
(1990) 05 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No"s. 19, 20 and 21 of 1988

Sankar Trading

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 22-05-1990

Acts Referred:

Tripura Sales Tax Act, 1976 — Section 9(2)

Citation : (1990) 2 GLR 169

Hon'ble Judges : H.K. Sema, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.R. Bhattacharjee, H.A. Sarkar and P.K. Majumdar, for the Appellant; M. Nath, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—These three writ petitions involve common questions of law and fact as such these are taken up together for hearing.

2. The Petitioner in these cases is a dealer in tea. It is registered under the Tripura Sales Tax Act, 1976 (hereinafter referred to as the Act"). It submitted returns of turnover and paid the tax due thereon. In compliance of the notice issued by the Superintendent of Taxes u/s 9(2) of the Act the Petitioner also appeared before him and produced the books of account and documents and other evidence in support of the returns. No defect, as such, was found in the books or the documents produced by the dealer. However the Superintendent of Taxes felt that the sale prices of tea shown in the books of account, cash memos, invoices, bills etc. were lower than the prevailing market price of tea. He, therefore, did not consider the accounts to be correct and complete and estimated the turnover of the Petitioner at a higher figure than the one disclosed in the return taking the sale price of tea @ Rs. 15/-per kg, in the assessment for the year ending 31.3.30, @ Rs. 16/- per kg, in the assessment for the year ending 31.3.81, @ Rs. 17/-per kg, in the assessment for the year ending 31.3.32. The appeals and revisions filed by the Petitioner were rejected and the

orders of assessment were confirmed.

3. The main grievance of the Petitioner is that there is no material on record to show that the prevailing market rate of tea was Rs. 15, Rs. 16 and Rs. 17 per kg, respectively during the three years under consideration. In other words, according to the Petitioner, it was incumbent on the part of the revenue to inform the Petitioner the materials, if any, on the basis of which it arrived at a conclusion that the market rate of tea was as indicated above. Had that been done the Petitioner could have explained the same or differentiated his case from the Ors. . Addition of the sales price of tea at a much higher figure than that disclosed by the Petitioner in the accounts and documents and the determination of the turnover on the basis thereof without furnishing the material or evidence on the basis of which such estimate was based, according to the Petitioner, is not tenable in law. In support of the contentions the Petitioner relies on a decision of this Court in *Dwijendra Kumar Bhattacharjee v. The Superintendent of Taxes* reported in (1989) 2 GLR 461.

4. We have considered the submissions of the learned Counsel. No counter has been filed by the revenue. From the assessment orders as as the appellate or revisional order it does not appear that any trial on evidence on the basis of which the accounts and documents the Petitioner were rejected and the higher sale price of tea was opted for estimation of the turnover was pointed out to the Petitioner is that view of the matter as observed in *Dwijendra Kumar Bhattacharjee* (supra) the Assessee was denied the opportunity of meeting the case which was made out in the assessment orders. We may refer to para of the said decision where it has been held:

The assessing officer cannot rely on any evidence or any fact in arriving at his conclusion without first pointing out the same to the Assessee and giving him a reasonable opportunity of meeting the case which is sought to be made out in the assessment order. In other words, though the assessing officer can make such inquiries he considers necessary he must give an opportunity of being heard to the Assessee in respect of any materials proposed to be used for the purpose of assessment. Even in cases where the assessing officer gets information?s from private sources and does not want to disclose the source of information to the Assessee, he shall have to communicate to the Assessee the substance of such information if he proposes to use the result of such inquiry against the Assessee. It is necessary in order to put the Assessee in possession of full particulars of the case he is expected to meet. The assessee must be given full opportunity to meet objections raised by the assessing officer if an assessment is based on materials which were not disclosed to the Assessee, the order of assessment would be vitiated.

5. Following the aforesaid decision we are of the opinion that it was incumbent on the part of the Superintendent of Taxes to inform the Petitioner the materials or to furnish the necessary information gathered by him in regard to the market rate of tea prevailing at the particular time to enable it to submit its explanation

in that regard. That having not been done the impugned orders of assessment are vitiated and cannot be sustained.

6. In view of what has been stated, the impugned orders of assessment for the years 1.4.79-31.3.80, 1.4.80-31.3.81 and 1.4.81-31.3.82 are set aside. The Superintendent of Taxes may supply the necessary Information to the Petitioner and after giving him reasonable opportunity of hearing pass a fresh order.

7. In the result, the petitions are allowed. No order as to costs.