

(1992) 02 GUJ CK 0003
In the Gujarat High Court
Case No : Spl. C.A. No. 5343 of 1987

Pag Precision Bearing Limited

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Gujarat Sales Tax Act, 1969 — Section 41, 42, 42(1)

Citation : (1992) 02 GUJ CK 0003

Hon'ble Judges : Y.B. Bhatt, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; J.M. Thakore, Advocate-General and K.M. Mehta, AGP, instructed by G. Doshit and Co., for the Respondent

Judgement

G.T. Nanavati, J.—The petitioner-company is having its registered office at Bombay and its head office and factory at Baroda. It is registered as a "dealer" under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act") as well as the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Local Act"). The petitioner sells its goods within and outside the State of Gujarat. It has branch offices at various places in India. At places where the petitioner has branch offices, the petitioner despatches goods to its branch offices from time to time and the said branch offices subsequently sell the goods in the State in which they are located. The said sales effected by the branch offices are subjected to local sales tax by the States, wherein the branch offices are located. In respect of the sales effected directly by the petitioner in other States, the petitioner pays sales tax under the Central Sales Tax Act. It is subjected to tax under the Gujarat Sales Tax Act in respect of the sales effected by it within the State of Gujarat. It appears that, some transactions, which the petitioner described as "branch transfers", are considered by the department as inter-State sales and possibly to find out the real nature of those transactions, a search was carried out on February 3, 1983 and large number of account books and other records had been seized by the department. Meanwhile, for the assessment period September 1,

1976 to August 31, 1977, respondent No. 1, the concerned Sales Tax Officer, prepared a draft assessment order and served the same on the petitioner on August 10, 1982. The petitioner has filed its objections on August 26, 1982. On February 12, 1985, the 1st respondent issued a show cause notice, calling upon the petitioner to show cause why the branch transfers earlier accepted in the draft assessment order should not be disallowed and also submitted a revised draft assessment order. On March 15, 1985, the petitioner objected to the same. Thereafter, hearings were fixed, but, according to the petitioner, no effective hearing has taken place so far.

2. It is the petitioner's case that, similar is the position with respect to the assessment period September 1, 1977 to August 31, 1984. It is also the petitioner's case that the 2nd respondent, exercising powers u/s 42(1) proviso has been staying the assessment proceedings by giving a stock reason : "the assessment proceedings were going on and that as some more time would be required and as it is not possible to complete the assessment proceedings within the time prescribed by law". That way, the assessment proceedings were stayed till August 31, 1987. After that date, the petitioner did not receive any show cause notice, calling upon it to show cause why the assessment proceedings for those years should not be stayed for a further period of one year. But, on September 18, 1987, an Inspector of Sales Tax came to the petitioner's office and tried to serve upon the petitioner an order, purporting to have been passed by the 2nd respondent on August 31, 1987, u/s 9(2) of the Central Act read with section 42(1) of the Local Act. The petitioner declined to accept such ante-dated order. Thereafter, on September 22, 1987, the 1st respondent served the said order on the petitioner. The 1st respondent also served on the petitioner a notice of hearing of the assessment proceedings for the period 1977-78 to December 31, 1982. The petitioner contended that the assessments for those periods have become time-barred and, therefore, the question of attending the hearing of the assessment proceedings does not arise. As the Sales Tax Officer in spite of the objection raised by the petitioner, wanted to proceed further with the proceedings, the petitioner has filed this petition, challenging the order dated August 31, 1987 and respondent No. 1's action of proceeding further with the assessment proceedings for the period commencing from September 1, 1976 to August 31, 1984.

3. What is contended by the learned counsel for the petitioner is that, no order for stay of the assessment proceedings was passed on August 31, 1987 and thus, the said assessment proceedings have become time-barred. In the alternative, it was contended that the said order is null and void, inasmuch as no show cause notice was given to the petitioner, nor was it heard before passing that order. It was lastly contended that the reason given in the order does not justify passing of such an order.

4. The learned counsel submitted that, if the impugned order was really passed on August 31, 1987, then, in that case, it would have been served upon the

petitioner on August 31, 1987 and the department would not have waited for that purpose till September 22, 1987. If the order was really passed on August 31, 1987, then, the Sales Tax Inspector would not have asked the petitioner to put the date August 31, 1987, on the receipt acknowledging service of that order. These two circumstances are relied upon by the learned counsel in support of his submission that, in fact, the order was not passed on August 31, 1987.

