(1994) 11 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8143/94

Anupam Agencies — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 7(4)

Citation : (1995) 110 PLR 51

Hon'ble Judges : N.K. Sodhi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : M.L. Puri, for the Appellant; A.K. Walia, AAG, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—What is challenged in this petition under Article 226 of the Constitution is the order passed by the assessing authority whereby the registration certificates granted to the petitioner both under the Punjab General Sales Tax Act, 1948 (for short, the State Act) and the Central Sales Tax Act, 1956 (hereinafter called the Central Act) have been cancelled. The order of the Sales Tax Tribunal, Punjab upholding the order of cancellation in appeal has also been impugned primarily on the ground that the petitioner was not afforded a reasonable opportunity by the assessing authority to prove its case.

2. Petitioner (hereinafter referred to as the dealer) is a proprietorship concern which carried on the business of sale and purchase of watches at Batala, District Gurdaspur in the State of Punjab and was registered as a dealer with the assessing authority Batala under the State Act and the Central Act. The assessing authority, Batala had reason to believe that the dealer made purchases of goods worth lacs of rupees from Hyderabad Allwyn Ltd., SCO No. 371-72, Sector 35-D, Chandigarh during the period from May 31, 1984 to July 31, 1984 but the returns filed by the dealer during 1984-85 did not show the corresponding sales nor any amount of tax had been deposited for its inter-state

sales/purchases. A notice u/s 7(4) of the State Act was issued to the dealer on 9.12.1985 to show cause as to why its registration certificates be not cancelled. The notice could not be served on the dealer and ultimately it was served by substituted service by affixing the same at the last known business premises at Batala. It appears that the dealer had closed its business and shifted from Batala and, therefore, it did not appear before the assessing authority who by an ex-parte order dated 21.4.1986 cancelled the registration certificates. The dealer filed an appeal before the Sales Tax Tribunal Punjab and the stand taken therein was that it had not made any purchases against the bills the details of which were mentioned in the order of the assessing authority. An affidavit was filed to that effect. The dealer and the department filed some more documents before the Tribunal in appeal in support of their respective claims which included an affidavit of Shri R.N. Sikka who was working as accountant with M/s Hyderabad Allwyn Ltd. In this affidavit, the deponent had stated that for the period 21.5.1984 to 31.7.1984 his company had made sales to the dealer amounting to Rs. 78,39,794.31 Ps. against the bills details of which were mentioned in the affidavit. He further stated that his company had received payments of more than rupees nine lacs from the dealer against those sales and the details of the demand drafts as well as cheques were also given in the affidavit. Shri R.N. Sikka also filed along with his affidavit the photo copies of the acknowledgements of receipt of goods in question showing that the goods had been duly received by the dealer. The receipts are alleged to have been signed by the proprietor of the dealer firm. He also filed photo copies of agreement/ guarantee bond and promissory note signed by the proprietor of the dealer and also a photo copy of the civil suit filed by M/s Hyderabad Allwyn Ltd. against the dealer for the recovery of the balance amount due to it. As already observed earlier, the dealer had also filed an affidavit, categorically stating therein that it made no purchases whatsoever from M/s. Hyderabad Allwyn Ltd., Chandigarh. It also filed an affidavit of one Dilbagh Rai Sharma, agent of M/s. Bombay Himachal Road Carriers (Regd.) Delhi at Chandigarh in which it was stated that M/s. Hyderabad Allwyn Ltd. never delivered watches for transportation from Chandigarh to Batala against the disputed bills and G.R.s. When the matter came up for final disposal before the Sales Tax Tribunal, counsel for both the parties agreed that in view of the voluminous material placed on the record, it was appropriate that the matter be remanded to the assessing authority to consider that material and pass a fresh order in the case. This contention was accepted and the case remanded to the assessing authority on May 12, 1988. After remand, the dealer filed an application before the assessing authority making a request that since the department was relying upon the affidavit filed by Shri R.N. Sikka the accountant of M/s Hyderabad Allwyn Ltd., which according to the dealer was false, the dealer be allowed to cross-examine Shri Sikka. This request was rejected by the assessing authority with the following observations:-

"Besides, the request of the dealer to call M/s Hyderabad Allwyn Ltd., Chandigarh for cross-examination the same is rejected because the material on the basis of which the dealer wants to cross-examine in fact relates to the dealer himself. The receipt, of goods and dishonoured cheques, promissory notes etc. were made by the dealer himself and not by Hyderabad Allwyn Ltd., Chandigarh.''''

