

(1971) 12 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Reference No. 40 of 1967

Associated Soap Stone Distributing Co.	APPELLANT
Vs	
State of Rajasthan	RESPONDENT

Date of Decision : 23-12-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 9

Citation : (1972) 29 STC 699 : (1971) 4 WLN 702

Hon'ble Judges : J.P. Jain, J;B.P. Beri, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; Raj Narain, Additional Advocate-General, for the Respondent

Judgement

J.P. Jain, J.—This is a sales tax reference u/s 15 of the Rajasthan Sales Tax Act. The applicant is a private limited concern and deals in sale of soap-stone. For the year 1st January, 1962, to 31st December, 1962, the assessee filed the quarterly returns late. The Commercial Taxes Officer, Special Circle, Jaipur, made the assessment of the assessee under the Central Sales Tax Act by his order dated 15th September, 1964. One C. L. Pandya, accountant of the assessee-company, and Shri V. K. Singhal, counsel for the assessee, were present on the date of the assessment. The Commercial Taxes Officer, Special Circle, Jaipur, who dealt with the case, asked the accountant, Shri Pandya to adduce reasons for late submission of returns. According to the assessing authority, he could not offer any satisfactory explanation for the delay. He, therefore, imposed a penalty of Rs. 1,000 on the assessee u/s 16(1)(c) of the Rajasthan Sales Tax Act read with Section 9(3) of the Central Sales Tax Act. We are not concerned with the other part of the order.

2. Being aggrieved by the imposition of penalty, the assessee preferred an appeal before the Deputy Commissioner (Appeals), Ajmer and Kota Division, Jaipur. The contention of the assessee was that the penalty was imposed without giving him reasonable opportunity as required by Rule 54 of the Rajasthan Sales

Tax Rules, 1955, but it did not prevail and the appeal was dismissed. The assessee then approached the Board of Revenue in revision. The learned member of the Board was of the view that the accountant of the company and the authorised representative of the assessee were present and they were asked to account for the delay in submitting the returns, but they could offer no reason for late submission of the returns. In this view of the matter, it could not be said that a proper opportunity of being heard was not given to the assessee. He, accordingly, by his order dated 1st December, 1966, refused to interfere with the order passed by the assessing authority and the Deputy Commissioner, Commercial Taxes (Appeals). The assessee-company submitted an application u/s 15 of the Rajasthan Sales Tax Act to the Board of Revenue and required it to refer to the High Court the questions of law arising out of the order of the Board of Revenue dated 1st-December, 1966. This application was heard by a Division Bench of the Board of Revenue and by its order dated 26th May, 1967, the Board made the reference in question.

3. The Board of Revenue did not frame any question. However, it is stated as follows in the order making the reference :

The question of law which has arisen in this case, therefore, is whether a regular notice to the assessee is necessary for showing cause why penalty should not be imposed upon him for breach of any of the conditions u/s 16, or whether he could be asked when he appears before the assessing authority for his assessment, the reasons for the omission or the breach of the provisions of Section 16, and why penalty should not be imposed on him. If the record demonstrably shows that the assessee was given an opportunity of being heard, even without issue of notice whether it can be deemed to be reasonable opportunity of being heard within the meaning of Rule 54.

As this important question of law has arisen in this case, it is submitted to the High Court of Judicature for Rajasthan at Jodhpur for an authoritative pronouncement.

4. There is no doubt in our mind that this is an unsatisfactory method of making a reference. The requirement of Section 15 is that the Board of Revenue while making the reference should frame the question for the answer of this court. We do not, however, propose to send the case back to the Board for framing a proper question as, in our opinion, this court has the power to formulate the proper question so as to bring out the real issue in controversy within the meaning conveyed by the statement of the Board of Revenue reproduced above. We are fortified in our view by the observations made in *State of Bihar v. The Bengal Chemical and Pharmaceutical Works Ltd.* [1954] 5 S.T.C. 28 Ramaswami, J., observed :

Even if the question has not been happily framed I think that the High Court is competent to reframe and resettle the question formulated by the Board of Revenue for answering it so as to bring out the real issue in controversy between

the parties. In the present case, the real question at issue between the assessee and the department is with respect to the transaction of sales with the Bhagalpur Municipality and the Bhagalpur District Board which constitute the major part of the taxable turnover determined by the Sales Tax Officer. There is nothing in Section 21(5) of the Bihar Sales Tax Act of 1944 to suggest that the duties of the High Court are confined to answer the question of law strictly in the grammatical form formulated by the Tribunal irrespective of whether it is the real question at issue between the taxing authorities and the assessee. It is well settled by a long line of authorities that the High Court may at the hearing of the reference resettle and reframe the issue so as to bring out the real point in issue between the assessee and the taxing authorities.

5. The other Judge deciding the case did not agree with the view expressed by Ramaswami, J. The matter was referred to the third Judge. Das, J., agreed with the view taken by Ramaswami, J., on this point. It was observed by him :

I also agree with any learned brother Ramaswami, J., that even if the second question, as formulated by the Board of Revenue, is somewhat wide and requires modification, it is open to this court to resettle and reframe the question to bring out the real point in issue between the assessee and the taxing authorities.