5. One B. L. Modak, Assistant Commissioner of Sales Tax (Appeals), Division I, Ahmedabad, has filed a reply on behalf of the respondents. He has asserted therein that the impugned order was, in fact, passed on August 31, 1987. He has further stated that, possibly because of negligence on the part of the Inspector the said order was not immediately served on the petitioner. Though the Assistant Commissioner has not produced any documentary evidence in support of the statement made in his affidavit, we have no reason to doubt the correctness of his statement, as he has made that statement after verifying the record. The learned counsel appearing for the respondents also showed to us the file containing that order and having perused the same, we are convinced that the said order was, in fact, passed on August 31, 1987. For this reason, the grievance made by the learned counsel for the petitioner that in the absence of an affidavit by the Deputy Commissioner, who had passed that order, the statement made by the Assistant Commissioner should not be accepted, does not deserve to be considered any further.

6. With respect to the second contention, it was submitted by the learned counsel that assessment proceedings are accepted as quasi-judicial proceedings. The power conferred by the proviso to sub-section (1) of section 42 to stay such proceedings must, of necessity, be regarded as a quasi-judicial function. Secondly, section 42(1), which provides the period of limitation for completing the assessment proceedings, in a way, confers a right on the assessee, though a negative one, not to be assessed after the expiry of the period of limitation. Moreover, as a result of staying the assessment proceedings, the period of limitation gets extended and civil consequences adverse to the assessee follow. Thus, as a result of staying the assessment proceedings, the assessee's substantive right gets affected and he also becomes subject to certain adverse civil consequences. Therefore, either on the ground that passing of an order under the proviso to sub-section (1) of section 42 is a quasi-judicial function or on the ground that the assessee would be adversely affected by reason of passing of such an order or both, it should be held that prior notice and an opportunity of hearing are a must before passing of such an order and that such order should contain reasons and it should be served upon the assessee. As the petitioner was not given any notice, nor an opportunity of hearing before passing of the impugned order, it should be regarded as null and void.

7. Learned counsel drew our attention to the summary of principles deduced from judgments of various courts, in Kanga and Palkhiwala's "The Law and Practice of Income Tax", Eighth Edition, Volume I, at page 1133. According to

that summary, the A.O. exercises quasi-judicial functions and should be governed in his procedure by judicial considerations and must conform to the rules of natural justice. That is to say, he must proceed without bias and give sufficient opportunity to the assessee to place his case before the department; he must conduct himself in accordance with the principles of justice, equity and good conscience. The A.O. cannot rely on any evidence or any fact in arriving at his conclusions without first pointing out the same to the assessee and giving him a reasonable opportunity of meeting the case which is ultimately made out in the assessment order. He also drew our attention to the decision of the Supreme Court in *The State of Orissa and Another Vs. Chakobhai Ghelabhai and Company*, wherein it is observed that the assessing authorities including the Assistant Collector of Sales tax and the Collector of Commercial Taxes were not courts in the strict sense of the term "Court", though they exercised quasi-judicial functions under the Orissa Sales Tax Act. Our attention was also invited to another decision of the Supreme Court in *Commissioner of Income Tax, West Bengal-1, Calcutta Vs. Simon Carves Limited*, wherein it is observed that the taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair manner. The learned Advocate-General appearing for the respondents did not dispute the position that the assessment proceedings are quasi-judicial proceedings. However, he disputed the correctness of the submission that exercise of power of staying proceedings should also be regarded as quasi-judicial. He submitted that the said function is really a legislative function and if not that, then, it is an administrative function, but certainly not quasi-judicial.

8. If the contention raised by the learned Advocate-General, that the power to stay assessment proceedings is a legislative power, is accepted as correct, then, what effect it will have on the right claimed by the assessee to be assessed within the prescribed period of limitation will have to be regarded as irrelevant and there is no dispute on this point. Therefore, before considering whether in view of the likely effects of exercise of the power of staying assessment proceedings it should be regarded as a quasi-judicial function, it would be proper to consider if that can be regarded as a legislative function.

