
(2013) 08 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Nos. 183, 194 195, 196, 230 and 231 of 2003

Indian Gum Industries Ltd.

APPELLANT

Vs

Assistant Commissioner

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

Citation : (2014) 70 VST 108

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Judgement

P.K. Lohra, J.—All these six revision petitions are preferred by the petitioner-assessee u/s 86 of the Rajasthan Sales Tax Act, 1994 (for short, "the Act of 1994") against the impugned judgment/order dated 20th of September 2002, passed by the learned Tax Board, Ajmer, whereby three appeals filed by the petitioner were dismissed and three appeals laid by the respondent-Revenue were allowed by a common verdict. Scorning the checkered history of the case, the facts in brief are that the petitioner is involved in manufacturing of gwar gum powder for its supply within the State, out of the State and for its export abroad. For manufacturing gwar gum, the petitioner-company purchased the raw material, i.e., gwar split from the registered dealers out of the State during the assessment years 1995-96, 1996-97 and 1997-98. The petitioner-company purchased huge raw material from two registered firms of Ahmedabad, namely, Chhaganlal Jain Halwala, and Rafanlal Gautam Kumar Jain. Both these dealers are having registration with the Gujarat Sales Tax Department and CST number to their credit. Despite a billed purchase by the petitioner, the assessing authority after formal enquiry, which was made in a slip shod manner, branded the transactions of the petitioner with these dealers as fake one, passed the assessment orders for all these three years, and imposed tax, interest and penalty of a huge sum.

2. Being aggrieved from the assessment orders passed by the assessing authority, the petitioner laid three separate appeals before the Deputy

Commissioner (Appeals), Commercial Taxes Department, and the appellate authority, after hearing rival submissions partly allowed all the three appeals of the petitioner-assessee and waived the penalty imposed against it by the assessing authority.

3. Feeling disgruntled from part of the appellate order, the petitioner yet again made an endeavour by way of preferring appeals before the learned Tax Board for assailing all the three assessment orders of the assessing authority which were partly upheld by the appellate authority. The waiver of penalty for all the three assessment years has furnished a cause of grievance to the Revenue, and therefore, this part of favourable verdict vis-a-vis the petitioner-assessee was questioned by the Revenue before the learned Tax Board by preferring three separate appeals.

4. The learned Tax Board consolidated all the appeals and heard all these appeals together and disposed of them by a common judgment and order, which is the order impugned in all these revisions. The learned Tax Board rejected all the three appeals preferred by the petitioner-assessee and allowed all the three appeals of the Revenue, thereby restoring the assessment orders passed by the assessing authority for all the three years.

5. At the threshold, when the petitions came up before this court, the court was pleased to admit all these petitions for hearing. After service of the notices, on 30th of July 2013 the coordinate Bench on hearing the rival counsels thought it proper to formulate question of law to be adjudicated by this court. The coordinate Bench was pleased to frame the following question of law for determination:

"Whether, in the facts and circumstances of the case, the Tax Board was justified in upholding the finding of two authorities below that the intra-State purchases of Gwar split made by the petitioner-assessee were intra-State purchases?"

6. Questioning the legality and propriety of the impugned order of the learned Tax Board, the learned senior counsel Mr. M. S. Singhvi would urge that while upsetting part of order of the appellate authority and restoring the order of the assessing authority, the Tax Board has given complete slip to the provisions of the Act of 1994. Mr. Singhvi has argued that imposition of tax, penalty and interest on an assessee is a quasi-judicial function guided by established principles and norms and those norms cannot be reduced as mere rituals by the taxing authorities at their whims and fancy. Learned counsel for the petitioner has formulated three vital propositions for assailing the impugned order. At the threshold, challenging the impugned order, the learned counsel has contended that while castigating the petitioner-assessee for fake and spurious transactions of purchase for raw material of gwar gum, the taxing authority has not conducted thorough enquiry and survey including inspection of the account books and other relevant record of the registered dealers of Ahmedabad. According to Mr. Singhvi, the finding of the assessing authority with which the learned Tax

