its amendment has been quoted in the preceding portion of the judgment and its comparative study will clearly show that the restriction imposed on the Commissioner by Legislature that order "is prejudicial to the interest of Revenue" did not exist earlier. This Court interpreted the provision as it stood earlier and hence the said interpretation shall not hold the field, after its amendment.

14. It is contended that in order to avail of the remedy of appeal, the petitioner is required to deposit certain amount and it is not in a position to do so. Hence, the Commissioner erred in rejecting the revision application and rendering the petitioner remediless.

15. I do not find any substance in this submission of the learned Counsel for the petitioner. It is well-settled that the right of appeal is neither a fundamental nor a constitutional right but is a creation of statute: It follows that the statute which gives the right can also regulate it by imposing conditions and restrictions for its exercise. The Legislature in its wisdom has put certain conditions for invoking the remedy of appeal including the deposit of certain percentum of tax assessed or full amount of tax admitted. The Legislative intent, in my opinion, cannot be allowed to be circumvented on the purported plea of the petitioner that it has no money to deposit. The command of the Legislature is meant to be obeyed and the court would not like to give an interpretation which tends to defeat it.

16. The view which I have taken finds support from the decision of the Supreme Court in the case of The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, wherein it has been held as follows:

40. ...We fail to understand as to why the Legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of

any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid....

17. It has lastly been contended that remedy u/s 46(4) of the Act if held limited only in a case when the order is found to be prejudicial to the interest of the Revenue, the same shall be discriminatory, impeding the right to trade and business as also the right of property guaranteed under Articles 14, 19(1)(g) and 300A of the Constitution of India. It has been pointed out that to invoke remedy of appeal, certain percentum of tax assessed is to be paid and prohibiting the assessee to invoke the revisional power u/s 46(4) of the Act, shall render the provision discriminatory in nature. It is not the case of the petitioner that the aforesaid provision is beyond the legislative competence or is ultra vires on any other count.

18. I do not find any substance in this submission. Section 45(1), (2) and (3) of the Act, which is relevant for the purpose, reads as follows:

45. Appeal. - (1) Subject to such Rules as may be made by State Government under this part any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him, or a person objecting to an order of penalty passed against him or an order u/s 27 may appeal to the Joint Commissioner or the Deputy Commissioner specially authorised in this behalf.

(2) And where an order of assessment or penalty against a dealer has been passed u/s 17 or 19 by an authority other than the prescribed one as a consequence of the proceeding having been transferred by the Commissioner under Sub-section (5) of Section 9, the dealer may appeal in the prescribed manner to the authority next above the officer passing that order, not being an authority below the rank of a Joint Commissioner.

(3) No appeal under Sub-section (1) or (2) shall be admitted unless the dealer objecting to an order of assessment has paid twenty per cent of the tax assessed or full amount of admitted tax, whichever is greater....

19. From a plain reading of Section 45(1), (2) of the Act, it is evident that right of appeal is available to a dealer only. An order passed either u/s 45(1) or (2) is revisable u/s 46(1) of the Act, which remedy only the dealer can invoke. The Revenue has not been given any right to file appeal either u/s 45(1) or 45(2) of the Act or to invoke the revisional power u/s 46(1) of the Act. In the face of it, the Legislature thought it fit to provide remedy to the Revenue and made it clear that it is available only in a case when it is prejudicial to the interest of the Revenue.

20. In the absence of any express power given to the Revenue to file an appeal, against the order of assessment, which is prejudicial to the interest of Revenue, the Legislature has conferred suo motu power to the Commissioner to correct and pass such order as ft deems fit. This in no way can be said to be discriminatory or impeding the right of a dealer guaranteed under Article 14 or 19(1)(g) of the Constitution of India. It in no way affects the right under Article 300A of the Constitution of India also.

21. The view, which I have taken finds support from the decision of the Supreme Court in the case of State of Andhra Pradesh v. T.G. Lakshmaiah Setty & Sons [1994] 94 STC 190 in which it has also been held as follows : (page 194)

...The suo motu power was conferred on higher authorities to correct errors of law or to correct improper or irregular procedure or illegality in the procedure, to safeguard the interests of the Revenue, as there was no express power given to the State, to file an appeal against the order of assessment.

22. In the result, I do not find any merit in the application and it is dismissed accordingly, but without any order as to cost.

Mihir Kumar Jha, J.

23. I agree.