

(2002) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 113 of 2001

Mona Granites P. Ltd.

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-03-2002

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 29(5)

Citation : (2003) 2 RLW 852 : (2002) 3 WLN 542

Hon'ble Judges : Rajesh Balia, J;K.K. Acharya, J

Bench : Division Bench

Advocate : Ajay Kothari, for Vineet Kothari, for the Appellant;

Final Decision : Dismissed

Judgement

Balia, J.—Heard learned counsel for the appellant.

2. The appellant aggrieved of the order passed by the learned Single Judge dated 6th Feb., 2002 dismissing the writ petition challenging the notice issued by the Sales Tax Authorities under the Rajasthan Sales Tax Act, 1994, on 6th August, 2001 (Annexure- 3) to the writ petitions, has preferred this appeal.

3. It is stated by the learned counsel that while assessment for the accounting year 1999-2000 was still pending, during the pendency, of the assessment impugned notice was issued calling upon the petitioner to present himself on the next date of hearing and to explain why certain additions be not made in the turn- over declared by the assessee to the extent of Rs. one crore eighteen lacs, which does not appear to have been disclosed in the return.

4. In the impugned notice the Assessing Authority also disclosed his reasons for issuing such notice u/s 29(5) of the Rajasthan Sales Tax Act, 1994 read with other relevant provisions. The reasons were stated to be that a survey was conducted in the premises of the Assessee during the relevant period by the Central Excise Department in which discrepancies were found in the stocks and stock registers maintained by the petitioner Assessee. The case of escapement of

Excise Duty was also made out against the petitioner by the Authorities under the Central Excise Act. As the matter related to shortage of stock alleged to be found by the Central Excise Authorities, Assessing Authority under the Sales Tax Act also reached the prima facie conclusion that it is likely that assessee has not shown turn- over relating to such under disclosed stocks in his returns and, therefore, impugned notice was issued, explaining the reasons for such notice in the specific area of doubt which is sought to be cleared by he Assessee in connection with three pending Assessment Authority. In the process, he also made Assessee aware about that such additions in the turn-over will, is made, lead to consequence of levy of penalty etc.

5. The Assessee has contended that notice discloses that Assessing Authority has already made up his mind. Section 29(5) does not authorise the Assessing Authority to call upon the assessee to explain specific additions to be made in the return submitted by the assessee. He can only be called upon to prove correctness of the return submitted by him. Calling upon to prove negative is not envisaged. If the assessee only the Assessing Authority can resort to proceed for assessment under other provisions for making additions by proving the specific additions to be made of may proceed to best judgment assessment. However, unless such stage is reached, a notice, like the impugned notice, cannot be issued to assessee by predetermining the issue of additions to be made.

6. The writ petition has been dismissed by the learned Single Judge holding that interference by this Court at this stage under Article 226 of the Constitution of India, is not warranted. The Court has also noticed that it is only after reply to the show cause notice is filed, then the department is required to prove the evasion of tax. Prima facie, there is evidence for evasion of tax In huge sum.

7. It is contended by the learned counsel for the Assessee in this appeal that the impugned notice was issued in purported exercise of power under Sub-section (5) of Section 29. Said provision authorises the Assessing Authority merely to require the dealer to produce accounts, registers, and documents including any other evidence; and to produce or cause to be produced any evidence which he may reply in support of the returns filed or the statements made, to the Assessing Authority. He could not under that provision with reference to survey or search under the Central enactment or finding and conclusions reached thereunder assume jurisdiction to make additions in the return, without giving any opportunity to the Assessee to prove the correctness of returns filed by him, in the first instance.

