

Member Board Of Revenue, West Bengal vs Controller Of Stores Eastern Railway ... on 28 April, 1989

Equivalent citations: 1989 AIR 1468, 1989 SCR (2) 777, AIR 1989 SUPREME COURT 1468, 1989 22 VKN 327, 1990 SCC(TAX) 83, 1989 UPSTJ 349, (1989) 2 JT 215 (SC), 1989 SCC (SUPP) 2 236, (1989) 74 STC 5

Author: R.S. Pathak

Bench: R.S. Pathak, L.M. Sharma, N.D. Ojha

PETITIONER:

MEMBER BOARD OF REVENUE, WEST BENGAL

Vs.

RESPONDENT:

CONTROLLER OF STORES EASTERN RAILWAY CALCUTTA, ETC.

DATE OF JUDGMENT 28/04/1989

BENCH:

PATHAK, R.S. (CJ)

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SHARMA, L.M. (J)

OJHA, N.D. (J)

CITATION:

1989 AIR 1468 1989 SCR (2) 777

1989 SCC Supl. (2) 236 JT 1989 (2) 215

1989 SCALE (1) 1145

ACT:

Bengal Finance (Sales Tax) Act, 1941: Section 2(c).

"Dealer"--Railway--Effecting sale of unclaimed, unconnected goods for money consideration--Whether dealer.

Indian Railways Act, 1890: Section 56.

HEADNOTE:

The assessee South Eastern Railway, a registered dealer under the Bengal Finance (Sales Tax) Act, 1941, disposing of unclaimed and unconnected goods for money consideration under Section 56 of the Indian Railways Act, 1890, applied to the Commercial Tax Officer for cancellation of registration as a "dealer".

The Commercial Tax Officer rejected the application on the ground that the disposal of unclaimed goods for valuable consideration was a regular feature of the assessee's activities, and, therefore, the assessee fell within the scope of the Bengal Finance (Sales Tax) Act, 1941.

Assessee's revision application was rejected by the Assistant Commissioner of Commercial Taxes on the ground that the sales effected by the assessee were sales under the Act and that the assessee was a "dealer". A second revision of the assessee was also dismissed by the Additional Commissioner of Sales Tax.

On a further revision the Board of Revenue also confirmed the status of the assessee as a "dealer", holding that in the systematic and organised character of business of auctioning by the assessee, a transfer of property was involved and therefore a sale of goods took place.

At the instance of the assessee a reference was made to the High Court. The High Court answered the question in favour of the assessee by holding that the disposal of the goods did not indicate that the

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Railway was carrying on business as a dealer liable to assessment under the Act.

The assessee in the connected appeal, Eastern Railway, was engaged in selling scrap and unserviceable material, and a similar order was passed by the High Court in its favour. Hence these appeals by the Revenue.

Allowing the appeals and setting aside the judgments of the High Court, this Court,

HELD: 1. The assessee South Eastern Railway was a carrier of the goods and if at the stage of delivery, goods remained unclaimed for a period, the Railway was entitled to dispose them of. The activity of so disposing of the goods was adjunctive to the principal activity of the carriage of goods by the Railway. It is an activity which may be regarded as necessarily incidental or ancillary to its business as carrier of the goods. Therefore, the assessee South Eastern Railway was a "dealer" for the purposes of the Bengal Finance (Sales Tax) Act, 1941. [780G-H]

2. The assessee in the connected appeal, Eastern Railway, who was disposing scrap and unserviceable material was also a "dealer" for the purposes of the Bengal Finance (Sales Tax) Act, 1941. [780H; 781A]

District Controller of Stores, Northern Rly, Jodhpur v. The Assistant Commercial Taxation Officer & Anr., [1976] 37 S.T.C. 423 applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1069 of 1975.

From the Order dated 18.5.1973 of the Calcutta High Court in Matter No. 586 of 1968.

D.N. Mukharjee and G.S. Chatterjee for the Appellant. D.N. Dwivedi and C.V. Subba Rao for the Respondents. The Judgment of the Court was delivered by PATHAK, CJ, The question raised in these two appeals is whether the assessee Railway in each appeal is a "dealer" within the meaning of the Bengal Finance (Sales Tax) Act, 1941 and therefore liable to assessment under that Act. In C.A. No. 845 of 1974 the facts are these.