9. It was submitted that the Legislature itself has made the provision for stay of assessment proceeding and its consequence. As the Legislature has provided for a time-limit, it had to provide for stay of assessment proceeding and its consequence so as not to frustrate the object and purpose of the Act. But for this provision, the assessing officer could not have extended, directly or indirectly by staying the assessment proceeding, the period of limitation. In the absence of such a provision negligence or connivance of the assessing officer would have given rise to a right to immunity from payment of proper amount of tax. Our attention was drawn to the definition of "legislative power" by Mr. Green as contained in "Treatise on Constitutional Law" by Wills. The expression is defined as "the power to create rights, powers, privileges, or immunities, and their correlatives, as well as status, not dependent upon any previous rights, duties, etc."

10. With respect to the administrative action, quasi-judicial function and a legislative act, the Supreme Court in *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, has observed as under :

"..... It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is "difficult in theory and impossible in practice". Though difficult, it is necessary that the line must sometimes be drawn as different legal rights and consequences may ensue. The distinction between the two has usually been expressed as "one between the general and the particular". "A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases". It has also been said "rule making is normally directed towards the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts"

11. The learned Advocate-General drew our attention to page 264 of *Legislative Drafting* by G.C. Thornton, Third Edition, where we find a statement to the effect that it is not unusual to delegate power to more than one Minister acting jointly and to provide that delegated legislation with financial implications may be made only "with the consent of the Treasury" or "with the approval of the Treasury". He also pointed out that merely because the power vested in the delegates is made exercisable on the advice or on the recommendation of or with the concurrence with another authority, it cannot be said that the power, which is vested, is not legislative in character. Of course, legislative power can be delegated by the Legislature to the executive. When the legislative power is so delegated, legislative function of the executive consists of making rules, regulations, bye-

laws, etc. Whether it is by the Legislature or executive, it is normally general and relates to the future. Ordinarily, all legislative measures are published in a certain manner. Viewed in this manner, the passing of a general or special order in exercise of the power conferred by the proviso u/s 42(1) cannot properly be regarded as a legislative act or a piece of delegated legislation. The power to pass an order is given to two authorities, viz., the State Government and the Commissioner. The order may be of general application, or it may be applicable to a single assessee. The order contemplated by the proviso can hardly be regarded as an instrument creating rights or liabilities or rules of conduct. It is difficult to appreciate how an order staying proceedings in case of an individual assessee on the special facts of the case can be said to be a rule of conduct either for assessees or sales tax authorities as a whole or with respect to a class of dealers or class of authorities. As rightly pointed out by the learned counsel for the petitioner, there is no requirement of publishing such order and such orders are, in fact, not published. He also rightly pointed out that the requirement of recording reasons for passing such an order is not consistent with the said order being legislative in character. We also see some force in the contention of Mr. Kaji, learned counsel for the petitioner that such power has been vested in two authorities and as the power given to the Commissioner can be exercised only subject to conditions prescribed by the State Government, a function to be performed by them cannot be regarded as legislative function. For these reasons, we are not inclined to accept the contention raised by the learned Advocate-General that the power conferred upon the State Government and the Commissioner by the proviso to sub-section (1) of section 42 is legislative in character. Since we are taking this view, it is not necessary for us to consider whether the said provision contains sufficient guidelines or norms, in the absence of which delegation of such power would be regarded as bad as conferring arbitrary powers on the delegates.

12. In our opinion, the function of assessment and the function of staying assessment proceedings need not, of necessity, be regarded as of the same nature. Though staying of assessment proceedings can be said to be connected with the process of assessment, it cannot, strictly, be regarded as a part of the process of assessment. Though the power to stay assessment proceeding has to be exercised during the pendency of the assessment proceeding, exercise of that power is for the purpose of facilitating completion of the assessment proceeding in a just manner. Obviously, it does not have any bearing on any of the questions required to be determined for the purpose of proper assessment. Though the power of staying assessment proceeding is connected with, and, is ancillary to the function of assessment, it is quite distinct from the nature of function of assessment and, therefore, the said function cannot be said to be quasi-judicial merely because the function of assessment is, undoubtedly, quasi-judicial in nature. Whether the function of staying assessment proceedings can be regarded as quasi-judicial or not will depend upon the object and purpose for which the said provision is made and the nature of that function.