6. In another COMMISSIONER OF AGRICULTURAL Income Tax Vs. SULTAN ALI GHARAMI., Chakravarti, J., who spoke for the court stated as follows :

In view of the unsatisfactory character of the question referred, we decided to reframe it so as to clarify its meaning and bring up to the surface the real points of controversy between the parties.

7. Learned counsel appearing for the parties do not dispute the competency of this court to settle the question in controversy in this case. They have also agreed to the form of the question formulated by us which is set out below :

Whether on the facts and in the circumstances of the case, the dealer was (a) entitled to a written notice and (b) was he afforded a reasonable opportunity of being heard as envisaged by Rule 54 of the Rajasthan Sales Tax Rules before penalty was imposed u/s 16(1)(c) of the Rajasthan Sales Tax Act ?

8. Evidently there are two parts of this question. The first part is whether a notice in writing is required within the meaning of Rule 54 of the Rajasthan Sales Tax Rules, 1955.

9. Rule 54 reads as under :

54. Giving opportunity for hearing and recording reasons for certain orders.-In all cases where an assessing authority determines the turnover of a dealer at a figure different from that declared in the return submitted by the dealer, or imposes a penalty u/s 16, or refuses to grant a refund applied for by the dealer, the assessing authority shall briefly record the reasons therefore ; and no such order shall be passed unless the dealer has been given a reasonable opportunity

of being heard.

10. In this context, the relevant part of Section 16 may be reproduced below as it then existed:

16. Offences, Penalties and Prosecutions, etc.-(1) If any person-

(a) has without reasonable cause failed to get himself registered as required by Sub-section (1) of Section 6 within the time prescribed ; or

(b) has without reasonable cause failed to pay the tax due within the time allowed ; or

(c) has without reasonable cause failed to furnish the return of his turnover, or failed to furnish it within the time allowed ; or

(d) has without reasonable cause failed to comply with all the terms of the notice issued under Sub-section (2) of Section 10; or

(e) has concealed the particulars of his turnover or deliberately furnished inaccurate particulars of such turnover ; or

(f) prevents or obstructs inspection, entry, search and seizure by an officer authorised u/s 22 ; or

(g) wilfully acts in contravention of any provision of this Act not otherwise provided for-

the assessing authority may direct that such person shall pay by way of penalty, in the case referred to in Clause (a), in addition to the fee payable by him, a sum not exceeding Rs. 50, and in the case referred to in Clause (b), in addition to the amount payable by him, a sum not exceeding half of that amount, and that in cases referred to in Clauses (c) and (d), in addition to the tax payable by him, a sum not exceeding half the amount of tax determined ; in the case referred to in Clause (e), in addition to the tax payable by him, a sum not exceeding double the amount of tax, if any, which would have been avoided if taxable turnover as returned by such person had been accepted as the correct turnover, and in the cases referred to in Clauses (f) and (g), a sum not exceeding Rs. 100.

11. It is true that Rule 54 does not require the issue of a notice in writing to show cause against the imposition of penalty. A notice has also not been prescribed by the provisions of the Rajasthan Sales Tax Act. However, the requirement of the rule is that where an assessing authority imposes a penalty u/ s 16, it shall briefly record the reasons and no such order shall be passed unless the dealer has been given a reasonable opportunity of being heard. As already noticed above, Section 16 empowers the assessing authority to impose penalties on the dealer for various reasons envisaged by the several clauses of Sub-section (1). Under our jurisprudence, no one can be penalised without a proper enquiry. Penalising a person without an enquiry is abhorrent to our sense of justice. It is a violation of the principle of natural justice which we value so much. Rule 54 is a

salutary rule enacted only to meet the requirement of the rules of natural justice. It says that no penalty will be imposed unless the dealer has been given a reasonable opportunity of being heard. The question then arises how that reasonable opportunity is to be given to the dealer. The language of the rule does not insist upon a written notice to the dealer by the assessing authority. We are, therefore, unable to hold that in all cases a written notice must be given to a dealer before imposition of a penalty. We, however, consider it helpful to observe that a written notice is ordinarily conducive to clarity and certainty. It has the advantage of clearly communicating to the dealer the nature of his default and consequent penalty enabling the dealer to offer his explanation and emphasise on the extenuating circumstances. It could assist superior authorities in appreciating the situation. Besides, a written notice will speak out whether a reasonable opportunity was given to a dealer. Even the fact of giving an oral notice must find a place on the record of the assessing authority. Imposition of penalty is a stern step against a dealer and the fact that he was intimated of the nature of the default must be borne out by the record with convincing clarity. The nature of the notice will depend upon the facts and circumstances of each case. We will, therefore, hold that the notice in this case to the accountant, Shri Pandya, or Shri V. K. Singhal was only a token notice and it was no notice to the dealer. We answer this part of the question accordingly.