The assessee South Eastern Railway disposes of unclaimed and unconnected goods for money consideration. On 1 April, 1952 the assessee applied for registration as a dealer under the Bengal Finance (Sales Tax) Act in respect of unconnected or unclaimed goods, and was accordingly registered. It submitted returns of sales effected by it of unclaimed and unconnected goods year after year and paid sales tax pursuant to the assessments made by the Sales Tax department. However, in assessment proceedings for the four quarters ending March, 1959 the assessee applied to the Commercial Tax Officer for cancellation of the registration of the assessee as a "dealer" under the Act. The Commercial Tax Officer examined the case and did not accept the contention that the assessee was not a "dealer". On 6 June, 1959 he made an order rejecting the application on the basis that the disposal of unclaimed goods for valuable consideration was a regular feature of the assessee's activities, and that therefore the assessee fell within the scope of the Act. The assessee applied in revision before the Assistant Commissioner of Commercial Taxes. The only point raised in the revision application was whether the assessee could be treated as a "dealer" within the meaning of the Act. It was stated on behalf of the assessee that unclaimed or unconnected goods came into possession of the assessee but not as a result of any activity of purchase or of manufacture for sale. It was pointed out that when such good came into possession of the assessee it acquired rights over the said goods under Section 56 of the Railways Act enabling it to sell the goods. The revision petition was rejected on 27 January, 1960 on the finding that the sales effected by the assessee were sales under the Act and that the assessee was a "dealer". The assessee proceeded in further revision to the Commissioner of Commercial Taxes, West Bengal and similar contentions were raised before him but the revision application was dismissed by the Additional Commissioner of Commercial Taxes, who dealt with the case, by order dated 17 June, 1960. The assessee then proceeded in revision before the Board of Revenue, West Bengal. The Board held that a transfer of property was involved in the auction held by the assessee and that therefore a sale of goods took place. The Board further held that the systematic and organised character of business carried on by the assessee clothed him with the status of a "dealer" under the Act. At the instance of the assessee the Board of Revenue referred the following question to the High Court at Calcutta for its opinion:

"Whether the petitioner Railway in so far as it effects sales of unclaimed and unconnected goods under the provisions of Section 56 of the Indian Railways Act, is a dealer within the meaning of Section 2(c) of the Bengal Finance (Sales Tax) Act, 1941?"

The facts and circumstances in the case out of which Civil Appeal No. 1069 of 1975 arises are substantially similar to those narrated in the earlier case, except that the assessee here is the Eastern Railway and it is engaged in selling scrap and unserviceable material. The question referred at the

instance of the assessee to the High Court at Calcutta is as follows:

"Whether on the facts and in the circumstances of the case the Controller of Stores, Eastern Railways is a dealer engaged in the business of selling scrap and unserviceable materials within the meaning of cl. (c) read with C1.

(g) of Section 2 of the Bengal Finance (Sales Tax) Act, 1941."

The High Court delivered judgment setting forth detailed reasons therefore in the case relating to the assessee South Eastern Railway. It held that the disposal of the goods did not indicate that the Railway concerned was carrying on business as a dealer liable to assessment under the Act. The High Court disposed of the other case on the same basis as found favour with it in the earlier case, and answered the question in favour of the assessee. In these appeals the question is whether the assessee Railway in each case is a "dealer" for the purpose of assessment under the Bengal Finance (Sales Tax) Act, 1941. In the case of the assessee South Eastern Railway, what were sold were unclaimed goods. The Railway was a carrier of the goods and if at the stage of delivery goods remained unclaimed for a period the Railway was entitled to dispose them of. There can be no doubt that the activity of so disposing of the goods was adjunctive to the principal activity of the carriage of goods by the Railway. It is an activity which may be regarded as necessarily incidental or ancillary to its business as carrier of the goods. It seems to South Eastern Railway was a "dealer" for the purposes of the Bengal Finance (Sales Tax) Act, 1941. In the other case, the assessee Eastern Railway disposed of scrap and unserviceable material lying with it. The case is covered directly by the decision of this Court in the District Controller of Stores, Northern Railway, Jodhpur v. The Assistant Commercial Taxation Officer and Another, [1976] 37 S.T.C. 423.

In the circumstances the appeals are allowed, the impugned judgment of the High Court in each case is set aside and the questions referred to the High Court are answered in each case in the affirmative, in favour of the revenue and against the assessee. The appellant is entitled to his costs in each case.

T.N.A.

Appeals allowed.