13. We will now consider whether the said power is quasi-judicial in nature for the reason that an order passed in exercise thereof would adversely affect the right of the assessee of having his assessment proceedings completed within the prescribed time or that it would result in adverse consequences. Referring to section 42(1), it was submitted by the learned counsel for the petitioner that the said provision provides for a period of limitation, with the result that if the assessment proceeding is not completed within time, then a vested right is created in favour of the assessee not to be exposed to further demand of tax. It was submitted that since the said provision puts a fetter on the power of the assessing officer, it creates a corresponding right in favour of the assessee of not being subjected to assessment thereafter. In support of this contention, the learned counsel invited our attention to the decision of the Supreme Court in *S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company*, . That was a case arising u/s 34 of the Indian Income Tax Act, 1922, which provided for time, within which notices could be issued by the Income Tax officer for assessment or reassessment under certain circumstances. With respect to such a provision, the Supreme Court observed that the period prescribed for assessment is not a period of limitation. Such a provision was regarded as a fetter upon the power of the Income Tax officer to bring to tax income escaping assessment. It was considered as a provision prescribing different periods in different classes of cases for enforcement of the right of the State to recover tax. This decision, therefore, is not of much help to us, because the provision with which we are concerned specifically provides a period of limitation for completion of assessment. But it can certainly be said that, if the period of limitation is permitted to expire, then, in that case, the assessing officer will have no power thereafter to complete the assessment proceeding, acting under sub-section (3) or (4) of section 41 of the Act. If the assessment proceeding is thus allowed to become time-barred and if the assessing officer, thus, loses his power of completing the assessment acting under sub-section (3) or sub-section (4) of section 41, then, it can be said that the assessee thereafter acquires an immunity from being subjected to the requirements of sub-section (3) or (4) of section 41. Even then, it cannot be said that the said provision confers a right on the assessee. Even if it is assumed that the said provision does confer a right on the assessee, such a right would not come into existence if within the period of limitation, the power conferred by the proviso is exercised and an order for staying the assessment proceedings is passed. This will be the effect of passing an order staying the assessment proceeding in view of the second proviso to section 42(1).

14. Prior to May 6, 1970, there was no provision in the Act prescribing time-limit within which assessment proceeding was required to be completed. It appears that the Legislature thought of making a provision for time-limit for completion of assessments in view of the report of the Sales Tax Enquiry Committee appointed by the Government of Gujarat, which gave its report in the year 1967. The position of assessment cases lingering for years was not regarded as satisfactory,

as the dealers had to preserve account books for long periods and it used to become difficult for them to produce evidence at a very late stage to support their claims of set-off, exemptions, etc. The position was regarded as unsatisfactory also because delay in assessments was jeopardising Government revenues and the recoveries were becoming difficult. Considering the difficulties of the administration and the staff and the desirability of exerting necessary pressure on the administration to carry out such assessments, the committee recommended that a statutory time-limit be provided for completion of assessments. The committee recommended three years as the time-limit for completion of assessments and that is how, initially, the Legislature had provided three years' time-limit for completion of assessment proceedings. Subsequently, in 1979, the time-limit was amended by reducing it to two years. But, while providing for the time-limit for completion of assessments, the Legislature also simultaneously provided for stay of assessment proceedings of a dealer or class of dealers, if considered necessary by the State Government or the Commissioner. The Legislature also simultaneously provided that in computing the period of limitation for the purpose of section 42, any period, during which assessment proceedings are stayed under the first proviso or by an order or injunction of any court or authority, shall be excluded. Therefore, while trying to find out the nature and extent of right or the protection given to the assessee by the said provision, we will have to read it as a whole. If the said provision is read in this manner, then, it becomes apparent that the assessment proceedings will become time-barred on expiry of two years, provided within that period, they are not stayed. In other words, if the assessment proceedings are stayed before the expiry of the period of limitation, then, in that case, the assessment proceedings will not become time-barred immediately on expiration of the said period of two years, as the period during which the proceedings remained stayed will have to be excluded while computing the period of limitation. If assessment proceedings are stayed, then, in such a case, no right in favour of the assessee will come into existence on the expiration of the period of two years. Therefore, even if we proceed on the basis that a right in favour of the assessee comes into existence on expiration of the period of limitation, that stage will not be reached till the period of limitation, as extended because of the stay, becomes over. Therefore, it is not possible to accept the contention that on expiration of the period of two years, the power to assess comes to an end. As pointed out by us earlier, the combined effect of the two provisions is to extend the period of limitation by such time, during which the assessment proceeding is stayed, and, therefore, the power to complete that assessment will not come to an end immediately on expiration of two years. For all these reasons, we find no merit in the contention of the learned counsel for the petitioner that, as the right to be assessed within the period of limitation and not to be subjected to any liability after expiration of two years gets affected adversely by an order of stay, the function of granting stay should be regarded as quasi-judicial.

