

TAX CASES No.9 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 1974-75;

FOOD CORPORATION OF INDIA PATNA-----Applicant
Versus
COMMISSIONER OF COMMERCIAL TAXES BIHAR-----Respondents

For the Applicant:-Mr. Jaya Narayan Sahay &
Mr.S.K.P.Sinha,Advocates
For Opposite party:- J.C. to A.A.G.VII

P R E S E N T

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 1974-75, it was assessed to Sales tax vide order dated 16.9.1983 by the Assistant Commissioner of Commercial Taxes.

While working out the tax liability the Assessing Officer observed as follows:-

"The dealers sale which would be subject to addl. tax works out as under-

Taxable Rs.75,49,22,650.11

foodgrains

Sale to Flour Rs. 1,52,43,173.36

Mills

Procured rice Rs. 15,36,075.19

Casual sale Rs. 92,163.75

Damaged grains

do-Gunny bags Rs. 16.21.876.22

Rs. 77,34,15,938.63

Total

Addl.Tax on Rs. 2,26,47,679.50

foodgrains

-do-Damaged Rs. 2,764.95

grains

-do-gunny sale Rs. 97,312.56

This amount of Rs.79,61,63,695.64 would be subject to
addl. tax at the rate of Rs.1/2%

6. Tax is assessed as under-

Taxable	Rs.75,49,22,650.11	Rs.2,26,47,679.50
foodgrains		@3%
Procured	Rs.15,36,075.19	Rs. 46,082.25
rice claim		@3%

rejected-			
Casual	Rs.16,21,876.22	Rs.	97,312.56
sale gunny	(5% + 1%)		
bags			
Damaged	Rs. 92,163.75	Rs.	2,764.95
grin-			
Addl. tax	Rs.79,61,63,695.64	Rs.	39,80,818.50
	Total	Rs.	2,67,74,657.76

Total assessed tax comes to Rs.2,67,74,657.76"

Assessee preferred revision before the Commissioner of Commercial Tax and from its order it is difficult to decipher what grievance it has in regard to the assessment of the years 1974-75. It may be mentioned herein that the commissioner has decided the assessee's revision for the 1973-74 and 1974-75 by a common order. The Assessee's preferred further revision before the Commercial Taxes Tribunal and the revision preferred against the order for the period 1974-75 was registered as Rev.No. 173 of 1984, in which assessee's grievance, in the words of Tribunal are as follows:-

"So far the revision No. 173/84 relating to the period 1974-75 is concerned, two points have been raised Viz., casual sale and imposition of additional tax on the

tax assessed and also imposition of additional tax on the collected."

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 in the facts and circumstances of the case, incidence of sales tax in respect of the amount of Rs.15,36,075.49, being the amount recovered through Fair Price Shops, for supply to them under the order of the State Government of rice procured under the Bihar Essential Commodities

procurement order fell on the petitioner?

(ii) Whether additional tax under the Bihar Sales Tax Act, 1959 could be levied on the amounts of sale tax collected?

(iii) Whether in the facts and circumstances, the assessing Officer erred in not examining the admissibility of rebate and whether the applicant was entitled to the same?

Question no.1 formulated for our opinion has already been answered in the connected case between the same party to day itself i.e. 30th of June, 2008 in Tax Case No.8 of 1988, and the answer thereto shall apply mutatis mutandis in this case also.

Mr. Sahay contends that additional tax is leviable only on gross turn over.

Opposite party is represented by Junior Counsel to Additional Advocate General No.III.

Section 3B of the Bihar Sales Tax Act reads as follows:-

"Section 3B.Charge of Additional tax.- Notwithstanding anything contained in sub-section(3) of section 4, or section 5,6,6A or 7 or in any notification issued thereunder, every dealer liable to pay tax under Section 3 or section 3A shall, with effect from the 1st December,1971, pay an additional tax at

such rate, not exceeding one per centum of his gross turnover, as the State Government may from time to time, by notification in the Official Gazette, fix:

xxx

xxx

xxx"

From its plain reading it is evident that additional tax is to be on the gross turn over. The expression gross turn over has been defined under Section 2(k) of the Act. It reads as follows:-

"2. xxx xxxx xxx xxxx
 xxx xxx xxx xxx
 (k) "gross turnover" means the aggregate of the amount of sale prices received and receivable by a dealer, during any given period, in respect of sale of goods including the sale of goods made in the course of inter-State trade or commerce or export of outside the State and the aggregate of the amounts of purchase prices paid and payable by a dealer in respect of the purchase of goods or classes of goods declared under Section 3A, but exclude the sale price of the said declared goods."

The additional tax is leviable on the gross turn over only.

Hence in our opinion the additional tax would not be leviable on the amount of sales tax collected.

Accordingly answer to the second question is in the negative and it is held that additional tax could not be levied on sales tax collected.

Now we proceed to consider the third question. It seems that this question has not been discussed and adjudicated. In our opinion, in the facts and circumstances of the case the assessing Officer erred in not examining the admissibility of the rebate. On the basis of the materials on record, at this stage it shall be premature to adjudicate as to whether assessee will be entitled for the same or not.

Accordingly our answer to the first part of third question is in the affirmative and it is held that assessing Officer erred in not examining the admissibility of rebate.

Tax case stands disposed off accordingly.

Let our opinion be forwarded to the
Commercial Taxes Tribunal, Bihar.

(Chandramauli Kr.Prasad,J.)

(Shailesh Kumar Sinha,J.)

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

