

PATNA HIGH COURT

State of Bihar

Vs

Rameshwar Jute Mills Ltd

Misc. Judicial Case No. 321 of 1950

(Ramaswami and Sarjoo Prosad, JJ.)

12.01.1953

JUDGMENT

Ramaswami, J.

1. This case is stated by the Board of Revenue under Section 25(1), Bihar Sales Tax Act (Act 19 of 1947).
2. The assessee is an incorporated company called Messrs. Rameshwar Jute Mills Limited of Muktapur in the District of Darbhanga. Assessment was made by the authorities under Section 13(2)(b), Sales Tax Act for the five quarters ending 31-9-1947, 31-12-1947, 31-3-1948, 30-6-1948 and 30-9-1948. For these five quarters the taxable turnover was determined to be Rs.9,21,043, Rs.9,39,910, 12,09,864/12/-, Rs.6,58,752 and Rs.6,92,895.
3. The assessee claimed deduction in respect of two matters. In the first place, he claimed certain amounts shown as the price of 'loom hours' which were sold by the assessee to different parties, the amount of the sale price being credited in the account books of the assessee. It appears that the Indian Jute Mills Association, of which Rameshwar Jute Mills is a member, allotted certain 'loom hours' to each mill and there was a condition that if for any reason a mill was not able to utilise its quota of loom hours, either due to shortage of raw materials or due to labour trouble or due any other cause it had the option of selling loom hours to some other concern which was capable of utilising the same. It was claimed on behalf of the assessee that the sale of 'loom hours' did not fall within the ambit of the Bihar Sales Tax Act. The argument was rejected by the taxing authorities. In the second place, it was alleged on behalf of the assessee that a quantity of gunny bags was sold to Messrs. Tata Iron and Steel Co. Ltd. through Messrs. Shaw Wallace and Co., who acted as brokers. It was said that the sale was to a registered dealer and the price received for the gunny bags ought to be exempted from sales-tax. This claim also was rejected by the taxing authorities on the ground that the sale was enacted in favour of Messrs. Shaw Wallace

and Co. and the books of the assessee showed that goods were supplied not to the Tatas but to Shaw Wallace and Co., on whom the responsibility for payment of the price rested.

4. Upon these facts the following questions of law have been formulated for the determination of the High Court:

"(1) Are 'loom hours' goods as under Section 2 (d), Bihar Sales Tax Act of 1947 and can sales of these be covered by Section 2(g) and thus be included as turnover as under Section 2(i) of the Act?" and (2) "Are sales to registered dealers of Bihar, through Commission agents outside Bihar, exempt from taxation by the operation of Section 5 (2)(a)(ii) of the Act?"

After hearing learned counsel for the parties we are of opinion that the questions should be altered in the following manner:

"(1) Are the sales of 'loom hours' in the circumstances of this case taxable under the provisions of the Bihar Sales Tax Act of 1947?" and (2) "Are the sales of gunny bags which were delivered to Messrs. Tata Iron and Steel Co. Ltd., Jamshedpore, sales to Messrs. Shaw Wallace and Co. in the circumstances of this case or whether they were sales to Messrs Tata Iron and Steel Co. Ltd., and therefore exempt under Section 5(2)(a)(ii) of the Act?"

5. On the first question it was contended by Mr. Bhattacharji on behalf of the assessee that 'loom hours' cannot by any stretch of language be deemed to be goods the sale of which can be taxed under the provisions of the Bihar Sales Tax Act. It was argued by the learned counsel that there was a domestic arrangement between the members of the Indian Jute Mills Association, in consequence of which 'loom hours' were allotted to each Jute mill and they had also agreed that if for any reason a mill was not able to utilise its quota of loom hours, it had the option of 'selling' the loom hours to some other concern which was capable of utilising the same. It was submitted by the learned counsel that there was no legal sanction behind this arrangement and the so-called right to utilise the loom hours was not a right in the legal sense at all and so was not capable of being transferred or sold to any third parties. To put it differently learned counsel said that loom hours in the context of the facts of the present case were not property in the legal sense and was not capable of being transferred. The materials on the record are not sufficient for determining the question whether the arrangement 'inter se' between the Jute Mills Association and the members thereof was a legally enforceable agreement or not. The question would depend upon the exact terms of the agreement or arrangement between the Indian Jute Mills Association and its members including the assessee, Rameshwar Jute Mills. No document has been produced in this case to show what were the precise terms of the agreement. In the absence of any such document or any other evidence to show as to the details of the arrangement it is impossible to determine the question whether the allotment of loom hours had any legal sanction and whether the assessee could transfer any legal right to third parties by the sale of the so-called loom hours.