15. The second ground on which it was submitted that the said function should

be regarded as quasi-judicial is that if the assessment proceeding is stayed, then that will adversely affect the assessee, inasmuch as that will postpone quantification of the correct amount of sales tax payable by the assessee and/or delayed payment of amount becoming refundable to the assessee. Thus, he may have to suffer loss of interest or he may have to pay interest for a longer period for the amount of sales tax not paid but subsequently found to be due and payable, as under the Act, interest is payable on the amount of tax not paid within the prescribed time till it is paid. He may not be able to lead evidence in support of his claim or rebut evidence, which may be discovered by the department because of lapse of time. It is not possible to accept this contention also mainly because, as we will subsequently point out, the order to stay assessment proceedings can be passed on administrative exigencies. In such a case, there would neither be a *lis* nor a quasi *lis* between the parties. Again, from the purpose for which such a provision has been made and the nature of the function, it cannot be said that any dispute is resolved either by the State Government or by the Commissioner while staying the assessment proceeding. The effect and consequences which may follow will not be as a result of any resolution of a dispute, but because of operation of other provisions of law.

16. As pointed out earlier, while providing three years' time-limit, a balance was sought to be struck between the difficulties of the department in completing assessment proceeding expeditiously and the likely harassment or hardship to be suffered by the assessee if the assessment proceedings linger on for a long time. Therefore, the Legislature, while providing for the time-limit, also provided for stay of assessment proceedings and exclusion of the period, during which assessment proceedings remained stayed while computing the period of limitation. The assessment proceedings may be required to be stayed not only because of any difficulty in completing assessment proceeding individually, but all assessments generally. Faced with an emergency or some unexpected situation, it may become necessary for the Government or the Commissioner to stay the proceedings in order to save the period of limitation. A war or a strike by the Officers of the Sales Tax Department, for example, may make it impossible or difficult to complete the assessment proceedings within the period of limitation. In such cases, in order to see that the Government revenue does not suffer, the Government or the Commissioner may be required to stay the assessment proceedings. Again, for example, if an important point of law is decided, say by the High Court, and the matter is carried to the Supreme Court, then the assessment proceedings involving such a question may have to be stayed not only for the benefit of the department, but also for the benefit of the assessee in order to avoid duplication of work later on. Thus, considering the nature and extent of the power or the function, we are of the opinion that the said function is administrative in nature.

17. Even though the action may be administrative, if it is likely to have civil consequences adversely affecting the persons concerned, the courts have held that, before taking such administrative actions or decisions, principles of natural

justice should be followed. That again is not applicable to all administrative functions and to all situations. Whether the principles of natural justice should be followed and to what extent would depend upon the nature of the functions and the nature of the effect it will have on the persons likely to be affected thereby. We have already pointed out earlier some of the circumstances, under which an order for stay of assessment proceedings may have to be passed either by the Government or the Commissioner. We have also pointed out that, passing of an order of stay does not have any direct effect on the assessee except that the time-limit, within which the assessment proceedings are to be completed, gets extended for some more time. Order for stay of assessment proceedings may have to be passed for reasons, with respect to which the assessee will have nothing to say or with which he may not be concerned. Such an order may have to be passed if a situation arises, under which it is not possible to complete assessment proceedings and it may not even be desirable to hear the assessee on the question as to whether the proceedings should be stayed or not in view of such a situation. We are, therefore, of the opinion that, while passing the order of stay, neither the State Government nor the Commissioner will be under an obligation to issue a prior notice to the assessee or to give him an opportunity of hearing. No doubt, the Government or the Commissioner will have to record reasons for passing such an order. Such an order can be passed only if passing such an order is found necessary and thus, what was the necessity will have to be indicated in the order. As the assessment proceeding will get stayed as a result of the order, we are of the view that such an order, containing reason, has to be served upon the assessee. In our opinion, this is the only requirement of principles of natural justice, which can be read into the provision.

