

A SUPREME PAPER MILLS LTD.
v.
ASSTT. COMMNR. COMMERCIAL TAXES CALCUTTA &
ORS.
(Civil Appeal No. 1410 of 2003)

B MARCH 25, 2010

**[D.K. JAIN, DR. MUKUNDKAM SHARMA AND
R.M. LODHA, JJ.]**

C *Bengal Finance (Sales Tax) Act, 1941 – s. 11 E(2) –*
D *Show-cause notice – Issuance of – Furnishing of incorrect*
E *statement of turnover/incorrect particulars of sales by*
F *assessee – Show cause notice issued proposing to re-open*
deemed assessment for the period – Challenge to, by
assessee on the ground that time period of 15 days not given
and reasons justifying the issuance of notice not given – On
appeal, held: Show cause notice is issued to the dealer when
Commissioner is satisfied that the dealer has furnished
incorrect statement of his turnover or incorrect particulars of
his sales in the return submitted, so as to enable the dealer
to reply to the show cause notice – Assessee would not in any
manner be prejudiced due to issuance of the notice –
Assessee can file an effective reply – Time given by the
authority for filing the reply can be further extended – Non-
mentioning of reasons justifying issuance of notice does not
invalidate the notice.

G *Interpretation of Statutes – Legislative intent – Held:*
Language employed in a statute itself determines and
indicates the legislative intent – If the language is clear and
unambiguous, it is not proper for the court to add any words
thereto and evolve some legislative intent not found in the
statute.

H **The question which arose for consideration in the**

instant appeal is whether the show cause notice issued by the respondent-Revenue proposing to re-open the deemed assessment for the period, is illegal and defective as the same did not provide for a time period of 15 days as prescribed in the statute and did not disclose the materials leading to the satisfaction of the concerned authorities justifying the issuance of such a show cause notice.

Dismissing the appeal, the Court

HELD: 1.1. The expression used in section 11 E(2) of the Bengal Finance (Sales Tax) Act, 1941 is that the Commissioner must be satisfied on information or otherwise that the registered dealer has furnished incorrect statement of his turnover or furnished incorrect particulars of his sale in the return. A show cause notice is issued to the dealer with the purpose of informing him that the department proposes to re-open the assessment because the Commissioner himself is satisfied that the dealer has furnished incorrect statement of his turnover or incorrect particulars of his sales in the return submitted, so as to enable the dealer to reply to the show cause notice as to why the said power vested on the Commissioner should not be exercised. [Para 14] [806-G-H; 807-A]

1.2. There is nothing in the language of s. 11 E(2) which either expressly or impliedly mandates the recording of any reasons. Section 11 E (2) nowhere specifically mentions that factual basis of the ground of Deputy Commissioner's satisfaction on either or both the points mentioned in sub-section 2(a) or 2(b) of section 11 of the Act are required to be incorporated in the notice for re-opening of the deemed assessment and supplied to the dealer and that in case of failure to do so, the same would invalidate the notice. [Paras 15 and 18] [807-B-C; 808-B-C]

A 1.3. Section 11 (E) is clear and explicit and there is
 no ambiguity in it. If the legislature had intended to give
 any other meaning as suggested by the counsel
 appearing for the appellant it would have made specific
 provision laying down such conditions explicitly and in
 B clear words. The court cannot add anything into a
 statutory provision, which is plain and unambiguous.
 Language employed in a statute itself determines and
 indicates the legislative intent. If the language is clear and
 unambiguous it would not be proper for the court to add
 C any words thereto and evolve some legislative intent not
 found in the statute. [Para 16] [807-C-E]

2.1. In the instant case, notice was issued in order to
 provide an opportunity of natural justice to the dealer.
 The notice issued giving the dealer an opportunity to
 D show cause within a stipulated period does not in any
 manner prejudice the right of the appellant to file an
 effective reply. It was always possible for the appellant
 to seek for further time, if according to him the time given
 by the authority for filing the reply was required to be
 E extended in order to enable him to collect some record.
 It cannot therefore be said that if detailed reasons for
 issuance of notice being absent in the show cause notice,
 the same was invalid and void. [Paras 17 and 18] [807-G-
 H; 808-A]

