

(1957) 05 CAL CK 0015

In the Calcutta High Court

Case No : Civil Revn. Case No's. 2419 and 2420 of 1955

Aswini Kumar Dutt

APPELLANT

Vs

Commercial Tax Officer, Midnapore and Another

RESPONDENT

Date of Decision : 31-05-1957

Acts Referred:

Bengal Finance (Sales Tax) Act, 1941 — Section 11, 11(1), 15, 20, 20(2)
Bengal Finance (Sales Tax) Rules, 1941 — Rule 49, 71, 79, 80, 80(2)
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1958 Cal 289 : 61 CWN 953 : (1958) 2 ILR (Cal) 450

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Binayak Nath Banerjee, N.C. Ray and Sudhindra Kumar Kar, for the Appellant; J. Majumdar and Somendra Chandra Bose, for the Respondent

Judgement

Bose, J.—Civil Revision No. 2419 of 1955. This is an application under Article 226 of the Constitution for a Writ in the nature of Certiorari for quashing an order passed on review of an assessment made under the provisions of the Bengal Finance (Sales-tax) Act and a notice of demand issued in respect thereof and also for a Writ in the nature of Mandamus directing the opposite parties to forbear from giving effect to the said review order and the said notice of demand.

2. The petitioner is a dealer in various commodities including cigarettes and he is registered under the Bengal Finance (Sales-tax) Act. In course of his business as dealer in cigarettes the petitioner sells cigarettes to dealers outside West Bengal and particularly to dealers in Purulia and Manbazar which were in the State of Bihar at the relevant time. One Mahalakshmi Transport Co. carries the goods which are so sold outside the State of West Bengal for freight by bus and they issue printed receipts for such carriage. The petitioner maintains his accounts in accordance with the Bengali Calendar, that is to say, from the 1st day of Baisakh to the last day of Chaitra and according to his certificate of registration the petitioner has to file returns for every quarter of the year with reference to the

Bengali Calendar year. In respect of the year 1359 B.s. corresponding to the period commencing on the 14th April, 1952 and ending on the 13th April, 1953 the petitioner did not file within time the quarterly returns in the office of the Commercial Tax Officer, Midnapore. Thereupon the Commercial Tax Officer issued a notice in Form No. VI under the provisions of Rule 49 of the Bengal Sales-tax Rules calling upon the petitioner to produce certain accounts and documents in connection with the petitioner's sales in respect of the said year. Pursuant to the said notice the petitioner's representative and the petitioner's lawyer one Sri B. B. Das appeared before the Commercial Tax Officer of Midnapore on the 26th February, 1954 with the petitioner's books of accounts and other documents. The said Commercial Tax Officer verified the gross sales with the books of accounts and further verified the claims for deduction made by the petitioner in respect of the sales to registered dealers and despatch to their addresses outside West Bengal, and on being satisfied about their correctness, the Commercial Tax Officer allowed deductions which had been claimed by the petitioner and made an order of assessment on the 26th February, 1954. On 14th July, 1954, another Commercial Tax Officer came to the petitioner's shop and demanded production of the petitioner's books and other documents in respect of the said year 1359 B.S. and upon production of the said accounts and documents the said Officer seized and took away two flat files containing particulars of sales to places outside West Bengal and the corresponding receipts granted by Messrs. Mahalukshmi Transport Co. Ltd. in respect of the goods carried by the said Company to places outside West Bengal. Thereafter on 1st June, 1955 a Review Case being No. 2 of 1055-56 relating to the said year of 1359 B.S. was started by the Commercial, Tax Officer, Midnapore, against the petitioner and a notice in Form No. IX of the Sales-tax Rules was served on the petitioner. The relevant portion of the said notice may be set out hereunder:

"Form IX.

(See rule 79)

To M/S Aswini Kumar Dutta (dealer). of Bankura (address).

Whereas it is proposed to pass an order to the effect mentioned below, you are hereby informed that if you wish to prefer any objection against such order you should attend either personally or by authorised agent for that purpose at the office of the undersigned at Midnapore Office on the 20th day of June, 1955.

Sd/- Illegible. 1-6-55.

Commercial Tax Officer, Midnapore.

Gist of the order proposed to be passed :--

As it transpires that the goods in respect of claim u/s 5 (2) (a) (v) for the year 1359 B.S. were delivered in West Bengal it is hereby proposed to revise my assessment order and to disallow the entire claim of Rs. 6,56,077-11-9 and to assess you to tax on those claims wrongly allowed in addition to tax already

assessed. If you have any objection to proposed order please prefer them on 20-6-55 at my Midnapore Office.