But assuming for the sake of argument that the sale of loom hours had legal sanction the question would still remain whether the transaction falls within the ambit of the Bihar Sales Tax Act. The question is whether the sale of loom hours would be sale of goods within the meaning of Section 2(d), Bihar Sales Tax Act. Section 2(d) defines

" 'goods' to mean all kinds of movable property other than actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property".

Movable property is not defined in the Act but it was pointed out by Mr. Gopal Prasad who appears on behalf of the Advocate General in this case that "movable property" is defined in the General Clauses Act to mean 'property of every description except immovable property'. Section 3 (26) states that 'immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. The argument of Mr. Gopal Prasad is that the sale of loom hours was not sale of moveable property as defined in the General Clauses Act and therefore it was sale of immovable property and so falls within the purview of the Bihar Sales Tax Act. There is a fallacy behind this argument for it proceeds on the assumption that loom hours is property and therefore falls within the definition of movable property under the General Clauses Act. On this point Mr. Gopal Prasad referred to the definition of 'property' in the Sale of Goods Act. Section 2(11), Sale of Goods Act defines 'property' to mean the general property in goods, and not merely a special property. But this definition has no bearing on the question we have to decide in the present case. There is a juristic distinction between a right or legally protected interest and the 'res' or object of that right. It is obvious that Section 2(11), Sale of Goods Act defines property in the sense of the right and not of the 'res'. In the present case the answer to the question at issue must depend upon the construction of the language of Section 2(d), Bihar Sales Tax Act. Section 2 (d) defines

"goods' to mean' all kinds of movable property other than actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property". If Section 2(d) is compared to Section 2(7), Sale of Goods Act, it would be immediately apparent that the definition in the Sales Tax Act is much narrower in scope than the definition in the Sale of Goods Act. In the Bihar Sales Tax Act the definition of 'goods' excludes not merely actionable claims but also stocks, shares or securities but in the Sale of Goods Act the definition includes stocks and shares. It is also important to notice that the latter part of Section 2(d), Bihar Sales Tax Act states that 'goods' shall include all materials, articles and commodities, whether or not to be used in the construction fitting out, improvement or repair of immovable property. The expression 'movable property' in the first part of Section 2(d) must be read in the context and collocation of the language of the latter part. If Section 2(d) is so read, it is clear that 'goods' in the Bihar Sales Tax Act must be construed to mean only tangible corporeal property and not abstract rights like

loom hours or actionable claims, stocks, shares or securities. It follows that in the present case the sale of loom hours does not fall within the ambit of the Bihar Sales Tax Act and the amount shown in the books of the assessee as sale price of the loom hours was not rightly taxed by the authorities.

