(2000) 05 DEL CK 0005

In the Delhi High Court

Case No : C.W.P. 2097 of 1996

Raj Photo Studio — APPELLANT

Vs

Sales Tax Officer — RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Sales Tax Act, 1975 — Section 4(2)

Citation : (2000) 5 AD 705 : (2000) 86 DLT 1 : (2001) 122 STC 279

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. Bhagwati Parshad, for the Appellant; Mr. S.C. Ladi, for the Respondent

Judgement

Arijit Pasayat, CJ.

1. Disallowance of claim of deduction u/s 4(2)(V) of Delhi Sales Tax Act, 1975 (in short ''the Act'') in respect of sales to registered dealers as made by the Sales Tax Officer, Ward 61, Bikri Bhawan, New Delhi, hereinafter referred to as the assessing officer, is the subject matter of challenge in this Writ Petition.

2. A brief reference to the factual aspects would suffice. Petitioner, a dealer registered under the Act, claimed deduction in respect of sales stated to have been made to registered dealers. Fifty four declaration forms in Form ST-I were furnished in support of the claim. Assessing officer rejected the claim on the ground that the purchasing dealers who had issued those forms had indicated different figures in respect of the transactions covered by the forms. On the aforesaid ground, the assessment for the year 1983-84 was completed raising extra demand of Rs. 10,60,185/- additionally which is required to be dealt with u/s 50 of the Act. Petitioner submitted its reply and took a stand that the claim was in order. A prayer was made to summon the concerned purchasing dealers u/s 42 for the purpose of verification of the Act. Since no action was taken on the request and the extra demand was raised, the present Writ Petition has been

filed.

3. Petitioner has taken the stand that non-issuance of summons to the concerned parties amounted to violation of the principles of natural justice and a fair opportunity has been denied. Learned counsel for the Revenue, on the other hand, submitted that records of purchasing dealers were verified in detail and since the figures reflected in the documents available with the assessing officer were different than those reflected by the Petitioner, disallowance has been rightly made. According to him there was no denial of opportunity and/or violation of principles of natural justice.

4. Section 4 of the Act deals with the rates of tax and deals with various deductions permissible while determining the gross and taxable turnover. The turnover of a dealer, as provided u/s 2(o) means aggregate amount of sale price received or receivable by the dealer subject to certain deductions. Taxable turnover assumes importance as it is linked with quantification of tax liability of a dealer. Sub-clause (V) of Section 4(2)(a) deals with sales made by a registered dealer to another registered dealer, Such sales are allowed to be deducted from the turnover provided such sales have been made to the purchasing dealers for any of the three purposes, i.e. for manufacturing some other items from the goods purchased; or for reselling them or for the purpose of using them as packing material for the goods which are manufactured or are sold. Rule 8 of the Delhi Sales Tax Rules, 1975 (hereinafter referred to as the Rules) deals with authority from whom declaration forms may be obtained and used, custody and maintenance of record of such forms and the matter incidental thereto. Rule 7 stipulates conditions subject to which a dealer may claim deduction on his turnover from sales to registered dealers. As the controversy is no mistakably linked with Section 4(2)(a), Rules 7 and 8, it is necessary to reproduce them :

Section 4(2)(a)(v).

For the purpose of the Act, "taxable turnover" means that part of a dealer''s turnover during the prescribed period in any year which remains after deducting there from :

(a) his turnover during that period on -

(i) xx xxx xxx

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) sale to a registered dealer :

Rule 7. Conditions subject to which a dealer may claim deduction from his turnover on account of sales to registered dealers- 1. A dealer who wishes to deduct from his turnover the amount in respect of sales on the ground that he is entitled to made such deduction under the provisions of sub-clause (v) of clause (a) of sub-section (2) of section 4, shall produce :

(a) copies of the relevant cash memos or bills according as the sales are cash sales or sales on credit; and

(b) a declaration in Form ST-1 duly filled in and signed by the purchasing dealer or a person authorized by him in writing.

Rule 8. Authority from whom the declaration form may be obtained, and use, custody and maintenance of records of such forms and matters incidental thereto.- 1. The declaration referred to in the second proviso the clause

(a) of sub-section (2) of Section 4 shall be in form ST-1 which shall be printed under the authority of the Commissioner and shall be obtained from the appropriate assessing authority by the registered dealer intending to purchase goods on the strength of his certificate of registration.

