

(1963) 03 OHC CK 0001

In the Orissa High Court

Case No : S.J.C. No's. 9, 10, 11 and 12 of 1962

Bhagwandas Khandelwal

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-03-1963

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 21, 24(1)

Citation : (1963) 14 STC 642

Hon'ble Judges : R.L. Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; R.K. Ghose, for the Respondent

Final Decision : Dismissed

Judgement

S. Barman, J.—The question referred by the Sales Tax Tribunal u/s 24(1) of the Orissa Sales Tax Act, 1947, in each of these S.J.Cs. analogously heard is this :

Whether under the facts and circumstances of the case the Tribunal was correct in holding that there was enough compliance of natural justice ?

The relevant facts are these :-The assessee-dealer is a wholesaler in grocery goods having his place of business at Soro in the district Balasore. He was assessed to sales tax u/s 12(2) of the Act for four consecutive quarters, namely, from the quarter ending on 30th June, 1957, to quarter ending on 31st March, 1958. In the relevant assessment orders the Sales Tax Officer found that the departmental authorities came across private books of account of certain retailers Sitaram Upadhyaya of Ichapur and Bhagirathi Naik of Bhatpara. The assessee-dealer is alleged to have mostly suppressed sales to these retailers on different dates. On this the Sales Tax Officer came to the finding that the assessee-dealer has suppressed sales to the tune of various sums and further found that the accounts submitted by the assessee-dealer are not genuine and do not reveal the correct state of affairs. On this finding the Sales Tax Officer assessed the dealer to the best of judgment. Being aggrieved by the said order

of assessment the assessee-dealer preferred appeals and moved a petition u/s 21 of the Act to summon the said two retailers at the cost of the assessee-dealer on the grounds stated in his petition. The Assistant Commissioner did not accept the argument advanced on behalf of the assessee-dealer for reasons stated in his order in the appeals. Thereafter there was second appeal to the Tribunal who upheld the decision of the Assistant Commissioner. Then on an application by the assessee-dealer for reference u/s 24(1) of the Act, the Tribunal referred the said question quoted above.

2. Section 21 of the Act under which the assessee-dealer had applied for summoning of the said two retailers, so far as material is this:

21. Powers of the Commissioner to take oath etc.-(1) The Commissioner, Tribunal or Additional Tribunal, as the case may be or any person appointed to assist the Commissioner under Sub-section (3) of Section 3 shall for the purposes of this Act have the same powers as are vested in a court under the CPC (V of 1908) when trying a suit in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining on oath or affirmation ;

* * * *

3. What happened in this case was this : Two sets of books of account were recovered from the said two retailers. They revealed transactions with the assessee-dealer. The accounts of the assessee-dealer were examined. In the light of disclosures made in those books of the retailers it was found that some of the sales effected by the assessee-dealer to the said two retailers were not entered in the accounts maintained and produced by the assessee-dealer. In some of the sales effected by the assessee-dealer to the said two retailers the prices were found to have been understated in the accounts maintained and produced by the assessee-dealer. The suppressions of sales to the said two retailers worked out at figures mentioned in the judgment of the Tribunal in second appeal. Accordingly, the assessee-dealer's accounts were rejected and the turnovers were enhanced.

4. The rival contentions are as follows : The assessee-dealer's points are these : The materials recovered by seizure of the books of accounts of the said two retailers are not admissible against the assessee-dealer inasmuch as the assessee-dealer was not given full opportunity to meet the case against him on the basis of such materials. The assessee-dealer's point is that he was not given a chance to confront the said two retailers one of whom was examined in his absence and other was not examined at all, and thus, according to the assessee-dealer, there was denial of natural justice. The department's case, on the other hand, is that the assessing officers were not bound to accede to the request of the assessee-dealer to bring the persons from whom information regarding suppression of accounts is gathered, and to examine them in the presence of the assessee-dealer. The department's point is that the assessee-dealer cannot ask

for this as of right.

5. Their Lordships of the Supreme Court in *Raghubar Mandal Harihar Mandal v. The Stats of Bihar* [1957] 8 S.T.C. 770 at 779-780, reiterated the Rules laid down in their earlier decision in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax* [1954] 26 ITR 775. The relevant portion of their Lordships' decision is this :

...Officer is not bound to rely on such evidence produced by the assessee as he considers to be false; if he proposes to make an estimate in disregard of the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going to found that estimate ; he is not however debarred from relying on private sources of information, which sources he may not disclose to the assessee at all; and in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible.

This decision lays down that the gist of the private information collected by an assessing officer should be made known to the assessee-dealer so that he may be in a position to rebut it.

6. In the present case the extracts of the transactions as disclosed from the books of account of the said two retailers were made known to the assessee-dealer. It is clear from the assessment records that one of the said two retailers Sitaram Upadhyaya made a statement supporting the transactions of purchases made by him from the assessee-dealer as disclosed in the books of account seized from the said retailer. It further reveals that in the course of enquiry against the other retailer Bhagirathi Naik for assessment against him, his books of account were seized. Bhagirathi Naik was examined in connection with his own assessment. His statement was not further taken in the assessment proceedings against the assessee-dealer, but extracts from the books of accounts seized from both the said two retailers were brought to the notice of the assessee-dealer on more than one occasion. The assessee-dealer also filed an extract of the transactions as disclosed from his accounts relating to the said two retailers. It further appears from records that beyond asserting that the books of accounts are correct, the assessee-dealer took no other step to disprove the entries made in the books of accounts of the said two retailers. In my opinion, there is no substance in the assessee-dealer's contention that he should have been given a chance to confront the said two retailers and that the statements of the said two retailers should have been taken in the presence of the assessee-dealer. The assessee-dealer cannot ask for this as of right.

7. That apart, the assessee-dealer at no point of time during the assessment proceedings before the Sales Tax Officer asked for such an opportunity to

confront the retailers. In his statement before the Sales Tax Officer on 27th August, 1958, the assessee-dealer said this:

...I had given a statement on 22-3-58, before the I.C.T. regarding my transactions with Sitaram Upadhyaya. I have no other transactions with him save given before the I.C.T. To-day I have filed a statement of sales to Sri Bhagwan Sahu of Biduhat since 14-11-55 till 22-10-57. I have no other transactions with him save given in the list either in cash or in credit. The I. C. T. has signed in the above two khatahs. From the perusal of both the accounts it is seen that total suppressions amount to Rs. 5,151-8-6. I have nothing more to add.

It is clear from the above that the assessee-dealer did not choose to take any other step in the course of the assessment proceedings before the Sales Tax Officer. The relevant extracts from the books of accounts seized from the said two retailers were brought to the notice of the assessee-dealer. The assessee-dealer could not disprove the entries in the books of account of the said two retailers. When indeed extracts of the transactions, as disclosed from the books of accounts, were made known to the assessee-dealer, and thus opportunity given to the assessee-dealer to disprove them, there was in my opinion sufficient compliance with principles of natural justice.

8. In this view of the case, we are of opinion that on the facts and in the circumstances of the case the Tribunal was correct in holding that there was enough compliance of natural justice. The answer to the question referred by the Tribunal is accordingly in the affirmative in all these S.J.Cs. As the assessee-dealer has failed he is to pay the costs of the reference. Consolidated hearing fee Rs. 100.

R.L. Narasimham, C.J.

9. I agree.