Sd/- Illegible, 1-6-55"

3. The petitioner received the said notice on 1st June, 1955 and he appeared before the Commercial Tax Officer on the 20th June, 1955 and it is alleged that he made some oral submissions before the said Officer, The petitioner also submitted a petition of objection and requested the Commercial Tax Officer to call Messrs. Mahalakshmi Transport Company who were responsible for the carriage of the petitioner's goods from Bankura to Consignees outside West Bengal as a witness in this case. The said prayer of the petitioner however was refused. The petitioner also asked for time on the ground that some of the books the production of which was necessary in connection with the assessment proceeding were lying in the custody of the Court of the Subordinate Judge of Bankura in connection with a civil suit filed by the petitioner but no time was however allowed. The Commercial Tax Officer-rejected the petitioner's objection which he has filed before the Officer on that day and the Officer passed an order on the 23rd June, 1955 making a fresh assessment on the petitioner in respect of the said year 1359 B.S. disallowing the claim for deduction in respect of the goods sold outside West Bengal amounting to Rs. 6,56,077-11-9 and assessed the petitioner to tax at the sum of Rs. 34,625-0-3. Out of the said amount the petitioner has paid Rs. 1,500/- and Rs. 3,755-4-0 and the balance outstanding is Rs. 19,369-12-3. The petitioner has in the petition challenged the validity of the said order dated the 23rd June. 1955 reviewing the assessment for the year 1359 B.S. on grounds set out in paragraphs 19 to 24 of the petition.

4. In the counter-affidavit which has been filed by the Commercial Tax Officer, Midnapore, the circumstances under which the review proceeding came to be started have been related in paragraphs 4 and 6 of the affidavit but it is not necessary to set them out in any detail. But it may be pointed out that the Commercial Tax Officer has stated in the affidavit that certain admissions had been made by the petitioner on the basis of which and on the basis of certain further materials collected as a result of enquiry made by the deponent the review proceeding had been started.

5. In the affidavit-in-reply filed by the petitioner it is disputed that the petitioner had made the alleged admissions.

6. The first point that has been argued by Mr. Binayak Nath Banerjee, learned Advocate for the petitioner, is that the Commercial Tax Officer acted in excess of his jurisdiction in making enquiries and in relying on materials or evidence collected at such enquiry for the purpose of reviewing the assessment under the provisions of Section 20 (4) of the Bengal Finance (Sales-tax) Act. It is pointed out that there is express provision made for enquiry in Section 20 (2) (b) of the Sales-tax Act and in Rule 80A of the Sales-tax Rules, but Section 20 (4) which provides for review does not expressly confer any power of enquiry on the

Reviewing Authority. So it is argued that the enquiry which was made by the Commercial Tax Officer for the purpose of review was without jurisdiction. It is to be noted that in the present case the assessee did not file any return for the relevant period within time and the Commercial Tax Officer proceeded to make a best judgment assessment as contemplated by Section 11 (1) of the Sales-tax Act. The scope and implication of a best judgment assessment has been indicated and explained by the Privy Council while construing similar provision in the Indian Income Tax Act the case of AIR 1937 133 (Privy Council) , The observations made by the Judicial Committee are pertinent to the question under consideration and a relevant portion thereof may be set out here-under :

"The officer is to make an assessment to the best of his judgment against a person who is in default as regards supplying information. He must not act dishonestly, or vindictively or capriciously, because he must exercise judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate : and though there must necessarily be guess-work in the matter, it must be honest guess-work. In that sense, too, the assessment must be to some extent arbitrary"".

The said observations of the Judicial Committee have been applied to the case of best judgment assessment made u/s 11 of the Bengal Finance (Sales-tax) Act in the case of Jagadish Prosad Pannalal Vs. Member, Board of Revenue, , (see also Jamnadas Srinivas v. Board of Revenue ILR (1949) Cal 307 (C) and Shree Shew Sakti Oil Mills v. Member, Board of Revenue, West Bengal ILR (1949) Cal 347 (D).

