

M/s. Doma Sao Mohanlal

Vs

State of Bihar and Others

Civil Appeal No. 1328 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

21.01.1971

JUDGMENT

SHAH, C.J. -

1. A Hindu Undivided Family was registered in the name of Doma Sao Kishun Lall as a dealer under the Bihar Sales Tax Act, 1944. The family was assessed to tax under Section 10 of the Bihar Sales Tax Act 1944 for six quarters ending March 31, 1947. The Bihar Sales Tax Act, 1944 was repealed and was replaced by the Bihar Sales Tax Act, 1947, but under Section 32 of the Repealing Act liability to pay tax incurred before the date of such repeal and proceedings pending on the said date as also all proceedings initiated after the commencement of the Bihar Sales Tax Act, 1947 and relating to any such liability incurred before the date of such repeal were to be continued and disposed of or initiated and disposed of, as the case may be, as if the 1947 Act had not been enacted.

2. In 1962 the Commissioner of Sales Tax revised the assessment of the Hindu Undivided Family and assessed it to pay Rs. 40, 729.89 as tax. Proceedings were then commenced for realisation of the dues and a tax certificate was filed before the certificate Officer, Patna against Doma Sao Mohanlal the present appellant. It was contended by the appellant that it had no connection with the Hindu Undivided Family firm of Doma Sao Kishun Lall and the appellant could not be called upon to pay the dues under the assessment orders passed in 1962 against the firm of the Hindu Undivided Family of Doma Sao Kishun Lall. The Certificate Officer rejected the contention of the appellant. The order was confirmed in appeal by the Collector of Patna and by the Commissioner of Patna Division and also by Board of Revenue. A petition filed by the appellant before the High Court of Patna was summarily rejected.

3. Tax was assessed against the Hindu Undivided Family carrying on business in the name of Doma Sao Kishun Lall. The appellant claims that in August 1946, the Hindu Undivided Family was dissolved and the members of the family became partners under a deed executed on September 26, 1946 to carry on the business which were carried on by the Hindu Undivided Family. That partnership was dissolved and another partnership was formed on April 22, 1947. This partnership continued till April 11, 1955 and after certain arbitration proceedings that firm was also dissolved and a new partnership was constituted in the name and style of Doma Sao Mohanlal under a deed dated April 18, 1956, and the business was continued by the two partners Mohanlal and Lakshmi Prasad, whereas the other partners carried on another business.

4. The Tax Officer sought to recover the tax assessed against the Hindu Undivided Family Doma Sao Kishun Lall from the present appellant. Liability to pay sales tax is a statutory liability : it is not contractual. The liability to sales may be enforced by summary process only in the manner provided

by the Act. Under Section 4 of the Bihar Sales Tax Act, 1944, every dealer whose gross turnover during the year immediately preceding the commencement of the Act exceeded Rs. 5,000/- was liable to pay tax under the Act on sales effected after the date was so notified. Section 7 provided for registration of dealers. Section 9 provided for filing of returns and Section 10 provided for assessment of tax. Under Section 11 tax was made payable under the Act in the manner provided at such intervals as may be prescribed. Sub-section (4) of Section 11 provided that the amount of tax assessed under sub-section (5) of Section 10 together with the penalty directed to be paid under that sub section shall be paid by the dealer into a Government treasury by such date as may be specified in a notice issued by the Commissioner for the purpose. By sub-section (5) of Section 11 it was provided :

Any amount of tax together with the penalty, if any, which remains unpaid after the date specified in the notice issued under sub-section (4) shall be recoverable as an arrear of land revenue.

5. Procedure for enforcement of liability recoverable as an arrear of land revenue is prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914. Under Section 4 of that Act when the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due. A public demand by Section 3(6) of that Act means any arrear of money mentioned or referred to in Schedule I, and includes any interest which may, by Law, be chargeable thereon up to the date on which a certificate is signed under Part II. Under Schedule I, item 3 any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

6. Since the appellant was not assessed to tax, it is necessary to enquire whether under the Bihar Sales Tax Act the tax could be recovered from the Appellant. Section 17 of the Bihar Sales Tax Act, 1944, provided, insofar as it is relevant :

When the ownership of the business of a registered dealer is entirely transferred, any tax payable in respect of such business remaining unpaid at the time of the transfer shall be payable by the transferee as if he were the registered dealer;

7. Without deciding that the business in respect of which the liability to pay tax arose was entirely transferred to the appellant, the liability to pay tax assessed against Doma Sao Kishun Lall could not be enforced against he appellant. Reliance was, sought to be placed by the State upon a decision of the High Court of Patna in Writ Petition M.J.C. No. 11574 of 1960 between Messrs. Doma Shaw Mohanlal Shaw v. Board of Revenue and Others. In that case the High Court had observed that the Muradpur business of the firm Doma Sao Kishun Lall was entirely transferred to the petitioner firm and hence the tax payable in respect of the said business, which remained unpaid at the time of the transfer, was payable by the transferee. The tax sought to be recovered in the proceedings out of which that writ petition arose related to the assessment year 1949-50. But each assessment period is a distinct, and any decision by the authorities declaring liability to tax cannot operate as res judicata in respect of another period.

8. The High Court did not held (Sic) an investigation in the present case whether the appellant was a transferee to whom the ownership of the entire business of the Hindu Undivided Family which was assessed to tax was entirely transferred. In the absence of such a finding, the judgment of the High Court cannot be sustained.

9. The order passed by the High Court must therefore be set aside and the proceeding remanded to the High Court to be dealt with and disposed of according to law, after issuing a notice against the State and after considering the evidence in that behalf. No order as to costs.

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