Board has concurred, that purchase of raw material is intrastate and not inter-State, is based on mere ipse dixit of the assessing authority. Castigating the methodology of the assessing authority for indictment of the assessee, Mr. Singhvi submits that by upholding the said finding the learned Tax Board has miserably failed to adjudicate the lis involved in the matter in proper perspective. On this vital issue, the learned counsel would urge that recording of finding that inter-State purchase was bogus and drawing affirmative conclusion that it was an intra-State transaction on the basis of sampling of individual transaction and on the basis of statements of truck owners/drivers is unusual and de hors the prescribed principles and norms for such drastic conclusions. Emphasizing the genuineness of all these inter-State transactions, Mr. Singhvi has argued that the taxing authorities having accepted the fact that the assessee has paid entire price of raw material to the registered dealers of Ahmedabad by demand draft, cannot take a topsy turvy stand that transaction was fake without verifying facts from the dealers and inspecting their account books. Mr. Singhvi, while taking a dig at this inconsistent and self-contradictory stand of the Revenue, has argued that findings and conclusions arrived at by the learned Tax Board are perverse and perse beyond comprehension of any prudent man.

7. Highlighting procedural infirmities and pitfalls in scrutinizing each transaction, the learned counsel for the petitioner has strenuously urged that the procedure adopted by the Department was nothing but a sham, inasmuch as, the same was in clear negation of the principles of audi alteram partem. Mr. Singhvi has submitted with full eloquence that no proper opportunity of cross-examination was afforded to the assessee and this sort of infirmity itself has vitiated the orders of assessment and all subsequent orders including the impugned order passed by the learned Tax Board. For substantiating his argument, learned senior counsel has placed reliance on a Constitution Bench decision of apex court in case of *Tata Engineering and Locomotive Co. Ltd. Vs. The Assistant Commissioner of Commercial Taxes and Another*, In the said verdict, the apex court, while interpreting the term "sale" within the meaning of section 2(g) and section 3 of the Central Sales Tax Act, 1956, held in clear term in para 12 that the assessing authority should examine each transaction to see whether it was a completed contract of sale and assessment for the period based on examination of specific transaction is illegal. Para 12 of the verdict is as follows (page 381 in 26 STC):

"12. Another serious infirmity in the order of the Assistant Commissioner was (a matter which even the Advocate-General quite fairly had to concede) that instead of looking into each transaction in order to find out whether a completed contract of sale had taken place which could be brought to tax only if the movement of vehicles from Jamshedpur had been occasioned under a covenant or incident of that contract the Assistant Commissioner based his order on mere generalities. It has been suggested that all the transactions were of similar nature and the appellant's representative had himself submitted that a specimen transaction alone need be examined. In our judgment this was a wholly wrong procedure to

follow and the Assistant Commissioner, on whom the duty lay of assessing the text in accordance with law, was bound to examine each individual transaction and then decide whether it constituted an inter-State sale exigible to tax under the provisions of the Act."

8. With a view to strengthen his contentions in this behalf, Mr. Singhvi has also placed reliance on a decision of the apex court in case of *Kalra Glue Factory Vs. Sales Tax Tribunal and Others*, . The apex court in this verdict upset the conclusion of the assessing authorities that the transaction was an inter-State sale solely on the ground that the assessing authorities have placed reliance on statement of brie Bankey Lal which was not tested by cross-examination.

9. The learned senior counsel has also urged that strong suspicion, strange or coincidences and grave doubts cannot take the place of legal proof. On this proposition, the learned counsel for the petitioner has placed reliance on a decision of the apex court in case of *State of Kerala Vs. M.M. Mathew and Another*, The apex-court made the following observations in this behalf (pages 352 and 353 in 42 STC):

"... It is now well-settled that strong suspicion, strange coincidences and grave doubts cannot take the place of legal proof. To establish the charges against the respondents, it was, in our judgment, essential for the prosecution to establish that the secret books of account related to the business transactions carried on by the respondents and none else. This it could have established in a variety of ways, viz., (1) by adducing satisfactory proof to the effect that the place from which the secret books of account were seized formed part of the place of business of the respondents or was in their exclusive possession and control, (2) that the secret books of account were maintained by or under the orders of the respondents, (3) that the said books of account were in the handwriting of either of the respondents or their accountant or clerk or some other person employed by them. The third method indicated above could have been adopted by following one or more of the ordinary modes provided in the Evidence Act for proving the handwriting, i.e., (i) by calling the accountant or clerk or some other employee of the respondents who is supposed to have posted the entries in the account books, (ii) by calling a person in whose presence the account books were written, (iii) by calling a handwriting expert to testify that the entries in the secret books of account tallied with the admitted specimen writing of the respondents or any of their employees, (iv) by calling a person acquainted with the handwriting of the person by whom the secret books of account were supposed to have been written, (v) by having the comparison done in court of the secret books of account with some admitted writing as provided in section 73 of the Evidence Act, (vi) by proof of an admission made by any one of the respondents that the secret books of account related to the business transactions carried on by their firm or that any one of them had written the same, (vii) by adducing other unimpeachable circumstantial evidence. No attempt or step seems to have been made or taken in that behalf by the prosecution. The connection of the

