(1971) 03 MAD CK 0069

In the Madras High Court

Case No : Writ Petition No. 3289 of 1967

M. Vishindas APPELLANT

Vs

The Deputy Commercial Tax Officer RESPONDENT

Date of Decision : 03-03-1971

Acts Referred:

Citation : (1971) 84 LW 412 : (1971) 2 MLJ 90 : (1971) 28 STC 44

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : K. Mani, for V. Ramachandran, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—For the year 1964-65 the petitioner was assessed originally to sales tax in respect of his dealings in connection with his business in Tiruchirapalli as a general merchant under the name and style of "Meena Traders". On 20th August, 1966, there was a search and seizure of several incriminating slips and diaries from the business premises and residence of the petitioner. Proceedings, therefore, were initiated u/s 16 of the Madras General Sales Tax Act and ultimately, after following the usual procedure, a revised order was made by the assessing authority on 26th September, 1966. The petitioner appealed successfully before the Appellate Assistant Commissioner, who set aside the order of the assessing authority and remanded the matter once over to it to enable the assessing authority to give an adequate and fair opportunity to the assessee to explain the incriminating material recovered in the course of the search or raid, as stated above. The order of remand was made on 6th June, 1967. The assessing authority, however, on 13th June, 1967, and 8th July, 1967, asked the petitioner to produce his accounts but never gave the impression that he was willing to allow the assessee to inspect the incriminating material, which was obviously another source on which the assessment order which is likely to be passed thereafter, was going to be based. The petitioner wanted time to produce his regular books of accounts as they were being audited by then. But on 14th August, 1967, the assessing authority issued the usual proposal notice, stating therein that the petitioner could go over to the office during office hours between 16th August, 1967, and 26th August, 1967, to inspect the slips and diaries on which also the proposal to assess was based. The petitioner having been apprised for the first time after remand that the proposal to assess is going to be once again based on the alleged incriminating material recovered from his residence and business place, sought for an adjournment. He applied for such an adjournment on 31st August, 1967, up to which date the assessing authority gave him time to file his objections to the proposal.

2. It is not in dispute that the petitioner did seek for an adjournment to enable him to inspect fully the slips and diaries and submit his explanation to the intended action. The case of the department is that on prior occasions the petitioner did inspect the slips and diaries and he has taken notes or extracts therefrom and that therefore he had a full opportunity to peruse the slips, diaries, etc. and explain. But the petitioner''s case is that he had no such fair opportunity, though he had, on one or two occasions, the benefit of examining the incriminating slips and material.

3. Ultimately the assessing authority refused the adjournment and finally assessed the petitioner under the impugned order. The petitioner has come up to this Court for the issue of a writ of certiorari to quash the order of assessment dated 31st August, 1967.

4. The only contention of the petitioner is that he had no opportunity to explain the proposal after scrutinising the slips and diaries. His case is that after remand by the Appellate Assistant Commissioner the only opportunity that was given to him to enable him to inspect the slips or the incriminating material was in the proposal notice itself. He further states that the extracts made by the assessing authority in support of the proposal and communicated to him are not self-explanatory and it was in this behalf he wanted a further and fuller opportunity to scrutinise the incriminating material and submit his final explanation to the proposed action u/s 16 of the Madras General Sales Tax Act. The learned Government Pleader, however, states that the petitioner knew that he was under an obligation to explain and that even prior to 14th August, 1967, he did inspect the slips and diaries and take extracts therefrom and that by itself is sufficient compliance with the principles of natural justice.

5. In the instant case the Appellate Assistant Commissioner himself felt that there has been a violation of the principles of natural justice, as the assessee did not have a real opportunity to scrutinise the incriminating material at the opportune moment. It is this which prompted the Appellate Assistant Commissioner to set aside the original order of assessment. Nevertheless the assessing authority would issue the proposal notice on 14th August, 1967, and contemporaneously extend to the assessee an opportunity to inspect the slips and diaries. As this was effectually the first opportunity, after remand, the

petitioner sought for a reasonable time to re-inspect the slips and diaries, even if he had inspected them before, so that he could fully explain away the alleged discrepancies in his transactions. This was denied.

6. Principles of natural justice should be followed and the record should disclose that there has been a substantial compliance of this well established equitable doctrine. The assessing authority, however, thought that the extracts he gave as annexures to his proposal notice dated 14th August, 1967, were sufficient for the purpose. This is a matter for opinion. But if the assessee, who is the aggrieved person, wants a further opportunity to scrutinise the material which is going to be used against him and thereafter submit his objections to the proposal, then such a request ought not to be lightly brushed aside. In this case it has been done. The petitioner''s request for ten days'' time from 31st August, 1967, was negatived.

7. In this view of the matter, I am satisfied that there has been a violation of the principles of natural justice. The opportunity given to the assessee, in my view, is not adequate. The petitioner should be given a fresh opportunity. The rule nisi is therefore made absolute and the writ petition is allowed. In view of the long lapse of the proceedings, the assessing authority would finally give fifteen days'' time to the petitioner and thereafter proceed with the assessment. But he shall see that the petitioner is given a real opportunity to look into the slips and diaries and other incriminating material on which he proposes to assess.