7. It is therefore clear from the observations of the Judicial Committee that an enquiry is ancillary or incidental to or inherent in best judgment assessment. Apart from that it is clear from the provisions of Section 11(2) and Section 14 of the Sales-tax Act and from Rules 49, 54 and 55 of the Sales-tax Rules that some hearing and taking of evidence is involved in an assessment proceeding. It is true that there are express provisions for making enquiry in Section 20 (2) (b) of the Sales-tax Act and Rule 80A of the Rules. But it may be noted that this section and the Rules are complementary to each other inasmuch as an Appellate Authority can, himself make the enquiry or cause an enquiry to be made. When an Appellate Authority remands a case he can direct further enquiry to be made by the Officer to whom the case is remanded in such manner as he may direct; in other words, the Appellate Authority while directing a remand can prescribe the limit or scope of the enquiry to be made by the Officer to whom the case is remanded. This is what is contemplated in Section 20 (2) (b). It is also true that there is no express provision for enquiry in Sub-section (4) of Section 20 but the Commercial Tax Officer in the present case was reviewing the best judgment assessment which was made by him on the 26th February, 1954; in other words,

he was re-opening the assessment already made on 26th February, 1954 and was making correction in the original assessment. If in making such correction, he had to make further enquiry and rely on the result of such enquiry it cannot be said that he was acting in excess of his jurisdiction. The Reviewing Authority u/s 20 (4) is the same Authority who had made the original assessment. So it is not necessary to invest such authority with any further or express power of enquiry. He had already such power of enquiry in him. The Appellate and Revisional Authorities on the other hand, are persons other than the original Assessing Authority. So it has been felt necessary to clothe the Appellate and Revisional Authorities with express powers of enquiry lest it may be said that they had no power to take into consideration additional evidence or material collected as a result of further enquiry made by them. It will lead to a curious state of affairs if it is held that even if the Assessing Authority finds on receipt of further information or materials that his original assessment was made under any mistake or misapprehension and as such was wrong, he cannot on the basis of further materials obtained by him put the matter right. I hold that the Commercial Tax Officer was within his jurisdiction in making further enquiry and relying on materials obtained in such enquiry for the purpose of reviewing the best judgment assessment made by him.

8. The next point argued by Mr. Banerjee, is that the Sales Tax Act and the Rules make a distinction between "an assessment made" and "any order passed" under the Act or the Rules made thereunder and as Rule 80 (2) prescribes a period of limitation of 30 days for an application for review of an order, but no period is prescribed for review of "an assessment made," the Reviewing Authority could not suo motu start a proceeding for review of the assessment as this could only be done after the period for making an application for review had expired. The learned Advocate has referred to the provisions of Rule 80 (6) of the Sales Tax Rules, the relevant portion whereof is as follows :

"The Commissioner or any other authority appointed under the Act shall not, of his own motion, review any assessment made or order passed under the Act or the Rules thereunder if :

- (i) the time within which an application for review may be made before Mm has not expired; or
- (ii) the assessment has been made or the order has been passed more than four years previously;

Provided that any assessment made or order passed under the Act or the Rules thereunder before the commencement of the Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, may be reviewed by such authority at any time within four years from the commencement of the said Amendment Act, if the time within which an application for review may be made has expired."

9. I do not think that this contention of Mr. Banerjee, can be accepted as correct. Rule 80 (6) itself contemplates in Clause (ii) that an assessment made may be

reviewed suo motu within four years from the date of assessment. This provision will be made nugatory if the construction put by Mr. Banerjee is accepted. Furthermore, Rule 80 (2) indicates that an application for review of an order is to be filed within 30 days and an application for revision of an order is to be filed within 60 days. Although Rule 80 (2) does not expressly mention that "an assessment made" may be reviewed or revised, Rule 80 (3) makes it clear that an order of assessment is included within the word "order" as used in Sub-rule (2). Rules 74, 80 (1) proviso, and 85 of the Sales Tax Rules make it clear that "an order of assessment" and "an assessment made" mean the same thing and these expressions have been used indiscriminately in the Rules which have been framed under the Sales Tax Act, to convey the same sense. In my view, "an assessment made" or "an order of assessment" is included in the word "order" as used in Rule 80(2) and the period of limitation prescribed in that Rule for an application for review of an order applies to an application for review of "an assessment made" or "an order of assessment". So the Commercial Tax Officer had jurisdiction to start suo motu the proceeding for review of the assessment made.

10. The next point argued by Mr. Banerjee was that the Commercial Tax Officer had no jurisdiction to consider the question of allowing or refusing deduction as contemplated by Section 5, Clause (2) (a) (v) of the Sales Tax Act, inasmuch as it is the Commissioner whose satisfaction is essential before the deduction can be allowed, but as this power has not been and cannot be delegated to the Commercial Tax Officer u/s 15 of the Act read with Rule 71 of the Sales Tax Rules, the order of review dated 23-6-1955, disallowing the deduction was without jurisdiction. It is not disputed that all the powers u/s 11 of the Act, as indicated in item 5 of Rule 71 can be and have been delegated to the Commercial Tax Officer. Item 5 in Rule 71 is as follows :

"To make an assessment of tax or penalty, or to fix a date for payment or to extend a date for payment of such tax or penalty or to allow the payment of such tax or penalty by instalments and to exercise all other powers u/s 11 of the Act."