respondents with the entries in the secret books of account could also have been established by producing some of the customers whose names are admittedly to be found in the secret books of account to testify that the deals evidenced by the entries were transacted by them with the Kallupalam Lad's Jewellery Mart of which the respondents were the proprietors. As the prosecution has failed to resort to any of these methods, they have to thank themselves for the result of the prosecutions upon which it seems to have launched without seeking expert legal assistance. The decision of this court in Girdhari Lal Gupta Vs. D.H. Mehta and Another, which is heavily relied upon by the learned counsel for the State of Kerala is of no assistance to the State. In that case, it was established that the account slips were recovered from the premises of the accused which undoubtedly established their connection with them. Accordingly we do not find ourselves in a position to differ from the conclusions arrived at by the Additional Sessions Judge and the High Court."

10. Yet another judgment of the apex court on which the learned counsel for the petitioner has placed reliance is a decision of apex court in State of Kerala Vs. K.T. Shaduli Yusuff etc., The apex court proceeded to make the following observations in this behalf (pages 482 to 484 in 39 STC) :

"One of the rules which constitutes a part of the principles of natural justice is the rule of audi alteram partem which requires that no man should be condemned unheard. It is indeed a requirement of the duty to act fairly which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties because, as pointed out by this court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, "the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice" and justice, in a society which has accepted socialism as its article of faith in the Constitution, is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions. This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of audi alteram partem requires that a particular specified procedure is to be followed. It may be that in a given case the rule of audi alteram partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on the facts and circumstances of each case.

Now, in the present case, we are not concerned with a situation where the rule of *audi alteram partem* has to be read into the statutory provision empowering the taxing authorities to assess the tax. Section 17, sub-section (3), under which the assessment to sales tax has been made on the assessee provides as follows:

"If no return is submitted by the dealer under sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment:

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of being heard and, where a return has been submitted, to prove the correctness or completeness of such return."

It is clear on a plain natural construction of the language of this provision that it empowers the Sales Tax Officer to make a best judgment assessment only where one of two conditions is satisfied: either no return is submitted by the assessee or the return submitted by him appears to the Sales Tax Officer to be incorrect or incomplete. It is only on the existence of one of these two conditions that the Sales Tax Officer gets the jurisdiction to make a best judgment assessment. The fulfilment of one of these two prerequisites is, therefore, a condition precedent to the assumption of jurisdiction by the Sales Tax Officer to make assessment to the best of his judgment. Now, where no return has been submitted by the assessee, one of the two conditions necessary for the applicability of section 17, sub-section (3), being satisfied, the Sales Tax Officer can, after making such inquiry as he may consider necessary and after taking into account all relevant materials gathered by him, proceed to make the best judgment assessment and, in such a case, he would be bound under the proviso to give a reasonable opportunity of being heard to the assessee. But in the other case, where a return has been submitted by the assessee, the Sales Tax Officer would first have to satisfy himself that the return is incorrect or incomplete before he can proceed to make the best judgment assessment. The decision-making process in such a case would really be in two stages, though the inquiry may be continuous and uninterrupted : the first stage would be the reaching of satisfaction by the Sales Tax Officer that the return is incorrect or incomplete and the second stage would be the making of the best judgment assessment. The first part of the proviso which requires that before taking action under sub-section (3) of section 17, the assessee should be given a reasonable opportunity of being heard would obviously apply not only at the second stage but also at the first stage of the inquiry, because the best judgment assessment, which is the action u/s 17, sub-section (3), follows upon the inquiry and the "reasonable opportunity of being heard" must extend to the whole of the inquiry, including both stages. The requirement of the first part of the proviso that the assessee should be given a "reasonable opportunity of being heard" before making best judgment

assessment merely embodies the audi alteram partem rule and what is the content of this opportunity would depend, as pointed out above, to a great extent on the facts and circumstances of each case. The question debated before us was whether this opportunity of being heard granted under the first part of the proviso included an opportunity to cross-examine Haji Usman Kutty and other wholesale dealers on the basis of whose books of account the Sales Tax Officer disbelieved the account of the assessee and came to the finding that the returns submitted by the assessee were incorrect and incomplete. But it is not necessary for the purpose of the present appeals to decide this question since we find that in any event the assessee was entitled to this opportunity under the second part of the proviso."

