

(1970) 02 AHC CK 0005

In the Allahabad High Court

Case No : Sales Tax Reference No. 147 of 1969

Premier Motors (P.) Ltd.

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 19-02-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (1970) 26 STC 402

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : S.N. Verma, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.L. Gulati, J.—u/s 11(1) of the U.P. Sales Tax Act, the Judge (Revisions) Sales Tax, U.P., Lucknow, has submitted this statement of the case with the following question of law for the opinion of this court :

Whether on the facts and circumstances of this case as discussed in my order dated 23rd May, 1968 and in the order of the appellate court, dated 23rd April, 1965, the applicant was entitled to get the witnesses relied upon by the assessing authority examined in his presence and further whether he was entitled to cross-examine them.

2. The assessee M/s. Premier Motors (Pvt.) Ltd., Lucknow, is a dealer in motor vehicles. In respect of the assessment year 1958-59 the assessee disclosed a gross turnover of Rs. 35,79,753 and a net turnover of Rs. 21,98,063. While computing its net turnover the assessee had excluded a sum of Rs. 6,66,418.36 being the sale proceeds of 28 vehicles sold at Solan and not at Lucknow. The assessing authority came to the conclusion that out of 28 vehicles, 24 vehicles valued at Rs. 5,84,252.35 had been sold within U.P. and he, therefore, enhanced the assessee's net turnover to that extent.

3. It appears that the Sales Tax Officer (S.I.B.) carried out certain investigation to find out if the vehicles alleged to have been sold by the assessee at Solan

were really sold at Solan or were sold inside U.P. In the course of such investigation statement on oath of the manager of K. T. Financiers, Hazratganj, Lucknow, who had financed certain purchasers of the vehicles, was taken and likewise statements of some purchasers were also recorded. The Sales Tax Officer (S.I.B.) submitted a report to the assessing authority on the basis of which the Sales Tax Officer held that out of 28 vehicles, 24 vehicles alleged to have been sold at Solan were in fact sold inside Uttar Pradesh. The assessee during the course of assessment proceedings had applied for a copy of the report of the Sales Tax Officer (S.I.B.) and had also requested that the witnesses, who were examined by the Sales Tax Officer (S.I.B.) behind the back of the assessee, should be summoned and be examined in its presence so as to enable the assessee to cross-examine them, Both these requests of the assessee were rejected by the assessing authority.

4. The assessee appealed against the assessment order and one of the grievances put forward before the appellate authority was that the Sales Tax Officer was not justified in rejecting the request of the assessee for a copy of the report of the Sales Tax Officer (S.I.B.) and for summoning the witnesses who had been examined behind its back.

5. The appellate authority after examining the rival contentions of the parties came to the conclusion that the grievance of the assessee was justified. He accordingly set aside the assessment order and remanded the case to the assessing officer with three directions including the direction that certain witnesses should be summoned in the presence of the assessee who should be given an opportunity to cross-examine them. The Commissioner of Sales Tax felt aggrieved and went up in revision. The revising authority came to the conclusion that the appellate authority was not justified in remanding the matter inasmuch as the assessee was not entitled to cross-examine the witnesses who had been examined by the Sales Tax Officer (S.I.B.). At the instance of the assessee, however, the revising authority has made this reference to this court.

6. At the outset we might mention that the Judge (Revisions) appears to have entertained the view that in proceedings under the U.P. Sales Tax Act an assessing authority is free to conduct such enquiries as it likes and if in the course of enquiries certain witnesses are examined, the assessee is not entitled to ask the Sales Tax Officer to examine those witnesses in his presence so as to enable him to cross-examine them. This view of the revising authority, in our opinion, is erroneous.

7. It is true that the Evidence Act as such does not apply to the proceedings under the Act and it is also true that the assessing authority may use certain materials which strictly speaking may not be admissible evidence in a court of law. But that does not mean that any material or information gathered by the Sales Tax Officer as a result of a private enquiry can be used against an assessee without disclosing to him the material and without affording him adequate opportunity to rebut the same. The question that would arise in such a case

would be as to whether in the circumstances of the case the assessee can be said to have been afforded a reasonable opportunity to meet the case against him. It cannot be laid down as a matter of law that a witness examined by the Sales Tax Officer can never be summoned for cross-examination. The question would always depend upon the circumstances of each case.