11. It has been held that this delegated power includes the power or duty of the Commissioner to be satisfied initially that the return filed is not correct or complete as contemplated in Section 11(1) of the Act ILR (1949) Cal 347 (D). It appears to me that when the general power to make the assessment of tax was delegated to the Commercial Tax Officer by Item No. 5 in Rule 71, such delegation included the power to ascertain what was the taxable turnover of the dealer and in determining this taxable turnover, the question of deduction must incidentally come in, in order that the power of making an effective assessment of tax, can be properly exercised. The assessing Authority must necessarily have all the powers incidental or ancillary thereto. So, there is hardly any room for doubt that this satisfaction of the Commissioner in allowing deduction as contemplated in Section 5 (2) (a) (v) of the Act was impliedly delegated to and is included in the power to make assessment of tax-Reference may be made to the

case of *Mackertich, John v. H. C. Gupta* 49 CWN 322: AIR 1946 Cal 140 (E). In this case it was held by Das J. in construing Rule 75A of the Defence of India Rules that the duty of forming an opinion as to the necessity of making a requisition and the power of making the order of requisition under Rule 75A of the Defence of India Rules formed one and composite whole and when the power is delegated, the duty is delegated as well so that the opinion of the delegatee becomes the relevant opinion and the proper foundation of the order (See *Jagwant Kaur Kesarsing Dang and Others Vs. The State of Bombay*, , paragraph 2 of the judgment). So this contention of Mr. Banerjee fails. Moreover, I find it difficult to follow the attitude of the assesses in taking up and pursuing such a point as a ground for attacking the validity of the order. It is to be noted that where the Commercial Tax Officer allowed the deduction in respect of this very item while making the original assessment, the petitioner did not question the authority or power of the Commercial Tax Officer to make the allowance but when the claim has been refused on review the petitioner challenges the power of the Commissioner to consider the question of allowability of such deduction.

12. The next point argued by Mr. Banerjee is that the order passed on review of an assessment on the 23rd June, 1955 should be quashed! as it was made in violation of the principles of natural justice and without giving the petitioner reasonable opportunity as contemplated by Section 20 (5) of the Act. It is submitted that the notice that was served on the petitioner in Form No. IX of the prescribed form only called upon the petitioner to prefer an objection against the proposed order by attending personally or by authorised agent on the 20th June, 1955. It did not call upon the petitioner to produce any books of accounts or other documents or to produce any witness on that date. Reference is made to Sections II and 14 of the Act and to Rule 49 and Form No. VI of the Rules to show that it was within the power of the Commercial Tax Officer to call for production of books of accounts and documents if such production was necessary. The petitioner appeared on the appointed date with his written) objection and asked for time to produce books which were exhibited in the Subordinate Judge's Court at Bankura and were in the custody of the said Court and he also asked for an opportunity to have a representative of the Mahalakshmi Transport Company summoned as witness in support of the case of the petitioner but this was also refused. Accordingly, it has been argued that the petitioner was not given any reasonable opportunity of being heard as contemplated by Section 20 (5) of the Act. Now Rule 79 requires that before any order u/s 20 of the Act is passed notice in Form No. IX has to be served fixing a place and time not less than 15 days for hearing any representation which the dealer might make. So although the notice in Form No. IX according to this Rule 79 fixes time for hearing representation of the dealer the notice as prescribed calls upon the assesses only to prefer an objection. This preferring of objection can be oral or in writing (compare Rule 53). The notice in Form No. IX which was actually served upon the petitioner was thus a misleading one and it might have led the assessee to believe that all that he was required to do on the 20th June,

1955 was to file an objection, and a later date would be fixed for hearing of the matter. But when the petitioner presents himself on the 20th June, 1955 with written objection and asks for time or adjournment of the case to a later date he is refused such time. The relevant portion of the order dated the 23rd June, 1955 which deals with this aspect of the matter may be usefully set out here-under :

"The dealer turned up on the appointed date and first of all prayed for time. The prayer for time having been refused, he filed objection and prayed that for the hearing of the objection he should be allowed time first because the books of accounts for the period were in Court and secondly because the transport company being the main witness some time would be required for appearance of witness representing the transport company, Again the dealer said that all sales were not through transport company but a portion of it was also made by rail. If such was the case the amount of the claim for which goods were sent by rail could have been allowed simply on the production of Sales Tax Register showing the amount of claims under each head. This register was not in Court. As for the giving of evidence by transport company I am to note that I enquired from the transport company as to whether the company had any license as public carrier for carrying goods only for freight and I was informed the company had no such license. Because of above the prayer for time could not be acceded to"".