11. Arguing with full emphasis learned senior counsel submits that assessment is a quasi-judicial proceeding and as such assessment pre-supposes adherence of principles of natural justice. For this proposition, the learned counsel has placed reliance on a decision of the Gauhati High Court in *Dwijendra Kumar Bhattacharjee Vs. Superintendent of Taxes, Government of Tripura and Others*, Elaborating the need for adherence of principles of natural justice, the court proceeded to make the following observations in paras 9 to 13 of the verdict laying down parameters for its observance (pages 401 and 402 in 78 STC):

"9. The assessing officer invested with the power to make assessment of tax discharges quasi-judicial functions and he is bound to observe the principles of natural justice in reaching his conclusions. The fact that he is not fettered by technical rules of evidence of pleadings and is entitled to act on material which may not be accepted as evidence in a court of law, does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law. One of the rules which constitutes a part of the principles of natural justice is the rule of audi alteram partem which requires that no man should be condemned unheard. It requires an opportunity to be heard to be given to a person likely to be affected by a decision. But this rule is also not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry. The procedure required to be adopted in giving an Opportunity to a person to be heard must necessarily depend on the facts and circumstances of each case.

10. The assessing officer cannot rely on any evidence or any fact in arriving at his conclusion without first pointing out the same to the assessee and giving him a reasonable opportunity of meeting the case which is sought to be made out in the assessment order. In other words, though the assessing officer can make such inquiries he considers necessary he must give an opportunity of being heard to the assessee in respect of any materials proposed to be used for the purpose of assessment. Even in cases where the assessing officer gets informations from private sources and does not want to disclose the source of information to the assessee, he shall have to communicate to the assessee the substance of such information if he proposes to use the result of such inquiry against the assessee.

It is necessary in order to put the assessee in possession of full particulars of the case he is expected to meet. The assessee must be given full opportunity to meet objections raised by the assessing officer. If an assessment is based on materials which were not disclosed to the assessee, the order of assessment would be vitiated.

11. In this connection, it may be appropriate to mention that it is also settled by now that the assessee has a right to inspect the records and relevant documents before he is called upon to lead evidence in rebuttal. He has a right to inspect the statement recorded or orders passed by the assessing officer. In *State of Kerala Vs. K.T. Shaduli Yusuff etc.*, where evidentiary material produced by a third party was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, it was held that the assessee was entitled, to have such person summoned as witness for cross-examination, inasmuch as cross-examination is one of the most efficacious method of establishing truth and exposing falsehood. As in that case the assessing officer refused to summon the said person for cross-examination, the Supreme Court held that the act of the assessing officer in refusing to summon the said person for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee and that vitiated the orders of assessment made against him.

12. At this stage, it may be pertinent to emphasise that the opportunity of hearing to the assessee, contemplated above, is not an empty formality or ritual or a pretence. It is a valuable right granted to the assessee and, in fact, is an important safeguard against arbitrary assessments. It cannot be taken lightly by the authorities. The opportunity must be real and reasonable. If an assessee, who is asked to furnish certain particulars or submit explanations within a specified time, prays for further time stating his difficulties and/or reasons, his prayer should be considered judiciously. Sometimes, as in the present case, hearings, for assessment for a number of years are taken up together and the assessee is asked to appear and produce evidence in support of his returns. On consideration of the evidence produced by the assessee the assessing officer might require some further particulars and/or information which it might not be possible for the assessee to submit instantaneously or at short notice. He may require reasonable time to furnish the same and pray for the same before the assessing authority. Such prayers cannot be rejected at the threshold without considering the ground given by the assessee merely because the assessing officer is hard-pressed to complete the assessment by a specified date or for administrative expediency. Such a rejection would amount to denial of reasonable opportunity of hearing to the assessee and vitiate the assessment.

