

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1105 OF 2004

NARANI STORES

...APPELLANT

VERSUS

DEPUTY COMMISSIONER
OF SALES TAX, ERNAKULAM

...RESPONDENT

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in T.R.C. No. 82 of 1999, dated 17.12.2002, whereby and whereunder the High Court has set aside the order of the Sales Tax Appellate Tribunal, Ernakulam (for short "the Tribunal") sustaining the order passed by the Deputy Commissioner and allowed the tax revision.

2. The assessment year in question is 1988-89. The appellant-assessee is a dealer doing business in provisional stores. He is a registered dealer both under the Kerala General Sales Tax, 1963 (for short, "the Act") and the Central Sales Tax, 1956 (for short, "the 1956 Act").

3. The assessing authority had completed the assessments for the assessment year 1988-89 on 27.11.1990. After completion of such assessment, the assessing authority had issued a demand notice, inter alia, directing the appellant to pay up the tax demanded.

4. Aggrieved by the said assessment order and the demand notice so issued, the assessee had filed an appeal before the First Appellate Authority as envisaged under the provisions of the Act. The First Appellate Authority, by its order dated 06.05.1991 had modified the aforesaid order of assessment and had directed the assessing officer to give effect to the said order. Pursuant to the direction so issued, the assessing authority has passed a fresh order of assessment, dated 26.06.1993.

5. During the interregnum, the intelligence officer had inspected the business premises of the appellant and since there was a discrepancy in the turn-over reflected in the books of accounts and the actual stock that was found, he had imposed a penalty.

6. The Deputy Commissioner of Commercial Taxes in exercise of his powers under Section 35 of the Act had issued a show cause notice, inter alia, directing the appellant to show cause why the orders of assessment passed by the assessing authority should not be revised, dated 27.06.1995.

7. After receipt of the said show cause notice, the appellant had brought to the notice of the Deputy Commissioner that the Managing Director of the firm is under bed rest and his son, who is looking after the business in the meanwhile is out of station and therefore, they may be given some additional time to reply to the said notice.

8. After receipt of the aforesaid letter, the Deputy Commissioner had given them some more time to reply to the show cause notice and also furnish the details, by communication dated 06.07.1995. Since the appellant could not file either his reply or any other details within the time so granted, the Deputy Commissioner has proceeded to pass the ex-parte order, dated 27.07.1995 setting aside the order passed by the assessing authority, dated 26.06.1993 and remanded the matter back to the assessing authority for re-assessment in accordance with law.

9. Aggrieved by the said order, the appellant had carried the matter before the Tribunal. The Tribunal, by its order dated 17.09.1996,

was pleased to allow the appeal filed by the assessee and had granted him all the reliefs that were sought in the Memorandum of Appeal.

10. Aggrieved by the said order passed by the Tribunal, the State had carried the matter before the High Court. As we have already noticed, the High Court has allowed the revenue's revision and has set aside the orders passed by the Tribunal restoring the order passed by the Deputy Commissioner.

11. The assessee is before us in this appeal questioning the correctness or otherwise of the aforesaid judgment and order passed by the High Court.

12. After hearing learned counsel for the parties to the lis, we are of the opinion that the matter requires to be remanded back to the Deputy Commissioner for fresh consideration pursuant to the notice issued by him under Section 35 of the Act. We say so for the reason that the Deputy Commissioner in his order issued under Section 35 of the Act, *inter alia*, directed the appellant to show cause why the orders passed by the assessing authority, dated 27.11.1990 should not be revised. For multifarious reasons, the assessee could not file the reply in time.

13. In our considered opinion, the Deputy Commissioner ought to have given some more time to the appellant to file his reply and explain in detail as to why the order passed by the assessing authority should not be modified. The right to file a reply has been considered to be an indispensable facet of right to proper hearing. The maxim of *audi alteram partem* is an epitome of general principles governing fair hearing. The principle of fair hearing has two justiciable elements. The first is that an opportunity of hearing must be given and the second is that the opportunity must be reasonable and adequate. (*Indru Ramchand Bharvani v. Union of India*, (1988) 4 SCC 1). The opportunity of hearing requires to be tested on the anvil of reasonableness and adequacy of such opportunity. The right to file an adequate reply and represent one's case before the decision making authority shelters under the second limb.

14. In a case where huge tax liability is being imposed on an assessee, he has a right to file a reply and represent his case before the adjudicating authority. Should such sufficient opportunity not be afforded to the assessee, he would be deprived of his valuable right. In the facts of the instant case, sufficient time was not granted to the assessee by the Deputy Commissioner who had passed the *ex-parte* order, dated 27.7.1995 imposing a huge tax liability on the assessee and since the same is opposed to the principles of natural justice, in our considered opinion, the order of the Deputy Commissioner requires to be set aside.

15. This aspect of the matter, though noticed by the Tribunal but has not been adverted to by it and the relief has been granted to the assessee on a different ground. Further, in the revision filed by the revenue, the High Court, though has noticed the said aspect of the matter, but has not given any relief to the assessee.

16. In view of the above, in our considered opinion, the High Court was not justified in allowing the revenue's revision petition.

17. In view of the above, we set aside the orders passed by the High Court as well as the Tribunal. We now remand the matter back to the Deputy Commissioner to review the orders passed by him on 27.07.1995 and give one more opportunity to the appellant and pass appropriate orders in accordance with law.

18. All the contentions of both the parties are kept open. No costs.

.....J.
(H. L. DATTU)

.....J.
(C. NAGAPPAN)

NEW DELHI;
DECEMBER 11, 2013
ITEM NO.116

COURT NO.3

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1105 OF 2004

NARANI STORES

Appellant (s)

VERSUS

DY. COMMNR. OF SALES TAX, ERNAKULAM
(With office report)

Respondent(s)

WITH SLP(C) NOS. 23525-23527 of 2012
(With prayer for interim relief)

Date: 11/12/2013 This Appeal/petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE C. NAGAPPAN

For Appellant(s) Mr. Subramonium Prasad,Adv.
Mr.Rajiv Dalal, Barrister

Mr. T.G. Narayanan Nair, Adv.

For Respondent(s) Mr. Ramesh Babu M.R.,Adv.

UPON hearing counsel the Court made the following
O R D E R

C.A.No.1105/2004:

The appeal is disposed of with no costs, in terms of the signed order.

S.L.P.(C)Nos.23525-23527 of 2012

List on 12.12.2013.

(G.V.Ramana)
Court Master
(signed order is placed on the file)

(Vinod Kulvi)
Asstt.Registrar