

**TAX CASE No.8 OF 1988**

Statement of case under Section 33 (2) (C) of the Bihar Sales Tax Act, 1959 by the Commercial Taxes Tribunal, Bihar Patna in the matter of assessment of Sales Tax of the Food Corporation of India, Patna for the year 1973-74;

Food Corporation of India, Patna -----Applicant  
Versus  
The Commissioner of Commercial  
Tax, Bihar, Patna. -----Opposite party

For the Applicant:-Mr. Jaya Narayan Sahay &  
S.K.P. Sinha, Advocates.

For Opposite party:-Junior Counsel to Additional  
Advocate General VII

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THE HON'BLE MR. JUSTICE CHANDRAMAULI KUMAR PRASAD

THE HON'BLE MR. JUSTICE SHAILESH KUMAR SINHA

Prasad & Sinha, JJ:- Petitioner-Food Corporation of India is a statutory Corporation created by an act of Parliament and a dealer within the meaning of Bihar Sales Tax Act, 1959, hereinafter referred to as the act. In the assessment year 1973-74, it was assessed to Sales tax vide order dated 23.5.1983 by the Assistant Commissioner of Commercial Taxes. The Food Corporation of India,

hereinafter referred to as the dealer, claimed deduction of Rs.4,42,17,174.21 on account of sale of wheat to Flour Mill for use of manufacture of Maida & Suji etc,. In support thereof, it furnished 428 declaration in Form IX to the extent of Rs.4,14,71.114.23. Out of 428 declarations in Form No.IX, two declarations of Rs.72,900/- i.e. Rs.1,45,800.00 in total were not original but Photostat copies. In the opinion of the Assessing Officer "production of declaration IX is mandatory, and no collateral evidence however convincing it may be can be a substitute for this mandatory requirement." Accordingly, the Assessing Officer rejected the Photostat copies of the two declarations referred to above and declined deduction over the amount either not covered by the declaration or covered under Photostat copies of the declarations.

Assessee also claimed that a sum of Rs.57,53.105.09 is not subject to sales tax at the hand of the assessee, the amount being sale

price of procured grains on which tax has already been paid by Supply Department of the State Government.

According to the dealer under the agreement with Supply Department during the period, sales tax on procured food grains had been collected by Supply Department and such sales should not be levied to tax twice. The Assessing Officer rejected the aforesaid claim, inter alia on the ground that the dealer had not produced any evidence to show that in respect of the above sales tax was collected and paid to the Commercial Tax Department by the Supply Department. In the opinion of the Assessing Officer the Food Corporation of India being a dealer within the meaning of Bihar Sales Tax Act, the liability lay on him to pay the tax. Assessing Officer further observed that onus was clearly on the dealer to furnish evidence that goods had been subjected to tax earlier and the same had been deposited in the account of the Commercial Taxes Department. In the opinion of

the Assessing Officer, the dealer having not discharged the above onus, the sale was found to be taxable at the rate of 3% at its hand.

On revision by the Food Corporation of India, the Commissioner of Commercial Taxes, Bihar Patna set aside the order of assessment and remitted the matter back to the Assessing Officer to assess tax afresh in the light of the direction. As regards the claim of the assessee of deduction of a sum of Rs.4,42,17,174.24 the revisional Court gave opportunity to produce necessary declaration. In this connection, the revisional Court had observed as follows:-

"As to the sales to Flour Mills worth Rs.4,42,17,174.24 the assessee may be allowed opportunity to produce necessary declarations. The case remanded to the lower Court on this score with direction that this claim of assessee may be examined afresh in the light of evidences which may be produced by him and order may be passed accordingly."

As regards the claim of the assessee of payment by tax by the Supply Department earlier it observed as follows:-

"The D.R. conceded that the assessee may be allowed opportunity to produce necessary

evidence before the lower Court. Accordingly, the case is remanded to the lower Court on this point with direction that the assessee should be allowed opportunity to produce evidences of sale, if any, otherwise from the supply Department, Government of Bihar and pass final orders accordingly."

It is relevant here to state that the Sales Tax authority did not assail the aforesaid order. However the assessee carried the matter further in revision before the Commercial Taxes Tribunal. The Commercial Taxes Tribunal by its judgment dated 12<sup>th</sup> of June, 1987 disposed of the revisional application and while doing so, as regards the claim of the dealer in regard to the admissibility of Photostat and duplicate copy of the declaration form, it held that same cannot be taken into consideration and accordingly, set aside the order of the Commissioner of Commercial Taxes and restored that of the Assessing Officer. While doing so, it observed as follows:-

So far the issue regarding admissibility of Photostat and duplicate copies of the declaration is concerned, it is apparent from relevant rules that they can't be treated as valid compliance of the provisions of law. Under the circumstances, the learned Assessing Officer has rightly rejected the

claim made on the basis of Photostat and duplicate copies of the declaration. Accordingly, this portion of the order remains undisturbed."