8. In the instant case we find from the assessment order that the assessee in support of its claim had produced the following documentary evidence :

(a) In the goods account the vehicles were shown to have been transferred to Solan branch.

(b) Temporary transit insurance was also obtained for sending the vehicles to Solan from Bombay.

(c) Export charges for transporting vehicles to Solan were also debited and necessary vouchers were also obtained.

(d) Octroi receipt for vehicles were obtained at Solan octroi post for the entry of each vehicle.

(e) Cash memos. were issued on the printed forms of Solan branch.

(f) On delivery chalans of Solan branch, signatures were obtained from the purchasers in support of their plea that the customers had actually gone to Solan and took the delivery of the vehicles there.

9. The assessing authority rejected all this evidence and has relied upon the report of the Sales Tax Officer (S.I.B.) which in turn is based upon the statements of the manager of the firm M/s. K. T. Financiers and some purchasers who had stated before the Sales Tax Officer (S.I.B.) that they had taken the delivery of the vehicles at Lucknow and not at Solan. In such circumstances it became necessary for the assessee to have the statements of the witnesses tested by confronting them with the delivery chalans signed by them according to which the delivery of the vehicles was taken by them at Solan. It is possible that the witnesses may not have disclosed the full facts in their statements made before the Sales Tax Officer (S.I.B.). It is further possible that the witnesses may have given wrong information to the Sales Tax Officer (S.I.B.). In any case it was necessary in the interest of justice in the instant case to confront the witnesses with the documentary evidence in the shape of delivery chalans so that they could clarify or reconcile their statements with the documentary evidence which was clearly at variance with their oral evidence. It was all the more necessary to follow this procedure because the assessee had alleged that the witnesses had made the statement before the Sales Tax Officer (S.I.B.) under duress and undue pressure. There can be no manner of doubt that the assessing authority while taking proceedings for assessment under the Act performs quasi-judicial functions and should be governed by judicial considerations and must conform to the rules of natural justice. The Supreme Court while dealing with a similar function of an Income Tax Officer under the *Suraj Mall Mohta and Co. Vs. A.V.*

Visvanatha Sastri and Another, observed at page 13 :

When an assessment on escaped or evaded income is made under the provisions of Section 34 of the Indian Income Tax Act, all the provisions for arriving at the assessment provided u/s 23(3) come into operation and the assessment has to be made on all relevant materials and on evidence and the assessee ordinarily has the fullest right to inspect the records and all documents and materials that are to be used against him. Under the provisions of Section 37 of the Indian Income Tax Act the proceedings before the Income Tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at. In other words, the assessee would have a right to inspect the record and all relevant documents before he is called upon to lead evidence in rebuttal.

10. In *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal* [1954] 26 ITR 775 (S.C.) the Supreme Court set aside an assessment order where this fundamental principle of natural justice was violated. We are of opinion that the same principle would apply to the proceedings under the U.P. Sales Tax Act. The provisions relating to the assessment contained in Section 7 read with Rule 41 are in pan materia with the corresponding provisions of assessment u/s 23(3) of the Income Tax Act, 1922. u/s 37 of the Income Tax Act, an Income Tax Officer has all the powers of a civil court for purposes of enforcing the attendance of any witness etc. and similar powers have been conferred on the Sales Tax Officer under Rule 75 of the U.P. Sales Tax Rules, which provides that the Sales Tax Officer...shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely,

- (a) enforcing the attendance of any person and examining him on oath or affirmation ;
- (b) compelling the production of documents ; and
- (c) issuing commissions for the examination of witnesses and any proceeding before any of the officers shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

11. In *Raghubar Mandal Harihar Mandal Vs. The State of Bihar*, the Supreme Court observed that the provisions of the Indian Income Tax Act were in pari materia with the provisions of the Bihar Sales Tax Act and reiterated that the principles enunciated in *Suraj Mall Mohta & Co.'s case* [1954] 26 S.T.C. 1 (S.C.) and in the case of *Dhakeswari Cotton Mills Ltd.* [1954] 26 S.T.C. 775 (S.C.) were applicable to the proceedings under the Bihar Sales Tax Act. It is thus clear that the proceedings of assessment under the Act must be conducted in accordance with the principles of natural justice and the assessee should be afforded a fair opportunity to rebut the materials sought to be used against him.