13. The assessing officer, after making all inquiries and giving reasonable opportunity of hearing to the assessee, can definitely arrive at his own conclusion. However, the assessment made must have reference to some evidence or material on record. Having rejected the books of account or the

evidence produced by the assessee the assessing authorities cannot act arbitrarily and on pure guess and make an assessment without reference to any evidence or any material at all. No hard and fast rule can be laid down to define the sort of material on which the assessing officer can base his assessment. It will depend on the facts of each case. In any event, the assessment order must disclose not only the reasons for rejecting the return and accounts but also the basis on which the assessment is made."

12. Mr. M. S. Singhvi, learned senior counsel, while impeaching the impugned order of the learned Tax Board has argued that when the goods have been purchased/sold from a dealer at the strength of registration certificate, then the other party could not be liable if the first party was liable to pay purchase/sales tax. For this proposition, learned counsel for the petitioner has placed heavy reliance on a verdict of apex court in case of State of Maharashtra Through The Secretary Vs. Suresh Trading Company, The apex court made the following observations on the said proposition in paras 4 and 5 of the verdict (page 441 in 109 STC):

"4. The High Court answered the question in the negative and in favour of the respondents. The High Court noted that the effect of disallowing the deductions claimed by the respondents was, in substance, to tax transactions which were otherwise not taxable. The condition precedent for becoming entitled to make a tax-free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax-free sale accrued to him. Thereafter to hold, by reason of something that had happened subsequent to the date of the purchase, namely, the cancellation of the selling dealers' registration with retrospective effect, that the tax-free resales had become liable to tax, would be tantamount to levying tax on the resales with retrospective effect.

5. In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the Department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates."

13. For authenticating his submissions on this proposition, the learned counsel for the petitioner has placed reliance on a decision of this court in case of Assistant Commissioner v. Saraogi Rollers Flour Mills Pvt. Ltd. [2005] 4 VAT reporter 223 (Raj). In this verdict, a coordinate Bench of this court, while relying on the decision of the apex court in State of Maharashtra Through The Secretary

Vs. Suresh Trading Company, has held as infra in paras 3 and 4:

"3. The core question involved in the matter is, as to whether the purchase of goods, as alleged by the assessee, was in fact purchased by the assessee from the registered dealer, or the alleged transaction was bogus one, and actually the goods were purchased from unregistered dealers. The AA mainly relied on the circumstances, that the entries of bank account of the alleged sellers do not corroborate the transaction, the firms had already closed their business and the registration had been cancelled, the consideration of purchase is said to be have been deposited in the bank account of the dealers, but it was immediately withdrawn in case, the sellers have filed affidavit that during the relevant period their purchase and sale was nil. Likewise it was also considered by the AA that the registration numbers of the vehicles from which the goods are alleged to have been transported are reported by the registering authority to be non est.

4. The learned Tax Board has found that material on record established that the registration of the seller has been subsisting up to January 21, 2001, and was subsequently cancelled with retrospective effect. Likewise, the registration of one of the seller was cancelled on March 31, 2002, while that of the other two dealers was cancelled on March 27, 2002, and therefore, in view of the judgment of the honourable Supreme Court in State of Maharashtra Through The Secretary Vs. Suresh Trading Company, it is lawful for the purchaser to enter into transaction relying on the validity of the registration. Regarding withdrawal of the amounts from the bank, it was found to be valid act on the part of the account holders. Similarly, it was found that the assessee had purchased goods from M/s. Bajranglal Vinod Kumar against declarations ST-17, and therefore, if any action was required to be taken, it was required to be taken against the sellers, regarding registration of the vehicles, it was found that the registering authority had certified the existence of registration of the concerned vehicles. Then bona fide endorsement of Krishi Upaj Mandi Samiti were also found on the certain bills. Inter alia, on this basis it was found that it cannot be said that the assessee had purchased the goods from the unregistered dealer."

