

(1954) 02 CAL CK 0026

Calcutta High Court

Case No: Matter No. 44 of 1953

S.M. Hanif

APPELLANT

Vs

The Board of Revenue

RESPONDENT

Date of Decision: Feb. 3, 1954**Acts Referred:**

- Bengal Finance (Sales Tax) Act, 1941 - Section 2, 21, 21(2)

Citation: (1956) 2 ILR (Cal) 818**Hon'ble Judges:** Sinha, J**Bench:** Single Bench

Judgement

Sinha, J.

The Petitioner (a firm) is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941. On June 6, 1945, the Petitioner entered into a contract with the Government of West Bengal, a copy whereof is annexed to the petition and marked as Ex. A. The agreement, on the face of it, is between the Governor of the Province of Bengal of the one part and four persons carrying on business in co-partnership under the name and style of Messrs. S.M. Hanif at 76 Colootola Street, Calcutta. They have been described as "Authorised "Dealer". Clause 3 of the contract runs as follows:

The Authorised Dealer shall promptly take all steps necessary for receiving, purchasing, storing and selling all cloth available for civil consumption in Bengal in accordance with the written authority or direction of Government or the Director.

2. Clause 5 of the contract also speaks about the authorised dealer purchasing and selling cloth. Clause 6 speaks about the authorised dealer delivering and selling cloth. This paragraph is important and I set it out below:

The Authorised Dealer shall consign deliver and sell the cloth only to such person and at such place or places within the Province of Bengal as Government or the

Director may direct and not otherwise provided however the Authorised Dealer shall not be required to part with the property in any goods except on prepayment.

3. Clause 20(b) is important and the relevant part is set out below:

Upon the termination of this agreement Government will take over from, the Authorised Dealer or their Banker or Bankers all stock of unsold cloth. Government will pay the value of the unsold stock at the price at which the Authorised Dealer has taken over (such prices not to exceed the price authorised by law) at the time of purchase by the Authorised Dealer....

4. Under Clause 24, the authorised dealer has to get himself registered under the Bengal Finance (Sales Tax) Act. That can only mean that he has consented to be treated as a "Dealer" under the Act. Otherwise he cannot be registered.

5. The present application arises out of the assessment for sales tax for the first two quarters in the accounting year January, 1945 to December 31, 1945. The Petitioners were called upon to file their return and to produce their books and documents. There is a long history as to how the matter was adjourned from time to time. It is alleged that the matter was ultimately adjourned till December 14, 1947, by the Assistant Commissioner, but nevertheless, on December 8, 1947, he proceeded to pass a "Best judgment" order, in the absence of the Petitioner. There was then an appeal to the Commissioner of Commercial Taxes who upheld the assessment except for the correcting of an arithmetical error of Rs. 10,000. From this order there was a further appeal to the Member, Board of Revenue, who submitted a certain question of law to this Court, namely, as to whether the Board should have taken into consideration the report of the Commissioner without giving the Assessee access to the report. This reference was decided in favour of the Assessee and the Board of Revenue thereafter considered the matter de novo and upheld the findings of the officers. Thereupon an application was made requesting the Board to refer certain points of law to this Court. The learned Member, Board of Revenue, by his order, dated March 4, 1952, has rejected the application and has refused to refer the matter to this Court u/s 21 of the Act. This application has been made u/s 21, Sub-Section 2(b) of the Bengal Finance (Sales Tax) Act, 1941, to compel the Member, Board of Revenue, to refer certain questions of law to this Court. Substantially, Mr. Sarkar, appearing on behalf of the Petitioner, has formulated two points. The first is that the Petitioners were mere handling agents and were not "dealers" as defined by the Act previous to the amendment. The word "dealer" was thus defined by the Act prior to the amendment:

"Dealer" means any person, firm or Hindu joint family engaged in the business of selling or supplying goods in West Bengal....

6. Mr. Sarkar argues that the Petitioner although described as an "authorised dealer" in the contract, had no choice in the sale of the goods because he had to sell to such persons as he was directed to sell by the Government, He says that upon a

reading of the contract the Petitioner must be taken to be a mere commission agent.

7. I am afraid I am unable to interpret the contract in this manner. The contract clearly refers to the Petitioner as a purchaser who was required to purchase cloth and sell the same. I have already pointed out the relevant provisions in the contract which clearly refers to the Petitioner as a purchaser. Also it is made clear that the title in the goods had passed to him upon such purchase (Clause 6). He has also consented to register himself as a "dealer" under the Act. It is quite true that according to the terms of the contract the Petitioner could not sell to anybody and everybody it liked. But Mr. Sarkar has not been able to show me any provision of law whereby parties are not entitled to enter into such a contract by which the purchaser would only be able to sell the goods purchased to parties approved by the Government. In any event, he does not argue that the contract was a void contract. The Petitioner proceeds on the footing that the contract was and continues to be a valid contract in its entirety. If that is so, then the only thing that remains to be done is to interpret it and, in my opinion, it can be interpreted only in the way mentioned above. It appears that the Petitioner purchased goods in its own name from the mills and sold the goods to parties as directed by the Government. This does not necessarily make the Government the purchaser and the Petitioner, a mere agent of the State. The Petitioner is both the purchaser and the seller.

8. Reference has been made by the Member, Board of Revenue, to a decision of Bose, J. in *Staynor and Company v. Commercial Tax Officer* (1951) 55 C.W.N. 583. There it was a case of an auctioneer auctioning goods at a public auction. The learned Judge held that such an auctioneer is a dealer within the meaning of Section 2(c)(i) of the Bengal Finance (Sales Tax) Act, 1941. It is not necessary in this case to go so far. As will appear from the definition given above, a "dealer" includes a firm engaged in the business of selling or supplying goods in West Bengal. Upon any interpretation of the contract, it is not possible to say that it did not carry on the business of selling or supplying goods in West Bengal. In my opinion, it has been rightly held to be a dealer coming within the mischief of the definition in the Act and assessed as such. Although a point of law arises in the interpretation, the point has been rightly decided.

9. The second point taken is about the date on which the Best judgment assessment was made. It is said that although the matter was adjourned till December 14, 1947, the officer made a Best judgment assessment on December 8, 1947. This, however, is a pure question of fact. It was held by the Member, Board of Revenue, that this was a typing mistake. This is a question of fact, and no question of law arises entitling the Petitioner to an order asked for. These being the only points raised, I find that there is no such point of law which the Respondent should be compelled to refer to this Court. The application must, therefore, fail.

10. The Rule is accordingly discharged. The Petitioner must pay the costs. The interim order is vacated.