

(1967) 01 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No's. 1360 to 1362 of 1964 and C.M.Ps. No's. 14215, 14216 and 14217 of 1966

Varghese and Co.

APPELLANT

Vs

Joint Commercial Tax Officer

RESPONDENT

Date of Decision : 24-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) 19 STC 440

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : C.S. Chandrasekhara Sastry, for the Appellant; Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—These are petitions filed by a businessman in a case when raids were made, searches were conducted and account books

were seized for the purposes of a close scrutiny, minute examination and investigation of correctness and completeness of their accounts and. the

intricacies of their business dealings and transactions. On 5th June, 1964, the Joint Commercial Tax Officer, the respondent herein, raided the

business premises and godowns of the petitioners and seized all the available records. The gravamen of the charge of the petitioners is that they

were not given an opportunity to explain the entries in the account books and correspondence seized from them before the Sales Tax Authorities

passed provisional assessment. After the seizure of the records, the Joint Commercial Tax Officer issued a notice to the petitioners stating that the

inspection of the petitioners" place of business and their godowns showed that,

they were maintaining anamath accounts in a pocket note book and in slips of papers, that a check of the pocket note book showed that the petitioners did not account for sales amounting to Rs. 2,09,445.46 relating to the month of April, 1964, that he proposed to determine their turnover for the month of April, 1964, at Rs. 5,48,721.30, and if they had any objection to the proposal they or their representatives could appear before the Joint Commercial Tax Officer at 11 a.m. on 29th July, 1964, and prove the correctness and completeness of their accounts. Along with the notice, extracts from the pocket note book of the petitioners giving naked figures running into ten pages without any details and amounting to Rs. 2,09,445.46 were sent and the petitioners were directed to explain the implications and intricacies of their dealings. Even a businessman having a colossal memory cannot explain without the help of his account books. Therefore the petitioners by their letter dated 28th July, 1964, asked the respondent to return the account books seized for enabling them to file objections and requested to give 10 days' time to file objections. By a letter dated 28th July, 1964, the respondent replied stating that their accountant took extracts from the account books in the office for submitting A-2 returns, that their explanation for asking time was not real, and that however they were allowed time till 31st July, 1964, to file their objections. Once again the petitioners wrote to the respondent a lengthy letter complaining that the authorities concerned took away 31 items as per the list furnished to the petitioners by the Assistant Commercial Tax Officer and requesting the authorities concerned to return the records which were in their custody to enable them to send their objections to the proposed assessment. The petitioners suggested to the Sales Tax Authorities to take every conceivable safety measure when the records were handed over to them. The petitioners even undertook to take true copies of the concerned records for the purpose of proving the correctness and completeness of their accounts. The petitioners requested the authorities at least to furnish them with the certified copies of the records on their furnishing the necessary stamp papers, if they were not allowed to take true copies of the records and file before them. The department did not reply to their letter. Nor did they consider their request. On the other hand, the Sales Tax Authorities passed a provisional assessment in respect of the dealings

of the petitioners for the month of April, 3964. It is this provisional assessment that is now questioned by the petitioners as illegal, irregular and void and violative of the principles of natural justice.

2. It is true that the petitioners are carrying on oil business in a large scale. When the department has suspicion, they are entitled to look into the records, investigate into the intricacies of the transactions and then form their own opinion. It is just and proper that before any assessment is made they should call upon the petitioners to submit their explanation. It is an admitted fact that they seized all the account books of the petitioners during their raid in their premises and retained them with them. Yet when they gave show cause notice to the petitioners, they called upon them to appear with all their account books to prove the correctness and completeness of their accounts. The department should realise that they are dealing with a citizen who is carrying on a trade. He has got a status of his own. His income is assessable to Income Tax. His business is liable to sales tax. His wealth is assessable for estate duty. When such a person is called upon to explain his conduct in the business, the department must give him every consideration and facility to explain his dealings. He should not be harassed or treated as a criminal. The authorities are expected to show sympathy and consideration and inculcate confidence in the businessman to find out the truth about the figures in the account books. When all the account books of a person are in the office of the Sales Tax Authorities and when he is directed to look into the records in the office, one cannot expect to have a warm reception or a calm atmosphere as he would be looked upon by the staff with suspicious looks and expressions of contempt. That is why the petitioners requested the Sales Tax Authorities to return the records to them for enabling them to submit their explanation regarding the naked figures shown in the extracts sent along with the notice. The question that now arises for my consideration is whether the petitioners were given a reasonable opportunity to explain the questions raised by the Sales Tax Authorities about the correctness of the figures in the account books.