5. For claiming deductions the declaration form required to be produced has to be in terms of Form ST-1. The said form consists of three parts, i.e. original, duplicate and counterfoil. Various particulars have to be filled in while using the form. Petitioner''s stand is that if there was any discrepancy, it should have been granted an opportunity to reconcile the figures with those of the purchasing dealer and for that purpose a prayer was made u/s 42 of the Act which deals with the powers of the Commissioner and other authorities to take evidence on oath. The Revenue authorities seem to have proceeded on the basis that when the purchasing dealer have furnished the details on the basis of counterfoils retained by them there was no necessity for further opportunity being granted to reconcile the discrepancy, if any. Initially, the burden is on the dealer who claims a deduction to show that he is in law entitled to claim such a deduction, In the case at hand, the Revenue relied on documents of persons from whom forms were obtained and discrepancy was alleged. Principles of natural justice and fair play demanded that the prayer made to summon the purchasing dealers deserved acceptance.

6. By a catena of decisions it has been held that the assessing authority is entitled to collect materials behind the back of the assessee, and is not required to disclose the source in all cases. But, he is bound to disclose that materials adverse to the assessed in his possession which he intends to utilize against the assessed in the assessment. It is the salutary requirement of the principles of natural justice mandating that a person is entitled to know the materials which are sought to be utilized against him for any adverse adjudication. After collecting the materials which are sought to be utilized against the assessee, a reasonable opportunity of stating his case is to be given. If the assessed demands that the person who has stated something adverse to him is to be cross-examined, same is to be allowed. If Revenue is of the view that there are entries in the accounts of another person which have not been reflected in the assessor?s account, or have not been correctly reflected and it is claimed that

those entries related to the assessee, the person in whose accounts the entries have been made have to be produced by the Revenue for the purpose of cross-verification and/or cross-examination if a demand is made by the assessed for the said purpose. This position was succinctly stated by the apex Court in State of Kerala Vs. K. T. Shaduli Yusuff 1977 39 STC 478. It has to be noted that in such cases, the person in whose books the entries appear stands in the position of a witness for the Revenue when the entries in his books of accounts are sought to be utilised for drawing adverse inference. Different figures as appearing in the purchasing dealers'' books of account are essentially relatable to materials providing foundation for the view of assessing officer. If he proposes to utilize the materials collected, he is bound to give an opportunity to the assessed to inspect them and to grant copies if applied for. It is in line with the principles of natural justice. Essential characteristic of "natural justice" is put by Romans in two maxims : (i) nemo judex in causa, sua and (ii) audi alteram partem, which respectively mean (i) no one can be a Judge in his own cause, and (ii) hear both sides. The said rules of natural justice is to secure justice to prevent miscarriage of justice. The person affected must have: (i) a reasonable opportunity of being heard; and (ii) the hearing must be a genuine one and not an empty public relation exercise. It is a basic requirement of principles of natural justice that before an order adverse to a person is passed, he should be granted an opportunity of hearing. Two fundamental principles of natural justice are that a man should not a Judge of his own cause, and no order should be passed without hearing the affected party. The maxim audi alteram partem (hear the other side) mandates it. A new rule closely and intrinsically linked with the aforesaid maxim is being accepted as fundamental. It is " qui a liquid statueritparte indusial altera, vacuum licet dixerit, haud vacuum facer it" (he who determines any matter without hearing both sides, though he may have said what is right, will not have done what is right). Logically, justice should not only be done, but should appear to have been done. The requirement of natural justice is to disclose such materials, which are used against the affected person. In the celebrated case of Cooper Vs. Hendwoath Board of Works (1963) 143 HR 414, the principle was thus stated: "Even God did not pass a sentence upon Adam before he was called upon to make his defense." "Adam" says God, "where art thou" " has thou not eaten of the tree whereof I commanded thee that thou should not eat". Since then the principle has been chiseled, honed and refined, enriching its content. A more recent statement of the law in Mulloch Vs. Abardeen 1971 (2) ER 1278 is that " the right of a man to be heard in his defense is the most elementary protection". This position was highlighted in Eric Alvares Vs. Collector and Others, , and Banamali Jena (after him) Subasini Mohapatra (after her) Haris Chandra Mohapatra Vs. State of Orissa (1996) 82 CLT 402. It is consonant with the principles of natural justice to conclude that no opportunity of being heard can be said to be "reasonable" unless the authority discloses to the person aggrieved the materials upon which he proposes to decide (See R. Vs. Westminster Asst. CIT 1940 5 All ER 132; R. Vs. Bondmin [1947] 1 All ER 109.

7. Under the circumstances, we feel that the Petitioner was denied due and proper opportunity to place materials in support of its claim. There was no legal impediment on the part of the assessing officer in issuing summons to the purchasing dealers, as requested. In the circumstances, we deem it necessary to remand the matter to the assessing officer to make a fresh assessment after issuing summons to those persons whom the Petitioner wants to summon. Whether the assessing officer would accept the claim after that is a matter for him to decide. We have not expressed any opinion on that aspect.

The Petition is allowed to the extent indicated.