8. This contention, in our opinion, is devoid of any substance. The assessment proceedings results in determination of a compendium of facts to ascertain the tax as prescribed by law. This inquiry is two way process in as much as the assessing authority is not merely an arbiter between two adversary parties before him. The Assessing Authority act as a quashi judicial statutory functionary who is not only adjudicator of matter, but also represents the State and discharges his duty to levy, and collect the tax which becomes payable on the

taxable event in the hands of the assessee, as authorised by law. That being the position, he s a party is entitled to lead its own evidence and ask for its rebuttal. He is not entitled to use any material in his possession against the assessee without disclosing It to him and calling upon him to explain nd to rebut the inference that can be drawn against him from the material which is in possession of the Assessing Authority. In doing so the Assessing Authority, only discharges his duty with fairness in accordance with basic requirement of natural justice, the very foundation of a fair procedure.

9. The scheme of Sub-section (5) of Section 29 clearly stipulates that the Assessing Authority is entitled to require the assessee to appear in person or by agent before him and to produce or cause to be produced such accounts, registers and documents as the assessing authority may require and to produce or cause to be produced any evidence on which he may rely in support of the returns filed or the statements made, to the Assessing Authority. Notice u/s 29(5) is envisaged only where the Assessing Authority is not satisfied that the returns are complete and correct. Obviously, satisfaction about the incompleteness and incorrectness of return is not to be formed without any basis. Whenever assessing authority intends to reject the returns filed by the assessee or the evidence which he may have produced in support of his return and records, is to be discarded, that by itself becomes a ground to make specific additions on the material in possessing of Assessing Authority. Rejection of books for want of credible evidence may result in best judgment assessment and such a recourse also does not exclude additions of specific amount on the basis of cogent and valid material, that may be³ available with Assessing Authority. However, use of such material is permissible only after the same is disclosed to Assessee, which the Assessing Authority intends to use against the assessee for making any additions, such materials may also form the bed- rock of satisfaction of Assessing Authority about incompleteness of returns.

10. Therefore, if assessing authority while issuing notice under Sub-section (5) of Section 5 makes reference to material in his possession and makes it known to the assess that the material which is going to be relied on by him, he does not transgress limits of his authority. Rather it is his duty to disclose such material before he acts, on such material. That being the position, we do not find that the Assessing Authority has committed any error in disclosing the material to the assessee for inviting his presence during the course of assessment u/s 29 of the Act of 1994, and explain the same.

11. The contention of the learned counsel for assessee that the Assessing Authority must stop short of sending notice for inviting the assessee to come with evidence before the Assessing Authority in return, in our opinion, is only incomplete approach to whole process of assessment. Where-ever Assessing Authority has no specific material with him but he is in doubt about the credibility of the returns or material which is placed by the Assessee before it, he may reject the same on the basis of being not credible. But at the same time, when

the assessing authority has any specific material with him relies on such material; as part of principle of natural justice, he is duty bound to give notice of such material to assessee calling upon him to explain that on the basis of such material an adverse inference may be drawn against him and he may be subjected to consequences of such Finding also.

12. Merely making known the material and possible inference that can be drawn against him, if not properly explained does not amount to pre-determination. In recording of every satisfaction on the basis of some material a prima facie conclusion has to be arrived at before proceeding further but such satisfaction does not carry any significance beyond prima facie opinion, and cannot be read as a conclusion or determination of an finding of fact. It also cannot be said that material that has come to light during survey conducted by Central Excise Department or finding reached by it are not relevant material, though it needs to be understood that finding reached by other department is neither conclusive nor is binding on the assessee and the assessee is entitled to prove independent of such findings, correctness of his return and correctness of his record and Assessing Authority is bound to reach his own conclusion on the basis of material that has come before it in the assessment proceedings. This does not detract from validity of such material for forming any prima facie opinion about incorrectness or incompleteness of assessee's return and call upon him to explain.

13. Learned Single Judge has clearly and correctly stated the principle in that regard that after the assessee furnishes his explanation by respondent to notice that the stage of proving the facts leading to additions in the return shall arrive. We, do not find any lack of jurisdiction or act of pre-determination in the impugned notice. The learned Single Judge was right in observing that no case was made out for interference by this Court to halt the process of assessment by the Assessing Authority, merely by issue of a show cause notice.

14. In the result, appeal fails and, is hereby dismissed.