So these are the reasons which prompted the Commercial Tax Officer to refuse further opportunity to the petitioner for adducing evidence, oral and documentary. It is true that the question of granting adjournment of a proceeding is entirely in the discretion of the Tribunal or the Authority concerned and this Court under Article 226 of the Constitution cannot interfere with the exercise of this discretion unless it is arbitrarily exercised by the Court, *Gayadin Ram v A. D. Khan*, 55 Cal WN 667 (G). It appears to me however that refusal of an opportunity to the petitioner in this case to call a representative of the Mahalakshmi Transport Co, as witness on the ground that the Commercial Tax Officer was already satisfied on ex parte enquiry that the Company had no license of a public carrier for carrying goods for freight was an arbitrary exercise of discretion. Section 21 (a) of the Sales-tax Act confers power on the Taxing Officer to compel the attendance of witnesses and examine such witnesses on oath or affirmation, to compel the production of documents and to issue commission for examination of witnesses. So the Act contemplates that opportunity to adduce evidence should be given to an assessee and although the petitioner requested the Commercial Tax Officer to call a representative of the Mahalakshmi Transport Co. the Commercial Tax Officer did not condescend to do so.

13. Moreover, it is not clear from the order dated the 23rd June, 1955 as to how much of the findings of the Commercial Tax Officer is based on his personal knowledge or guess-work and how much is based on evidence collected from witnesses or documents. The reasons set out in the order give no indication of that. It is clear law that if any finding was based on his personal knowledge or

mere guess work such finding would not be warranted by law (See cases of Bejoy Chand Chatterjee v. State of West Bengal 58 Cal WN 988 (H); Ashutosh Das Vs. State of West Bengal and Another, . In the case of Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, (J), the Supreme Court made the following observation :

"As regards the second contention, we are in entire agreement with the learned Solicitor General when he says that Income Tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a Court of law, but there the agreement ends; because it is equally clear that in making the assessment under Sub-section (3) of Section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and makes an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment u/s 23 (3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of (1944) 12 ITR 393 .

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing"".

14. It is clear on the facts and materials before me that the petitioner was not at all given a proper opportunity to contradict the correctness of the facts or materials which the Commercial Tax Officer had collected ex parte and which was prejudicial to the interest or to the case of the petitioner. That it is necessary to give such an opportunity is also clear from the English case referred to by the Supreme Court in the case reported in New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd., . The Supreme Court dealt with the relevant cases on the point at pages 237-240 and referred inter alia to the case of Board of Education v. Rice (1911) AC 179 (L). The relevant portion of the observations of the House of Lords may be set out below :

"They can obtain information in any way they think best always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view."

15. Now it is true that a copy of the pro-posed order dated the 1st June. 1955 was given to the petitioner sometime on the 8th June, 1955 (Annexure C to the petition), but in this order also there is a vague reference to enquiries at place of despatch, but no particulars of enquiries are given in order to enable the assessee to contradict the materials obtained at such enquiries by adducing evidence in rebuttal. No details of the report establishing that none of the parties

except 2 who are alleged to have had transaction with the petitioner were in existence at any time, have been given. It is not stated how the facts as to consumption of cigarettes at Purulia or Manbazar were collected so as to enable the petitioner to contradict such facts. Thus there can be no doubt that the petitioner had been prejudiced by non-disclosure of the sources of such information and there was thus violation of the principles of natural justice. As the petitioner was in the dark as to the material and facts collected by the Commercial Tax Officer his petition of objection was necessarily of a vague and general nature as indicated in Clause (j) of the petition of objection (Annexure A to the petition).

16. Mr. Majumdar referred to Section 11(1), Sections 20 (4) and 20 (5) of the Act and Rules 49 and 79 of the Sales-tax Rules and argued that since these statutory Rules had been fully complied with it must be held that reasonable opportunity had been given to the petitioner as contemplated by the Act and the Rules. According to Mr. Majumdar Rules 49 and 79 quantify the reasonableness of the opportunity. It appears to me however that such a narrow interpretation should not be put on the expression "reasonable opportunity". What is reasonable will depend on the facts and circumstances of each case and no hard and fast rule can be laid down in respect of such matter. In my view, the petitioner was not given reason-able opportunity and as there was violation of the principles of natural justice the order of the 23rd June, 1955 cannot be sustained.

