

(2008) 04 GAU CK 0031
In the Gauhati High Court

Laxmi Bricks Industries

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Tripura Sales Tax Act, 1976 — Section 10, 21(2), 23, 9(4)

Citation : (2009) 3 GLT 149 : (2008) 17 VST 294

Hon'ble Judges : Maibam B.K. Singh, J

Bench : Single Bench

Judgement

Maibam B.K. Singh, J.—This is to dispose Civil Rule No. 332 of 1998, Civil Rule No. 333 of 1998 and Civil Rule No. 334 of 1998 wherein common and related questions of facts and laws are involved.

2. I have heard Mr. S.C. Saha, learned Counsel appearing on behalf of the petitioner in the three cases and Mr. A. Ghosh, learned Counsel appearing on behalf of the State-respondents.

3. There is no dispute in respect of the following facts:

The petitioner is a registered dealer under the Tripura Sales Tax Act, 1976 (hereinafter referred to as, "the Act") as a manufacturer and seller of bricks, brick bats, etc. The Superintendent of Taxes, Charge-I, Agartala made a consolidated order of assessment ex parte in respect of the petitioner on September 7, 1996 summarily u/s 9(4) of the Act for the assessment years 1993-94, 1994-95 and 1995-96. The said summary assessment was purportedly made on failure of the petitioner to appear and produce relevant records and books of account inspite of sufficient opportunity given to him. On the basis of the said assessment, demand notices u/s 23 of the Act were made to the petitioner for a sum of Rs. 2,10,742 in respect of the return period ending on 1993-94, a sum of Rs. 1,88,743 in respect of the return period ending on 1994-95 and a sum of Rs. 1,48,400 in respect of the return period ending on 1995-96. The petitioner filed a petition u/s 10 of the Act before the assessing

authority (respondent No. 3) for cancellation of the said summary assessment order and to make fresh assessment. In respect of the said petition, the petitioner was informed, vide letter No. F.SDR/ST/2370/88/1511 dated January 29, 1997, by the assessing authority that no genuine ground for reopening the case u/s 10 of the Act was found and as such the prayer in that regard could not be considered. Thereafter, on February 13, 1997 the petitioner preferred three separate revision petitions, one for each of the relevant assessment order, u/s 21(2) of the Act before the Commissioner of Taxes, Government of Tripura (respondent No. 2) challenging the above decision of the assessing authority. The Commissioner of Taxes, Government of Tripura, dismissed the said revision petitions on March 11, 1998 for default. Apparently, being aggrieved by the said dismissal order, the petitioner filed three petitions in respect of the relevant three assessment orders separately praying for restoration of the said revision petitions. However, by a common order dated May 22, 1998, the Commissioner of Taxes, in effect, dismissed the said three revision petitions observing at para 4 of the order that though the petitioner himself was responsible to maintain the books of account and produce the same before the authority as and when required to do so, by taking the pleas of illness and death of the Accountant, he was trying to delay the matter and as such there was no sufficient ground for restoration of the said revision petitions.

4. The present three civil rules have been filed praying mainly for quashing the abovesaid summary assessment order dated September 7, 1996 passed u/s 9(4) of the Act, the order of the assessing authority passed on January 29, 1997 refusing to cancel the said summary assessment, the order of the Commissioner of Taxes passed on March 11, 1998 dismissing the revision petitions and also the order of the Commissioner of Taxes passed on May 22, 1998 refusing to restore the said revision petitions.

5. Mr. S.C. Saha, learned Counsel appearing on behalf of the petitioner, submits that on the date fixed for hearing on the question as to why assessment of the petitioner should not be made u/s 9(4) of the Act, i.e., on September 7, 1996 itself, the petitioner filed an application to the assessing authority (respondent No. 3) praying for adjournment of the hearing on the ground that due to death of his Accountant, he was not in a position to appear along with all records of account. The learned Counsel for the petitioner draws this court's attention to the fact that in the impugned assessment order dated September 7, 1996, the fact of filing of the said adjournment application is not reflected and as such one can reasonably conclude that it was completely ignored by the assessing authority.

6. The abovesaid fact of filing of the said application for adjournment is not disputed by the respondents. The assessing authority (respondent No. 3) ignored the said application at the time of passing the impugned assessment order dated September 7, 1996 by not stating anything about it. The assessing authority observed in the impugned assessment order to the effect that since the dealer

had not appeared before him with relevant records and books of account inspite of adequate time having been given, the assessment was required to be made as per provision of Section 9(4) of the Act. On the basis of the above observation, one cannot reasonably conclude that the assessing authority considered the said prayer made by the petitioner for adjournment. It is thus ascertained that the impugned assessment order dated September 7, 1996 was passed without consideration of the prayer of the said adjournment made by the petitioner. In the above circumstances, the observations made by the Commissioner of Taxes at para 4 of his order dated May 22, 1998 in the said revision to the effect that the said adjournment on the ground of death or illness of the accountant was not acceptable and that the petitioner was trying to delay the process of assessment would not have validated the impugned summary order dated September 7, 1996 which had been passed by ignoring and without considering the prayer of adjournment. On receipt of the said application for adjournment, the assessing authority ought to have considered the prayer for adjournment judiciously and passed an appropriate order before proceeding with the assessment u/s 9(4) of the Act. In the facts and circumstances, the impugned assessment order dated September 7, 1996 is found to have been passed without giving sufficient opportunity of being heard and thus in violation of the principles of natural justice.

7. A Division Bench of this court in *Dwijendra Kumar Bhattacharjee v. Superintendent of Taxes, Government of Tripura, Agartala* [1990] 78 STC 393 after referring to various authorities held at paras 9 and 12 as follows:

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.

...

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 assessees 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.

8. There is also no reliable material to show that the assessing authority gave any opportunity of being heard to the petitioner with reference to his application u/s 10 of the Act for cancellation of the impugned summary assessment made u/s 9(4) of the Act. It was not proper and just to reject the said application without giving any opportunity of being heard to the petitioner. In respect of the revision petitions filed by the petitioner, though the counter-affidavit filed on behalf of the respondents-State to the effect that the Commissioner of Taxes communicated to the petitioner, vide letter No. 2542-43 dated March 6, 1998 about the fixing of the date of hearing of the revision petitions as to be made on March 10, 1998 and that the petitioner failed to appear on the said date, no reliable material is produced to show that the petitioner got the said letter dated March 6, 1998. No order of dismissal was passed on March 10, 1998 itself. The dismissal order was passed only on March 11, 1998. There is nothing to show that the petitioner was duly informed about adjourning the date of hearing of the revision petitions till March 11, 1998. In my considered opinion, the revision petitions were dismissed improperly.

9. In the light of the above considerations, the impugned orders are hereby quashed. In the facts and circumstances of the case, the concerned authority shall take appropriate steps for assessment of the petitioner in respect of the said three assessment years afresh in accordance with law. To avoid delay in making fresh assessment, as ordered by this court in *Electrical Cables and Conductors v. State of Tripura* [1991] 81 STC 216 in similar facts and circumstances, the petitioner is directed to appear before the Superintendent of Taxes, Charge-I, Agartala on May 15, 2008 for the purpose of assessment on which date the Superintendent of Taxes shall hear the petitioner. If it is not possible to conduct the hearing for any reason, he shall fix another date/dates on which date/dates also the petitioner shall appear. No formal notice shall be necessary.

10. These three civil rules stand disposed.

No order as to cost.