The assessing authority then relying Upon the affidavit of Shri Sikka and the photo copies of the receipts allegedly issued by the dealer came to the conclusion that the dealer had entered into a contract of trade with M/s Hyderabad Allwyn Ltd., Chandigarh and received goods from them against payments. It was further held that the dealer failed to file its quarterly return after 31.12.1984 and suppressed purchases made from M/s Hyderabad Allwyn Ltd. leading to massive evasion of tax and for this reason the registration certificates of the dealer both under the State Act as well as the Central Act were cancelled. Feeling aggrieved by the owner of cancellation, the dealer filed an appeal before the Sales Tax Tribunal Punjab. In appeal also the dealer reiterated its stand by submitting that it had not made any purchases front M/s Hyderabad Allwyn Ltd. and, therefore, the question of evasion of any tax did sot arise. It was also submitted that the dealer had not been allowed to cross-examine Shri R.N. Sikka on whose affidavit the assessing authority had relied and, therefore, the dealer was not afforded reasonable opportunity of proving its case. The submission made by the dealer did not find favour with the Tribunal and the appeal was accordingly dismissed and the order of cancellation passed by the assessing authority was upheld. The order of the assessing authority as also that of the Tribunal upholding the same are now the subject matter of challenge in this petition.

3. The only argument advanced before us by Shri M.L. Puri, learned counsel for the petitioner is that the assessing authority and the Tribunal were not justified in relying upon the affidavit of Shri R.N. Sikka and the photo copies of the alleged receipts showing the receipt of goods by the petitioner to hold that the dealer had in fact made purchases from M/s Hyderabad Allwyn Ltd., without, following the dealer amining Shri Sikka was that the material produced by the said Shri Sikka in fact related to the dealer itself. In our opinion, this was not the right approach. The assessing authority which was discharging quasi judicial functions was seeking to rely upon the affidavit of Shri Sikka and the photo copies of the alleged receipts acknowledging the receipt of goods by the dealer without having a look at the originals. All this material was being produced from a third party and, therefore, the assessee was entitled to have Shri R.N. Sikka summoned as a witness for cross-examination as that is one of the most efficacious methods for establishing truth and exposing the falsehood. May be, the assessee could have succeeded in proving that the documents produced by Shri Sikka had not been signed and issued by the dealer. As was contended by Mr. Puri the dealer was wanting to prove that M/s Hyderabad Allwyn Ltd., Chandigarh did not in fact have necessary stocks on the dates in question and, therefore, could not have supplied watches in such huge quantities to the dealer. This could only be done if Shri Sikka had been asked to appear for Cross-examination along with the original record. Not having allowed the dealer to cross-examine Shri Sikka amounts to a denial of a reasonable opportunity of

being heard. It is by now well settled that taxing authorities entrusted with the powers to make assessment for taxes discharge quasi judicial functions and they are bound to observe the principles of natural justice in reaching their conclusions. It is true that the assessing authority is not fettered by technical rules of evidence and pleadings and is entitled to act on material which may not be accepted as evidence in a Court of law but that does not absolve it from the obligation to comply with the principles of natural justice. The rules of natural justice are not inflexible having a fixed connotation. They vary with the facts and circumstances of each case. It is, therefore, not possible to say that in every case they require a particular procedure to be followed, It may be that in a given case rules of natural justice may require that a person whose affidavit should be permitted to be cross-examined by the affected party while in some other case it may not be necessary. In the facts and circumstances of the present case, we are of the opinion that the dealer should have been allowed to cross-examine Shri Sikka. Since Shri Sikka was not allowed to be cross-examined, we hold that the assessee was not afforded a reasonable opportunity of being heard within the meaning of section 7(4) of the State Act.

4. In the result, the writ petition is allowed. The order of the assessing authority dated 23.11.1990 and the order of the Sales Tax Tribunal dated 31.3.1992 (Annexure P9 and P12 with the writ petition) are set aside and the case is remanded to the assessing authority with a direction to permit the assessee to cross-examine Shri R.N. Sikka and than to pass a fresh order in accordance with law. Parties are left to bear their own costs.