14. Assailing the impugned order passed by the learned Tax Board, the learned senior counsel for the petitioner-assessee has articulated his third contention that burden of proving that the impugned sale transaction is intra-State and not inter-State lies on the Department more significantly when the assessee has produced all relevant details including names and identity of the vendors, details about their registration and the requisite payment made to the dealers. The learned senior counsel further submits that once it was pleaded by the assessee that goods have been taxed in State of Gujarat then burden of proof to the converse obviously lies on the Department and it is not desirable from the Revenue to brush aside the plea of the assessee without proper verification of the facts. In order to strengthen this argument, the, learned counsel for the petitioner has placed reliance on a decision of apex court in case of Commissioner of Sales Tax, U.P., Lucknow and Others Vs. Suresh Chand Jain,

Tendu Leaves Dealer, Lalitpur and Others, The apex court, in the said verdict, concluded in clear and unequivocal terms that onus to disprove a fact asserted by the assessee lies on the Revenue. The court made the following observations in this behalf (page 47 in 70 STC):

"The principles of inter-State sales were well-settled. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, Justice Venkatarama Ayyar had held that sale could be said to be in the course of inter-State trade only if two conditions concur, namely, (1) a sale of goods and (2) a transport of those goods from one State to another. Unless both these conditions were satisfied, there could be no sale in the course of inter-State trade. There must be an evidence that the transportation was occasioned by the contract and as a result goods moved out of the bargain between the parties from one State to another. It is apparent from the facts found by the Tribunal that the assessee had since the very beginning been contending that he had effected only local sales. He had also filed an affidavit stating that he had not effected any sales of tendu leaves during the course of inter-State trade and commerce and that he had never applied to the Forest Department for issue of form T. P. IV and that no such form was ever issued to him and the tendu leaves in dispute were not booked by him through railways or trucks for places outside U. P. The Tribunal found nothing to discredit this version of the assessee. The onus lies on the Revenue to disprove the contention of the assessee. The Tribunal found no material to do so..."

15. E-converso, the learned counsel Mr. V. K. Mathur, appearing for the Revenue, has strenuously urged that the findings of the assessing authority and the learned Tax Board are concurrent that sale transactions of the Gwar split were intra-State and not inter-State, and therefore, the said finding of fact cannot be made subject-matter of judicial review in exercise of revisional jurisdiction of this court. Articulating his submissions to support the impugned order of the Tax Board, learned counsel for the respondent would urge that taxing authorities" are well within their rights to ascertain genuineness of a transaction so as to find out whether the alleged transaction is intra-State or inter-State. Mr. Mathur has argued with full vehemence that the respondent-Department has conducted an enquiry to find out nature of transaction in a fair and transparent manner which cannot be faulted for the simple reason that enquiry was conducted for the purpose of ensuring evasion of tax by the assessee. Countering all the contentions of the learned counsel for the petitioner, Mr. Mathur has argued that the learned Tax Board has examined the matter threadbare and thereafter it has restored the orders of the assessing authority which suffers from no infirmity much less legal infirmity and as such there is no question of law involved in the matter warranting interference in the revisional jurisdiction.

16. I have heard the learned counsel for rival parties, scanned the materials on record and examined the legal precedents throwing light on the question of law involved in the matter.

17. On examining the assessment orders with bird's eye view, it is amply-clear

that the assessing authority has not at all cared to verify the genuineness of the bills from the dealers of Gujarat and has categorized those bills as fictitious bills castigating the assessee for camouflaging the said transaction. For arriving at this conclusion, the enquiry procedure adopted by the assessing authority is per se an empty formality. It is really strange that when the assessee has produced umpteen material before the assessing authority to show genuineness of the sale transactions why the assessing authority has shown utmost haste in drawing the drastic conclusion that the alleged inter-State transactions are sham and in fact are intra-State sale transactions. The methodology, which is pressed into service by the assessing authority for drawing this sort of conclusion solely on the basis of sample transaction and statements of truck owners and drivers, *prima facie*, fall short of the requisite enquiry for unearthing the truth. This court is quite conscious about the fact that evasion of tax is a menace to the society and the Revenue Authorities acting as watchdogs are empowered to unearth truth for penalizing potential tax evaders. However, this court cannot lose sight of a very vital aspect of the matter that no revenue authority should term a genuine sale transaction as a sham on mere conjectures and surmises. Thus, in the considered opinion of this court, before castigating an assessee for a fake, or spurious transaction, or for his conduct of evasion of tax, a proper and meaningful enquiry is utmost essential which confirms adherence of principles of natural justice. The assessing authority, while categorizing the inter-State sale transactions of the assessee as fake and spurious, has not made any endeavour to verify the facts from the traders of Ahmedabad, nor any effort was made by the assessing authority to examine account books of the dealers. In the considered opinion of this court, it was a bare requirement for the assessing authority before drawing an inference that the alleged transactions were intra-State transaction and not inter-State transactions.