18. After we dictated this judgment in open court, but before we could sign it, the learned advocate for the assessee filed a note for rehearing of this petition on the ground that some judgments, which he ought to have cited, were not cited at the time of hearing of the petition. In view of that note, this petition was again listed before us on July 16, 1992. On that day Mr. Doshit, learned advocate appearing for the respondents, submitted that no rehearing of the petition is required. We have carefully gone through the decisions on which Mr. Kaji wanted to rely and after going through the same, we do not think it necessary to rehear this petition. Therefore, we have not accepted the request made on behalf of the petitioner for rehearing the petition, but we think it proper to deal with those decisions.

19. First decision relied upon by the learned advocate is that of the Rajasthan High Court in Jaipur Udyog Ltd. Vs. Commercial Taxes Officer, . In that case, the question which had arisen for consideration was, whether service of a valid notice, within the period of limitation, was a condition precedent for assuming jurisdiction for reassessment u/s 12 of the Rajasthan Sales Tax Act, 1969. We, therefore, fail to appreciate how the said decision can be of any help in deciding the question which arises for our consideration. The learned advocate also relied upon another decision of the Rajasthan High Court in Commercial Taxes Officer v.

Hindustan Zinc Ltd. [1992] 85 STC 142 Raj, wherein the Rajasthan High Court has held that u/s 10B(1)(iv) of the Rajasthan Sales Tax Act, 1954, before time for making an assessment is extended in any case, the dealer has to be given an opportunity to be heard, and reasons for extension of time have to be recorded. The Rajasthan High Court further held that where extension of time is granted without giving the dealer an opportunity to be heard and recording reasons the assessment proceedings are invalid. The reason given by the Rajasthan High Court is that : "..... The settled view is that extension granted without opportunity of hearing and without reasons having been recorded for the same invalidates the order". No decision has been referred to by the Rajasthan High Court in support of that view. Moreover, the points, which have been raised before us, were not raised before the Rajasthan High Court and thus the said decision appears to have been rendered without considering all the relevant aspects. Therefore, with due respect, it is not possible to accept the view taken by the Rajasthan High Court in that case.

20. Next decision relied upon is that of the Patna High Court in Tata Iron and Steel Co. Ltd. Vs. State of Bihar and Others, . That decision is entirely on a different point and the learned advocate was not able to point out which part of the judgment was of any help to him.

21. In State of Andhra Pradesh Vs. Nav Swadeshi Oil Mills, , the Supreme Court, while interpreting sections 14(1) and 14(3), of the Andhra Pradesh General Sales Tax Act, 1957, held that while a dealer who files a return within the prescribed period acquires immunity against assessment on the expiry of four years from the last date of the assessment year, a dealer who fails to file a return within the prescribed period has to wait for six years to be over to acquire such immunity. It is difficult to appreciate how this decision can have any bearing on the question with which we are concerned.

22. The learned counsel relied upon two more decisions of the Supreme Court in Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, and Commissioner of Income Tax, West Bengal III and Others Vs. Oriental Rubber Works, . In Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, , a question had arisen as to whether non-communication of the reasons in the order passed u/s 127(1) of the Income Tax Act, 1961, was such an infirmity as would render the order invalid. The Supreme Court held that non-communication of the reasons in the order passed u/s 127(1) was a serious infirmity and the order was invalid. In Commissioner of Income Tax, West Bengal III and Others Vs. Oriental Rubber Works, , the Supreme Court has held that where books or documents of an assessee seized in a search conducted pursuant to an authorization issued under sub-section (1) of section 132 are retained beyond the period of 180 days from the date of seizure, there is a statutory obligation on the Revenue to communicate to the assessee not merely the Commissioner's approval but also the reasons recorded by the authorised officer or the Income Tax Officer on the basis of which the approval

has been obtained; and such communication must be made as expeditiously as possible after the passing of the order of approval by the Commissioner. The Supreme Court further held that in default of such expeditious communication, the Commissioner's decision according approval will not become effective and any further retention of the books or documents seized would become invalid and unlawful. On the point of recording of reasons and communication thereof to the assessee, we are taking the view which is consistent with the view which has been expressed by the Supreme Court in these two cases. They do not support the contention raised by the learned advocate for the assessee that the assessee is required to be heard before passing an order for stay of assessment proceedings.

23. As we are not inclined to agree with the contentions raised on behalf of the petitioner, it is not necessary for us to consider the alternative contention of the learned Advocate-General that no relief should be granted to the petitioner as that would result in unjust enrichment.

24. In the result, this petition fails and is dismissed. Rule is discharged with no order as to costs. Ad interim relief stands vacated.

25. Petition dismissed.