However, the direction of the Commissioner of Commercial Taxes in regard to the claim of the dealer of deposits of the tax by the Supply Department of the Government of Bihar was not interfered.

Assessee filed application before the Commercial Taxes Tribunal, hereinafter referred to as the Tribunal under Section 33(1) of the Bihar Sales Tax Act to refer the question of law formulated by it to the High Court. The Tribunal by its order dated 29.3.1988 passed in Reference Case No.36-37 of 1987 rejected the said prayer. The Assessee thereafter filed the present application under Section 33(2) of the Act. This Court in exercise of the power under Section 33(3) of the Act directed the Tribunal to state the case and refer the question of law for its opinion. Accordingly, the tribunal has furnished

the statement of case and referred the following questions of law for our opinion:-

- "(i) Whether the provisions for declaration in Form IX under Rule 8(1) (c ) of the Bihar Sales Tax Rules, 1959 in respect of sales of wheat for milling for re-sale, is directory and Photostat copies of the declarations and other evidences in place of declarations could be considered.
- (ii) Whether duplicate declarations furnished by the purchasing dealer could be considered in support of the claims of sales to Flour Mills.
- (iii) Whether in the facts and circumstances of the case, the Tribunal could over-rule the remand order of the learned Commissioner for consideration of fresh declarations.
- (iv) Whether in the facts and circumstances of the case, the incidence of the Sales tax in respect of the amount of Rs.57,53,105.90 being the amount recovered through Fair Price Shops for supply to them, under the orders of the State Government of rice procured under the Bihar Essential Commodities Procurement Order fell on the petitioner.

Mr. Jai Narayan Sahay, appearing on behalf of the applicant contends that the provisions for furnishing declaration in Form IX under Rule 8(1) (C) of the Bihar Sales Tax Rules 1959 is directory in nature and Photostat copies of the declaration and other evidence in place of declaration could be considered.

Junior Counsel to Additional Advocate General No.VII however, contends that Photostat copies of the declaration or for that matter any other evidence in place of the declaration is not permissible to be considered.

The questions formulated and the submissions made require consideration of the Scheme of the Act and the Bihar Sales Tax Rules, 1959, hereinafter referred to as the Rules.

Section 4(3) of the Act which is relevant for the purpose reads as follows:-

"4.Exemption:- xxx xxx xxx  
xxx xxx xxx

(3)The State Government may, by notification and subject to such conditions or restrictions as it may impose, exempt from the levy of the general sales tax or special sales tax or both or the levy of purchase tax-

(a) sales of any goods or class or description of goods,  
(b) sales of any goods or class or description of goods to or by any class of dealers, and  
(c) any sale or category or description of sales;

(d) purchase of any goods declared under Section 3A by any class of dealers or any purchase or category or description of purchases of such goods."



Rule 8 of the Rules, inter alia mandates a dealer who claims deduction to furnish evidence in support of the claim and Rule 8(1) (C )the Rules which is relevant for the purpose reads as follows:-

"8.Evidence in support of claim for deductions from gross turnover(1) A dealer who claims that any amount should be deducted from his gross turnover on account of sales exempted from tax:

x x x x x x  
(c) under clause(b) or (c) of sub-section (3) of section 4, as having been made to a dealer who is entitled by virtue of the exemption allowed by the State Government under any of the said clause to purchase the goods free of general sales tax or special sales tax or both general sales tax and special sales tax, shall substantiate such a claim before the authority prescribed in rule 12 by producing, in addition to the evidence prescribed in clause (b) of this rule, a true declaration in writing, in Form IX obtained from the prescribed authority by the purchasing dealer or by his manager declared under Section 10 that the dealer is entitled to purchase the goods, which are the subject of the sale, free of tax as aforesaid and that the said goods are covered by his registration certificate, and;"

x x x x x

Mr. Sahay, drawing our attention to Rule 8(1) (C ) of the Rules contends that in addition to the evidence prescribed in Clause (b) of the said Rule a true declaration in writing

in Form IX obtained from the prescribed authority by the purchasing dealer or by his manager declared under Section 10 of the Act that the dealer is entitled to purchase the goods which are subject of the sale free of tax and that the said goods are covered by his registration certificate is required to be filed. He submits that true declaration in Form IX cannot be construed to mean that the photo stat copies of Form IX can not be considered.