3. Principles of natural justice have to be followed even at the time when provisional or final assessment is made. Assessment proceedings are quasi-judicial in nature. The Sales Tax Authorities are entitled to make any

enquiry they consider necessary. But as observed in Durga Prosad Khaitan Vs. The Commercial Tax Officer and Others, ""that does not necessarily mean that the rules of natural justice are to be violated."" Learned counsel for the petitioners contended that no reasonable opportunity was given to the petitioners to submit their explanation as would be clear from the way in which the petitioners were treated by the Sales Tax Authorities. The account books and other records of the petitioners were seized by the Sales Tax Authorities on 5th June, 1964. On 21st July, 1964, a show cause notice was issued to the petitioners why provisional assessment should not be made. On 28th July, 1964, by their letter the petitioners requested the authorities to return the records for enabling them to submit an explanation. By their letter dated 28th July, 1964, the Sales Tax Authorities replied stating that already their accountant took extracts from the account books in the office and that their explanation for asking time was not therefore real. By their letter dated 30th July, 1964, the petitioners prayed for the return of the account books to them after taking every conceivable safety measure. They even undertook to take true copies of the records and file them before the Authorities prior to taking back all their records. Alternatively the petitioners requested the authorities to furnish them certified copies of the records. The authorities did not comply with the petitioners' request. Nor did they send any reply to the petitioners. On 31st July, 1964, a provisional assessment was made in respect of the turnover of the petitioners for April, 1964. In these circumstances one would feel that no reasonable opportunity was given to the petitioners to submit their explanation before the assessment was made. It is useful to refer to the observations made by Veeraswami, J., in Shivji & Co. v. Joint Commercial Tax Officer [1965] 16 S.T.C. 769:

We need hardly observe that the assessment proceedings are quasi-judicial in nature and therefore the assessing authority has an independent duty to carefully scrutinise the materials for assessment and satisfy himself, thoroughly uninfluenced by any direction of superior officers, and assess the tax payable on that basis.... We also note that when hundreds of figures relating to omissions are reported by the intelligence staff, they were placed before the petitioner's representative just on the day of the assessment order and asked to explain then and there. It is patent that such an

opportunity is no opportunity at all. It is expected that the assessee ought to be given, both in law and in fairness, reasonable opportunities to look

into all the necessary documents and other books so as to enable him to explain and show cause why the proposed turnover ought not be taken as

the basis for assessment.

4. Learned counsel for the State contended before me that once an appeal was filed against the final assessment which had been passed during the

pendency of the writ petitions, the purpose of the writ petitions become infructuous and the petitioners could not urge in the writ petitions that no

reasonable opportunity was given to them. Further it was brought to my notice that all the records were returned to the petitioners and certainly the

petitioners would have an opportunity of disputing the correctness of the final assessment made by the Sales Tax Authorities. Learned counsel for

the petitioners contended that even though the petitioners have preferred an appeal against the final assessment, they have got a legitimate right to

complain to this Court having writ jurisdiction that no reasonable opportunity was given to them at the time of the provisional assessment which had

become final in the normal course. There seems to be some force in the contention urged by the learned counsel for the petitioners. Cases have

held and decided that under Article 226 a writ can issue or an order can be passed against an assessing authority when he proceeds to make an

assessment in spite of the objections made by an assessee that he has no jurisdiction, or when he proposes to make an assessment in pursuance of

a notice which is invalid or not served in accordance with law or seeks to recover tax under assessment orders, which were made without or in

excess of jurisdiction, or if the Tribunal has refused to entertain reference application or if the order passed is in violation of the principles of natural

justice. Therefore the point to be considered at this stage is whether the petitioners are entitled to continue the proceedings in this Court when they

themselves chose an alternative remedy, namely, filing a regular appeal against the final assessment, which was made during the pendency of the

writ petitions filed against the provisional assessment. In *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and*

Another, their Lordships observed :

It is well-settled however that though the writ of prohibition or certiorari will not

issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well-settled, will issue appropriate orders or directions to prevent such consequences.

5. Again in *G. Thangavel Nadar v. Deputy Commercial Tax Officer* [1963] 14 S.T.C. 420 Srinivasan, J., observed :

It is true that normally the failure to resort to the appropriate remedies may be a bar but where this Court did not reject the petition on that ground at the stage of admission, I do not think it will be proper to rely upon that circumstance when the hearing of the petition clearly discloses that there has been a violation of the principles of natural justice. It is well accepted that the existence of an adequate alternative remedy is not always a bar to the issue of a writ.

6. I feel that in the instant case the petitioners were not given a reasonable opportunity to explain the correctness and completeness of their account books before the provisional assessment was made. When the petitioners questioned the validity of the provisional assessment on the ground that the principles of natural justice have been violated, the Sales Tax Authorities should have stayed the passing of final assessment. When the Sales Tax Authorities passed final assessment during the pendency of the writ petitions, the petitioners have naturally to file appeal against the final assessment. Otherwise the assessment would become final. Once a conclusion is reached that the petitioners were not given a reasonable opportunity to explain the correctness and completeness of their accounts and the Sales Tax Authorities did not observe the principles of natural justice, the petitioners are entitled to seek the appropriate remedy provided under Article 226 of the Constitution. The Sales Tax Authorities are certainly entitled to reopen the assessment for the period in question.

7. The petitions are allowed and the rule nisi is made absolute. No order as to costs.