17. Mr. Majumdar also argued that as the petitioner had a right of appeal and revision and these remedies provided by the Act were not availed of before coming to this Court, the petitioner is not entitled to ask for any relief under Article 226 of the Constitution. Reliance is placed on the decision of the Privy Council case reported in *Raleigh Investment Ltd. v. Governor-General in Council* 74 Ind App 50 : AIR 1947 PC 78 (M), where the question was whether a suit was maintainable in view of the fact that the petitioner had an adequate and complete remedy under the various provisions of the Indian Income Tax Act. Reference, was also made to the case of *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, ; *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , paragraphs 8, 60 and 344 of the judgment; and *Jogesh Pandey Vs. Bhuneshwar Pandey and Others*, , paragraph 4 of the judgment. These cases however turn on their special facts.

18. It is however well-settled that the question of alternative remedy is a matter resting on the discretion of the Court and it is not an absolute rule of law. The existence of an alternative remedy is not an absolute bar to the jurisdiction of the Court entertaining applications for Writs under Article 226 of the Constitution. In the case before me important questions of interpretation of the provisions of the Sales-tax Act and Rules made thereunder have been raised and were raised before the Commercial Tax Officer. It is desirable that such questions should be decided by this Court instead of their being agitated and decided by

the Sale-tax Authorities and then coming up before the High Court u/s 21 (1) of the Sales-tax Act after the long chain of remedies provided by the Act had been gone through perhaps involving remands in some cases and further appeals to the same Tribunals over again after such remands. It has also been held that even when an alternative remedy by way of appeal has been availed of and the appeal is pending a Writ of Certiorari can issue when there is excess or want of jurisdiction *Nalini Ranjan Guha Vs. Annada Shankar Roy*, . It appears to me that in the special facts and circumstances of this case the nonavailability by the petitioner of the alternative remedy provided by the Sales-tax Act, does not disentitle the petitioner from obtaining reliefs under Article 226 of the Constitution.

19. A further point was argued by Mr. Banerjee that no appeal is permissible from an order passed on review of assessment u/s 20 (4) of the Act. Mr. Majumdar has, on the other hand, argued that an order passed on review of an assessment is also an order of assessment and hence an appeal lies u/s 20 (1) of the Act within 60 days from the receipt of the notice u/s 11 (3) of the Act. It appears to me that Mr. Majumdar's contention is correct. Section 20 provides that an appeal lies against "any assessment". This expression "any assessment", in my view, is wide enough to cover a case of an original assessment as well as an assessment made as a result of review. Review is made by the same person or authority who had made the original assessment and the effect of review of an assessment is nothing but re-opening the assessment. Such being the nature of review of an assessment I fail to see why an appeal will not lie under the provisions of Section 20 of the Act to appropriate authorities who are prescribed as the appellate authorities.

20. Mr. Banerjee has also argued that as there is error of law on the face of the record, the order passed on the 23rd June, 1955 should be quashed by a Writ of Certiorari, According to the learned Advocate the error of law complained of is that inadmissible evidence was admitted, and was made the basis of the order and consequently there was an error on the face of the record itself. It was submitted by Mr. Banerjee that the personal knowledge of the Commercial Tax Officer had been imported into the matter and he had indulged in some guess work and so there was an error of law patent on the face of the record. It is not however clear from the perusal of the order itself as to which portion of the order was based on personal knowledge, if any, and which portion was based on guess work, if any. I do not therefore think that it can be said that there is an error of law on the face of the record which justifies this Court in issuing a Writ in the nature of Certiorari.

21. In view however of my finding that the order is bad on the ground that principles of natural justice have been violated, this petition should succeed and the Rule is made absolute. Let a Writ of Certiorari issue quashing the order of the Commercial Tax Officer dated the 23rd June, 1955. The Commercial Tax Officer however will be at liberty to give the petitioner further and proper opportunity to

represent the petitioner's case as contemplated by Section 20 (5) of the Act and Rule 79 of the Rules and after such opportunity to assess the petitioner according to law. There will be no order as to costs. The interim injunction, if any, is vacated.

22. Civil Revision Case No. 2420 of 1955 :--

The judgment delivered by this Court in Civil Revision Case No. 2419 of 1955 will govern this Rule also.