18. One more redeeming feature of the case is that the assessing authority has presumed the alleged sale transactions as intra-State sale on the basis of sample transaction and by relying on the *ex parte* version of the truck owners and drivers, which has emerged out from their statements. Simply because the trucks in which the raw-material, i.e., Gwar split was transported from State of Gujarat to Rajasthan and there was no receipt of the border check-post, I am afraid, the conclusions of the assessing authority that the transactions in question were intra-State transactions, *prima facie*, cannot be sustained on the touchstone of umpteen material placed on record by the assessee to prove the said transactions as inter-State transactions. Moreover, not allowing the assessee to cross-examine the witnesses, who have deposed against them, and their statements were construed as incriminating material for discrediting the requisite material placed on record by the assessee to prove genuineness of the transactions, the bona fide purchase of the raw material from a registered dealer of Ahmedabad was yet another mitigating factor throwing *prima facie* light on the genuine inter-State transaction but the assessing authority has not addressed on this vital issue while passing the impugned order.

19. At the appellate stage, the appellate authority has examined the matter afresh and has found that the statements of the witnesses recorded by the Department are not worth reliance unless the assessee is permitted to cross-examine those witnesses. With these observations, the appellate authority has maintained the tax and interest but reversed the order of the assessing authority imposing penalty on the assessee.

20. The learned Tax Board, by the impugned order, has restored the order of the assessing authority and while passing the said order the learned Tax Board has not at all cared to examine the procedural infirmities in the enquiry and the factum of violation of principles of natural justice. It is apparent from a bare perusal of the impugned order of the Tax Board that the learned Tax Board while passing the said order, whereby the order of assessing authority is restored, has not followed the law enunciated by the apex court in the verdicts referred to supra. For ascertaining the true nature of the transaction, i.e., whether it is intra-State or inter-State, a thorough enquiry is pre-requisite and such a decision cannot be based on mere assumptions or by examining sample transaction. The Tax Board, being a quasi-judicial authority, is not expected to decide such a vital issue on the basis of an enquiry which is infirm and not in conformity with the principles of natural justice. On close scrutiny of the impugned order, this court also feels that the pivotal issues which were germane to the matter, viz., purchase/sale of goods from a dealer on the strength of registration certificate and burden of proof to categorize transaction as inter-State despite availability of requisite material furnished by the assessee, are not dealt with by the learned Tax Board appropriately as per ratio decidendi of the verdicts of apex court in State of Maharashtra Through The Secretary Vs. Suresh Trading Company, and Commissioner of Sales Tax, U.P., Lucknow and Others Vs. Suresh Chand Jain, Tendu Leaves Dealer, Lalitpur and Others, By not addressing these crucial issues in the order impugned, the learned Tax Board has alienated the basic tenets of law rendering the order vulnerable. Thus, in totality, the considered opinion of this court is that the Tax Board has committed a manifest error of law in concluding that the alleged sale transactions were intra-State and not inter-State, and that being so the question of law framed by this court in all these petitions is decided in favour of the assessee and against the Revenue. In this view of the matter, the impugned order dated 20th of September 2002, rendered by the learned Tax Board declaring the transactions as intra-State transactions, cannot be sustained and consequently the orders passed by the appellate authority and the assessing authority are also required to be set at naught for deciding the matter afresh in the light of observations made by this court hereinabove.

21. The net result of the above discussion is that all these revision petitions are allowed, the impugned order dated 20th of September 2002 passed by, the learned Tax Board as well as by the lower appellate authority and the assessing authority are quashed and set aside and the matter is remanded back to the assessing authority for making assessment of the tax for the assessment years

1995-96, 1996-97 and 1997-98 afresh after affording reasonable opportunity of being heard to the assessee strictly in accordance with law and the observations made to supra. The assessment orders were made in the year 1998 and the impugned order by the Tax Board was passed way back in the year 2002, therefore, the assessing authority is expected to take requisite steps expeditiously for passing assessment orders for all these three years afresh, preferably within a period of four months from the date of passing of this order. In the facts and circumstances of the case, the costs are made easy.