12. The next question that needs our determination is whether on the facts and circumstances of this case, the opportunity given to the dealer was a reasonable opportunity in terms of the requirement of Rule 54. According to the assessing authority, Shri C. L. Pandya, accountant of the assessee-company, was asked to adduce reasons for late submission of the returns, but he could not offer any satisfactory explanation for the delay. The learned member of the Board of Revenue who dealt with this case stated that Shri Pandya, accountant, and Shri V. K. Singhal, authorised representative, were asked the reasons for the belated submission of the returns. In his opinion, they were representing the dealer for all purposes. He further thought that these two representatives had no reason to give and as such, it was impossible for him to hold that proper opportunity was not given. Firstly, there is a clear discrepancy between what the assessing authority said and the learned member of the Board understood. That apart, there is nothing on record to suggest that Shri Pandya, accountant, and Shri V. K. Singhal, authorised representative, of the assessee were representing the dealer for all purposes. They were certainly there to assist the assessing authority for the assessment, but it cannot be said that they were prepared to answer the charge of submitting the returns late. It is also not on record as to, for how long, Shri C. L. Pandya had been in the employment of the dealer. Further, the assessing authority said that Mr. Pandya could not offer any satisfactory explanation, whereas the learned member of the Board said that both the representatives had no reason to give. The mere fact that at the time of assessment, the accountant or for that matter both the representatives of the assessee were asked to explain the reason for belated submission of the returns

and their failure to give any explanation does not mean that the requirement of Rule 54 was met. The requirement envisages a reasonable opportunity to be heard. In our opinion, asking one or both the representatives was not even a proper notice to the assessee. Even assuming that this was a kind of notice, it, cannot be held that it was a reasonable opportunity to the dealer inasmuch as the two representatives were not given enough time to contact their principal and seek instructions from him as to what was the exact cause for filing the returns late. It also does not appear as to what was the exact charge. Whether all the returns which were submitted were late or some of them. It also does not disclose as to how much they were late. We are clearly of the opinion that in the circumstances of this case, this was not enough and, at any rate, the opportunity given was not reasonable. The case of *ELECTRO HOUSE Vs. COMMISSIONER OF Income Tax, WEST BENGAL II.*, related to a notice u/s 33B of the Indian Income Tax Act, 1922. It empowers the Commissioner to call for and examine the record of any proceeding if he considers that any order passed therein by the Income Tax Officer is erroneous and to pass such order thereon after giving the assessee an opportunity of being heard. Their Lordships of the Calcutta High Court stated that "in a notice, u/s 33-B of the Indian Income Tax Act, the Commissioner must disclose to the assessee the grounds on which he proposed to revise, to enable the assessee to show cause.... The notice must be such as would not leave the assessee in doubt and speculating as to the nature of the charge he has to meet.... If the notice starting the proceedings u/s 33-B did not meet the requirements of law, that is to say, was opposed to the principles of natural justice, then the exercise of the jurisdiction by the Commissioner u/s 33-B should be struck down on the ground that the initiation of the proceeding being opposed to the principles of natural justice, the subsequent proceedings could not be taken."

13. The following observations may be aptly extracted here :

Dr. Pal, learned counsel for the assessee, did not argue that Section 33-B prescribed a form of notice to be served upon the assessee and that the notice, in the instant case, was bad because it did not conform to the form of the notice. All that the section required was that the assessee should be given "an opportunity of being heard". This opportunity, Dr. Pal submitted, must not be a token opportunity, but a reasonable opportunity. In our opinion, Dr. Pal is right in this submission. As far back as in the year 1958, the Supreme Court laid down in the case of *Khem Chand v. Union of India* [1958] S.C.R. 1080, 1095, 1096, what should be the measure of opportunity to be given. The Supreme Court observed :

"He must not only be given an opportunity but such opportunity must be a reasonable one...he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established...."

The above observation was no doubt made in the context of a disciplinary proceeding. We are, however, of the opinion that the measure of opportunity is the same, be it a disciplinary proceeding or a taxation proceeding.

14. In a sales tax case, *Rex Hosiery Factory v. S. K. Jain and Anr.* [1966] 18 S.T.C. 247, the learned Judge while dealing with a case of a similar nature observed as follows :

I, however, agree with the learned Counsel for the petitioner that the impugned order of assessment so far as it relates to the imposition of penalty is not valid. Section 10(7) under which the Assessing Authority purports to have acted clearly provides that before imposing the penalty the Assessing Authority has to afford "a reasonable opportunity of being heard" to the dealer. Admittedly, in the instant case no notice was issued to the petitioner against the action proposed to be taken under this provision of law, nor was he heard on that matter. In these circumstances, I am of the opinion that the imposition of penalty on the petitioner is not valid and the demand notice so far as it relates to the amount of penalty cannot be enforced against the petitioner-firm. The petition is, accordingly, accepted to this extent.

15. Thus, in our opinion, the order of imposition of penalty u/s 16(1)(c) was passed without a reasonable opportunity having been given to the dealer.

16. We will, therefore, answer this part of the question in the negative.

17. The reference is answered as indicated above. The department will pay costs to the assessee.