6. As regards the second question it was submitted by Mr. Bhattacharji that the gunny bags were actually sold to Messrs. Tata Iron and Steel Company Ltd., Jamshedpore, who were registered dealers and the sales were exempt from tax under the provisions of Section 5(2)(a)(ii), Bihar Sales Tax Act. It was argued that Messrs. Shaw Wallace and Co. were merely commission agents, that they purchased the goods from the assessee on behalf of Messrs. Tata Iron and Steel Co. Ltd., who were the real purchasers. The evidence on this point was examined by the taxing authorities who found that sales were in fact effected to Messrs. Shaw Wallace and Co. and not to Messrs. Tata Iron and Steel Co., Ltd. The Sales Tax Officer pointed out in the order of assessment that the books of the assessee showed that the goods were credited to Messrs. Shaw Wallace and Co. and not to the Tatas. The name of the Tatas does not appear anywhere in the books of the assessee. There is a further finding that the responsibility for payment of the price rested on Messrs. Shaw Wallace and Co. and not on the Tatas. It was contended on behalf of the assessee that the goods were supplied to the Tatas on the instruction of Messrs. Shaw Wallace and Co. That may be so, but upon the other facts established in the case the Sales Tax Officer and on appeal the Commissioner and the Board of Revenue found that the sale of the goods was in fact made to the Tatas (Sic). That is primarily a question of fact for which there was proper evidence before the taxing authorities. The second question must, therefore, be answered against the assessee and it must be held that sales of gunny bags delivered to Messrs. Tata Iron and Steel Co. of Jamshedpore were in fact sales made to Messrs. Shaw Wallace and Co. and therefore not exempt from tax under the provisions of Section 5(2)(a)(ii), Bihar Sales Tax Act.

7. In the result the first question must be answered in favour of the assessee and the second question in favour of the Department. There will be no order as to costs of this reference.

Sarjoo Prosad, J.

8. I agree but would wish to add a few observations of my own. The question whether the sale of loom hours falls within the sale of goods under the Sales Tax Act is somewhat intriguing. The word 'sale' discarding unnecessary details as defined in this Act means any transfer of property in goods for cash or deferred payment or other valuable consideration; and the word 'goods' has been defined in Section 2(d) of the Act to mean all kinds of movable property other than actionable claims, stocks, shares or securities, and includes all materials, articles and commodities, whether or not to be used in the construction, fitting out, improvement or repair of immovable property. The word 'moveable property' has not been defined in the Sale of Goods Act itself but the Board of Revenue has relied upon the definition given in the General Clauses Act under Section 3(38) which says that it shall mean property of every description, except

immoveable property. The definition of 'moveable property' as given in the General Clauses Act is certainly very wide and anything which is not immoveable property would come under the connotation of 'moveable property'. The contention of the assessee is that the sale of loom hours is not property at all and, therefore, does not come in the definition. The contention is based upon the assumption that there is no legal sanction behind this right or behind the transfer of this right. The assessee was claiming this exemption and he has shown nothing to indicate that there was no legal sanction behind the right. It may be that it was some kind of right, though intangible, which was capable of being legally transferred by the assessee; but even then the question remains, as my learned brother has pointed out, whether the definition of 'moveable property' as given in the General Clauses Act should be wholly adopted for the purposes of construing the definition of 'goods' as given in Section 2(d), Sales Tax Act. It is true that the word 'property' has been defined in the Sale of Goods Act to mean general property in goods, and again the word 'goods' has been defined in Section 2(7), Sale of Goods Act to mean every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. It is obvious that this definition of the term 'goods' in the Sale of Goods Act is much wider than the definition of 'goods' in the Sales Tax Act with which we are here concerned; and presumably, therefore, it is not possible to adopt the wider connotation given to the term 'property' or 'goods' in the Sale of Goods Act or for the matter of that the still wider connotation of movable property in the General Clauses Act. The collocation of the words used in the definition of 'goods' in the Sale of Goods Act apparently suggests that the 'goods' there defined refer to tangible goods or tangible movable property and not to any kind of intangible right. I, therefore, agree that the sale of loom hours does not come within the definition as given in the Sale of Goods Act and the Sales Tax Act and is exempt from payment of tax.

9. The second question formulated by the Board is as follows:

"Are sales to registered dealers, through commission agents, whose offices are situated outside Bihar sales of the class mentioned in Section 5(2) (a)(ii)?"

In view of the findings in the statement of the case submitted by the Board it is quite obvious that the question does not arise and need not be answered. The Board rejected the contention of the assessee that it was a sale to the Tatas and held, on the contrary, that it was a sale to Shaw Wallace and Co., who are admittedly not registered dealers in Bihar and, therefore, the exemption under Section 5(2)(a)(ii) is not available to the assessee. In my opinion, therefore, that question has rightly not been answered and did not arise for consideration at all.

Answered accordingly.