

M/s. Ballabhdas Agarwal

Vs

The State of Bihar

Civil Appeal No. 379 of 1961

(J. L. Kapur, M. Hidayatullah, Raghuvar Dayal JJ)

02.02.1962

JUDGMENT

KAPUR, J. -

This appeal by Special Leave against the order of the Board of Revenue, Bihar, relates to the assessment for the year 1950-51 of Sales Tax of the appellant under the Bihar Sales Tax Act, 1947 (Act 19 of 1947), hereinafter called the 'Act'.

The appellant was a railway caterer, who had Refreshment Rooms and Tea Stalls at various Railway Stations. He sold various kinds of eatables, cigarettes, betels, milk, fruits and tea at railway stations. He was registered as a dealer under the Act and had been carrying on business for a fairly long time. His case was that as it was difficult for him to maintain accounts in regard to eatables, some of which were taxable and others were not, he made representation in 1944 to the Bihar Government for some arrangement so that the difficulty in keeping different sets of account would be obviated. As a result of his representation the Bihar Government by a letter June 5, 1945, agreed that the appellant's taxable turnover in Bihar would be taken to be 66 2/3% of the gross turnover during the quarter ending December 31, 1944, and that this percentage might be revised after December 31, 1945. As a result of this letter, the appellant did not keep separate accounts for taxable and non-taxable items and for some of the quarters subsequent to those mentioned in the letter above referred to were also taxed according to the arrangement contained in that letter. For the period April 1, 1950, to March 31, 1951, the gross turnover was Rs. 11,16,270-11-0 and the appellant claimed that he be assessed at 66 2/3% of that amount; but the Sales Tax Officer taxed him on the total gross turnover except for the usual rebate of 4% allowed in such cases. He submitted that in this turnover there were included tax-free articles such as fresh milk, meat, fish, green vegetables etc., which were exempt from Sales Tax under s. 6 of the Act. His submission was that the excess amount assessed was Rs. 11,416-15-0. Against this order he took the usual appeals to the Sales Tax Authorities and after the appeals were rejected, he took a revision under s. 24 of the Act before the Board of Revenue, Bihar, where also he was unsuccessful. Under s. 25 of the Act he applied for referring 6 questions of law to the High Court and those questions were as follows :-

- (i) Whether upon the true construction of the agreement of 1945 between the State Government and the assessee which had been acted upon and not reviewed, the Department was legally entitled to tax petitioner on his gross turnover instead of 66 2/3% of the same ?
- (ii) Whether Member, Board of Revenue, having held that "in the circumstances the petitioner had prima facie bona fide grounds for his belief that the arrangement

which the Department had entered into, would continue" could legally hold that the petitioner was not entitled to be assessed in terms of the said arrangement ?

(iii) Whether in the facts and circumstances of the case, it is open to the Department to challenge the continuance of the arrangement arrived at between the State Government and the petitioner especially so when the State Government by its own acts or omissions misled the petitioner into maintaining his accounts in a manner prejudicial to the petitioner's claim for deductions on account of sale of tax free goods during the period ?

(iv) Whether in the facts and circumstances of the case, the petitioner was entitled to the entire, deduction on account of sale of meat and fish in terms of Notification No. 5564 Ft. dated 30-3-49 under section 6 of the Bihar Sales Act. 1947 ?

(v) Whether the Member Board of Revenue having held that meat and fish mentioned in Notification No. 5564 Ft. dated 30-3-49 under section 6 of the Bihar Sales Tax, Act. 1947, included boiled meat and fish and could meat and fish, could legally hold that meat and fish cooked otherwise were not covered in the terms of said notification ?

(vi) Whether in terms of the Notification No. 5564 Ft. dated 30-3-49 could meat and fish and boiled meat and fish could be distinguished from other preparation of meat and fish ?

But the Board of Revenue referred the following question to the High Court under s. 6 :-

"Whether the following forms of meat and fish are covered by Notification No. 5564 Ft. dated 30-3-49, issued under section 6 of the Bihar Sales Tax Act, 1947 ?

(i) Raw (i.e. uncooked in any way) meat or fish.

(ii) Boiled meat and fish, cooled or uncooled, meant for sale or consumption outside the petitioner's premises.

(iii) Fish or meat, which has been boiled or cooked in some other way served as separate or part of a dish outside the petitioner's premises as separate dish or part of a menu.

(iv) Fish or meat, which has been boiled or cooked in some other way, served as separate dishes or part of a dish outside the petitioner's premises."

The High Court reframed the question as follows :-

"Whether the petitioner was entitled to exemption under Notification No. 5564 Ft., dated 30th March, 1949, issued under section 6 of the Bihar Sales Act, 1947 with regard to the sales of the preparations of meat and fish e.g., meat curry and fish curry served as separate dishes, or as part of the menu, at lunch or dinner, at the petitioner's premises or outside ?"

and answered it against the appellant. It is against the order of the Board of Revenue that the

appellant has come in appeal by special leave but has not appeared against the judgment and order of the High Court.

This Court in *M/s. Chimmonlall Rameshwarlall v. Commissioner of Income-tax (Central) Calcutta* [A.I.R. 1960 S.C. 280] held that in cases where a reference is made to the High Court and the appeal is brought only against the order of the Income Tax Appellate Tribunal then the Supreme Court, if it interfered, would in fact be setting aside the judgment of the High Court without there being an appeal to this Court, and that this Court could not bypass the normal procedure which was to be adopted for the purpose. In a later Judgment in *Chandi Prasad Chokhani v. State of Bihar* [A.I.R. 1961 S.C. 1708] a similar view was taken that as the assessee had not obtained Special Leave in respect of any of the orders passed by the High Court under s. 25 those orders became final and binding and the assessee could not be allowed to bypass or go behind the orders of the High Court and such exercise would be particularly inadvisable in a case where the result may be a conflict of the decision of two courts of competent jurisdiction, which was contrary to the object of ss. 23, 24 and 25 of the Act. In this view of the law the appellant is not entitled to agitate the correctness or otherwise of the decision given by the Tribunal in regard to the questions which were agitated before the High Court and were decided against the appellant and against which no appeal has been brought.

But he submits that there are three other questions which also arise, and on which the appellant wanted a reference to the High Court but which were not referred. It was open to the appellant to apply to the High Court for a reference under s. 25. That the appellant did not do, and it has not been shown that there was any such breach of the rules of natural justice or violation of any principle of law which would be a good ground for out interference direct with the orders of the Board of Revenue in an appeal under Art. 136 of the Constitution.

In our opinion the appeal is without force and is dismissed with costs.

Appeal dismissed.

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