12. Now, turning to the facts of the instant case, we find that such an opportunity was not afforded to the assessee as is evident from the following extracts of paragraph 7 of the assessment order :

All these facts were made known to the dealer and several opportunities were given to him for filing the written statements which he failed to do so.

(a) However, it was argued that the statements and the proceedings of the S.T.O. (S.I.B.) were carried on at their back in view of which this should not be accepted as a useful evidence. For this an application was also moved that some witnesses be summoned so that they may be cross-examined by them. During the course of proceedings they had influenced many witnesses which is clear from the report of the S.T.O. (S.I.B.). For instance one Sri B. S. Sayal, Joint Director, Education, U.P., 45, Mahatma Gandhi Marg, Allahabad, was successfully persuaded by the firm to change his earlier version. Similarly this Jullundur firm as mentioned earlier was also persuaded.

Considering these facts I thought it unnecessary to summon the witnesses because they were also liable to be influenced by them now and their examination would not have served the useful purpose in view of the overwhelming evidence with the department. The application was, therefore, rejected.

13. To ask the assessee to file a written statement is not the same thing as to give him an opportunity of leading evidence in rebuttal. The fact that certain witnesses had changed their original statement or other witnesses were likely to do so is no ground for refusing to summon them for cross-examination. In fact this state of affairs shows very clearly that the testimony of those witnesses required to be tested by cross-examination before it could be used against the assessee. The revising authority while dealing with the contention of the assessee has observed in its revisional order :

It was argued on behalf of the opposite party that certain witnesses gave wrong statements behind the back of the opposite party. If that was so, it was open to the opposite party to produce their affidavits or subsequent statements in order to controvert the testimony before the assessing officer. This was not done. I am of opinion that full opportunity was given to the opposite party to meet the case against him and he is not entitled to cross-examine any witness.

14. The approach of the revising authority is again wrong. Evidently the assessee wanted the witnesses to be examined in its presence to show that the statements made by them before the Sales Tax Officer (S.I.B.) were incomplete, incorrect or untrue. This could not be achieved by asking the assessee to file affidavit or unsworn statements of those witnesses. The witnesses who had deposed against the assessee could not be under the control of the assessee. In the circumstances the only course open to the assessee was to approach the assessing authority to summon those witnesses in exercise of its power under Rule 75 so that they could be confronted with the documentary evidence in the

possession of the assessee.

15. The case of Bhagwandas Khandelwal v. The State of Orissa [1963] 14 S.T.C. 642 relied upon by the revising authority is clearly distinguishable because there the material sought to be relied upon by the assessing officer was the extract of accounts obtained from two dealers which extracts were placed before the assessee and secondly, the assessee had made no request to the assessing authority to summon the dealers who had supplied the extracts of the accounts and one of whom had also made an oral statement. In the instant case the assessee had been pressing its demand for summoning the witnesses from the very beginning and, in our opinion, for very cogent and substantial reasons.

16. Before parting with this case we might refer to the recent decision of the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, where their Lordships observed :

The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like India which is regulated and controlled by the rule of law, it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision.

17. In view of this authority it is futile to contend for the revenue that because the Sales Tax Officer is not a court and is not bound by the rules of evidence, therefore, the assessee is not entitled to have a witness examined in his presence where the statement of such a witness recorded at the back of the assessee is sought to be used against him and particularly where the statements of the witnesses concerned in this case are at variance with the documentary evidence in possession of the assessee.

18. We are of opinion that the view taken by the Judge (Revisions) is not correct and the appellate authority approached the matter from a right angle when it remanded the matter to the assessing authority to afford an opportunity to the assessee to cross-examine the witnesses.

19. For the reasons stated above, we answer the question in the affirmative in favour of the assessee and against the department. The assessee is entitled to its costs which we assess at Rs. 100. The counsel fee is assessed at the same

figure.