

M/S. Gopiram Bhagwan Dass

Vs

State of Bihar

Civil Appeals Nos. 575 - 576 of 1967

(K.S. Hegde, A.N. Grover JJ)

27.07.1971

JUDGMENT

GROVER, J. -

1. The appellant in these appeals is a registered dealer under the Bihar Sales Tax Act, 1947. The assessment order relating to the year 1958-59 was made on May 31, 1962. That is governed by the provisions of the aforesaid Act and has given rise to Civil Appeal No. 576 of 1967. The assessment order in respect of the year 1959-60 was also made on the same date, but that is governed by the provisions of the Bihar Sales Act, 1959 which came into force on July 1, 1959. However, the points are common and the provisions of the two statutes do not materially affect the decision of the appeals.

2. While showing his total turn-over, the assessee had sought to deduct certain amounts on the ground that sales to registered dealers had been made. The assessee produced declarations for all these sales to registered dealers. The Additional Superintendent of Sales Tax who made the order of assessment disallowed deductions claimed on account of sales to certain registered dealers on the ground that those dealers were bogus and had not been shown to be genuine. It was observed that the assessee had failed to exercise the required degree of diligence and had not taken adequate steps to satisfy that the transactions were with genuine dealers. It was held that the declarations could not be said to be true as required under Rule 18 of the Bihar Sales Tax Rules, 1949.

3. The assessee filed appeals to the Appellate Commissioner of Sales Tax. It was argued before him that in the presence of the declarations as required under the law, there was absolutely no ground for disallowing the deductions which had been claimed. It was stated that the firms, in question, were in existence and had furnished valid declarations at the time of the transactions and even if it was found that they did not exist on a subsequent date, the deductions could not be disallowed. The Appellate Assistant Commissioner did not find that the dealers to whom the sales had been effected had not been registered or that the valid declarations as required by Rule 18 had not been filed. All that was held was that there was no evidence on the record to suggest that the assessee had exercised ordinary prudence in trying to find out as to whether the purchasing dealers were firms in existence. The appeal was consequently dismissed but certain penalty which had been imposed by the original assessing authority was set aside.

4. The assessee took the matter to the Commercial Taxes Tribunal. Before the Tribunal, the statement of the assessee does not appear to have been disputed that the dealers in question had been duly registered and the registration number had been shown against the name of each dealer and further that they had purchased goods from the assessee and had given the requisite declaration to

the effect that they were registered dealers and were entitled to purchase goods free of sales tax. After considering the relevant provisions of the Sales Tax Act and the Rules, the Tribunal observed that although the law did not cast on the assessee any responsibility to be satisfied about the correctness of the certificate of registration but if he did not make further inquiries, he ran the risk of losing his claim for deduction if the department showed that the purchasing dealers were bogus and fictitious. As the present assessee had not exercised proper diligence to be satisfied about the transactions being with genuine dealers and not with bogus and fictitious persons, the claim for deductions was bound to fail.

5. The assessee after having failed to persuade the Tribunal to state a case to the High Court then moved the High Court under the appropriate provisions giving all the relevant facts and praying that the following two questions of law be referred to the High Court -

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the deduction of Rs. 1,06,306.08 from the gross turn-over of the dealer on account of sales to various registered dealers ?

(2) Whether a selling dealer is entitled to claim deductions from his taxable turnover of sales to purchasing registered dealer with respect to all the sales made until the date of the cancellation of the registration certificate of the purchasing dealers ?

The High Court, however, dismissed the petitions of the assessee in limine. According to the order of the High Court, the findings were of fact and no question of law arose.

6. We are unable to see how the questions which were sought to be referred were only of fact and were not of law. All the orders of the departmental authorities including the Tribunal appear to show that prima facie the assessee had complied with the requirements of the statute and the Rules for the purpose of claiming deductions. So long as the sales were to dealers who were registered under the relevant sales tax laws and who had supplied declarations to the assessee in respect of the sales, the duty which was cast on the assessee had been prima facie performed. The further point whether in the event of those purchasing dealers being found to be bogus and fictitious persons, the assessee would lose the benefit of the deductions claimed by him in the absence of any collusion or mala fide dealings on his part, is certainly not one of fact and is of law and required examination of the High Court apart from other allied matters arising out of the questions sought to be referred. We would accordingly allow these appeals and, set aside the orders of the High Court. The High Court will make appropriate directions to the Tribunal to state a case and refer the questions sought to be referred to it. The assessee will be entitled to costs in this Court.

</html