In support of the submission, he has placed reliance on a decision of this court in the case of Budhram Kashiram vs. The State of Bihar (26 STC 505) and our attention has been drawn to the following passage from paragraph 4 of the judgment which reads as follows:-

" The main question, however, for consideration still remains as to whether it was obligatory for the dealer to produce declaration in respect of the credit sales in order to claim deduction of this amount out of the taxable turnover, which is the question formulated and referred to this Court. The Tribunal has distinguished the Orissa case on merit also, on the ground that their Lordships of the Supreme Court have only ruled that even without the production of the declaration form, the assessee can be

granted exemption in respect of the credit sales, if the Sales Tax Officer is satisfied from other materials on record that such a sale has been made. It was not always obligatory on the part of the selling dealer to produce the declaration. If however, the assessing authority is not so satisfied from other materials on record, the assessee cannot get the benefit of exemption of credit sales without producing the required declaration."

Yet another decision, on which reliance has been placed, is a Division Bench judgment of this Court in the case of Budhram Kashiram Vs. State of Bihar ( 41 STC 201) and our attention has been drawn to Paragraph 8 of the judgment which reads as follows:-

"In my view, the contention of the learned Counsel for the petitioner is well-founded. It has got to be held that the provisions contained under rule 18 of the Rules are directory. Therefore, it was wrongly held by the Member, Board of Revenue, and the Tribunal and the other taxing authorities that the said rule was mandatory. Mr. Tara Kant Jha, the learned Advocate General, appearing on behalf of the State, also fairly conceded in this regard, in view of the judgment of the Supreme Court in the case of State of Orissa, referred to above, that the provision contained rule 18 was mere directory."

Having appreciated the rival submission, we are not inclined to accept the extreme view taken by the Assessing Officer and supported by the Junior Counsel to Additional Advocate General VIII that no collateral evidence however convincing it may be can be substitute for this mandatory requirement. We are of the opinion that from reading of the provision of Rule 8(1) (c ) of the Rules the dealer is required to furnish true declaration in writing in Form IX to claim deduction. We are of the opinion that the assessee before it could claim deduction has to produce true declaration in writing in Form IX but the expression "true" cannot be construed to mean that it has to be original. If the declaration is photostat copy or duplicate copy, and in the opinion of the Assessing Officer same is true nothing prevents him to consider and rely on that. If the Assessing Officer is satisfied that the declaration produced is true it cannot reject the

claim of deduction only on the ground that original Form IX was not produced.

In view of the discussion aforesaid, we are of the opinion that filing of Form IX is mandatory in nature but the Assessing Officer if satisfied that photostat copy and duplicate copy of Form IX filed is true that can be taken into consideration.

In view of the discussion aforesaid, answer to the first question forwarded for our opinion is in the affirmative and it is held that filing of Form IX is mandatory but in case the assessee files its true copy/duplicate copy and the Assessing Officer is satisfied that the same is true nothing prevents it from considering the same and granting the deductions as claimed for.

As a necessary corollary it is held that duplicate declaration can be filed to support the claim provided the Assessing authority is satisfied that the same is true. Accordingly question no.2 is answered in the affirmative and it is held that duplicate

declaration could be considered in support of the claim of sale. However its authenticity and value shall always be within the discretion of the Assessing Officer.

We are of the opinion that the Tribunal erred in overruling the remand order of the Commissioner of Commercial Tax, Bihar Patna. Resultantly, question no.3 is also answered in the affirmative in the aforesaid terms.

As regards the payment of tax by the Supply Department for which the dealer claimed deduction was directed to be considered by the Commissioner of Commercial Taxes while remanding the matter to the Assessing Officer. It is the stand of the dealer that under the agreement the amount was collected by the Supply Department and it is the obligation of the Supply Department to deposit the tax so collected. The Assessing Officer had considered this issue and found that the dealer has not produced any evidence to show that the sales tax was collected by the supply department and paid to Commercial Tax Department. It

further held that the liability to pay the tax was with the petitioner.

We are of the opinion that the petitioner being a dealer it was his obligation to pay the tax. In case it was claiming deduction on account of the payment made by the Supply Department, it was obligatory on its part to produce document in support thereto. The dealer having not produced any material to show that tax in fact has been paid and it can not be said that it is asked to pay the tax twice. As observed earlier, there is nothing on record to show that the dealer has paid the tax.

Accordingly answer to question no.IV is in affirmative. We are of the opinion that in the facts and circumstances of the case, the obligation to pay tax was on the dealer.

However, we would like to observe that in case dealer satisfies the Assessing Officer that in fact the tax has already been paid it shall consider the matter in accordance with law.

Let our opinion be forwarded to the  
Commercial Tax Tribunal, Patna.

(Chandramauli Kr. Prasad, J.)

(Shailesh Kumar Sinha, J.)

Patna High Court  
Dated the 30<sup>th</sup> of June, 2008  
A. Kumar/NAFR