F 2.2. The appellant at this stage is simply called upon
 to file his objection or show cause as to why the re-
 opening of the assessment should not be done. Once he
 submits his reply to the show cause, he would also be
 heard and would also be allowed to produce his records
 G namely books of accounts, only after which a decision
 would be taken whether the assessment already done
 should be re-opened or not. Even after that, the appellant
 would definitely get an opportunity of hearing in the fresh
 assessment proceeding. Thus, the appellant would not
 H in any manner be prejudiced due to issuance of the said

show cause notice. The judgment and order passed by the tribunal and upheld by the High Court, is maintained. [Para 19] [808-C-F] A

Sales Tax Officer, Ganjam vs. M/s. Uttareswari Rice Mills (1973) 3 SCC 171, held applicable. B

Apollo Tyres Ltd. vs. Deputy Commissioner (Commercial Taxes) and Ors. 2001 38 Sales Tax Advices 4; Hindustan Lever Ltd. vs. Director General (Investigation and Registration) and Anr. (2001) 2 SCC 474, referred to. C

Case Law Reference:

(2001) 38 Sales

Tax Advices 4 Referred to. **Para 7**

(2001) 2 SCC 474 Referred to. **Para 7** D

(1973) 3 SCC 171 held applicable. **Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1410 of 2003.

From the Judgment & Order dated 19.7.2002 of the High Court at Calcutta in W.P.T.T. No. 18 of 2001. E

Rana Mukherjee, M. Indrani, Abhijit Sengupta for the Appellant.

M. Chandrasekharan, Tara Chandra Sharma, Neelam Sharma, Rupesh Kumar for the Respondent. F

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. The issue that falls for consideration in the present appeal is whether the show cause notice issued by the respondent is illegal and defective as the same did not provide for a time period of 15 days as prescribed in the statute and also because it did not disclose materials leading to the satisfaction of the concerned authorities justifying the issuance of such a show cause notice. G
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A 2. The appellant Company was carrying on the business
of manufacturing various types of papers at its paper mill
situated at Village Raninagar Chakdah, District Nadia, Kolkata.
In the course of its carrying on business it filed necessary
returns as required under the Bengal Finance (Sales Tax) Act,
B 1941 (for short the "1941 Act") and also paid the taxes on the
basis of the said return. The Revenue also completed the
assessment proceeding which was deemed to have been
made under Section 11 E (1) of the 1941 Act by operation of
law. Subsequently, however, the appellant received a show
cause notice from the Deputy Commissioner, Commercial
C Taxes, Corporate Division whereby the appellant was directed
to show cause why deemed assessment case for the period
mentioned in the said impugned notices would not be re-
opened. Since the validity of the aforesaid notices has been
D challenged by the appellant herein, we would extract the
relevant contents of one of the notices which reads as follows:-

"Whereas I am satisfied that the returns filed by you which
formed the basis of the above mentioned deemed
assessment case exhibit incorrect statement of your
turnover/incorrect particulars of sales whereas it appears
E to me that the assessment is required to be re-opened,
you are hereby directed to show cause on 29.6.99 at 11.00
a.m. why the assessment will not be re-opened."

F 3. The other notices which are also impugned herein have
similar contents. In terms of the aforesaid notices, the
appellants were directed to submit their reply to the show cause
notice on 29.6.1999.

G 4. Being aggrieved by the issuance of the aforesaid
notices, the appellant filed an application under Section 8 of
the West Bengal Taxation Tribunal Act, 1987 challenging the
validity of the aforesaid notices issued by the respondent
proposing to re-open the deemed assessment for the four
periods. The West Bengal Taxation Tribunal heard all the four

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cases analogously and by judgment dated 27.7.2001, A
dismissed the same.

5. Being aggrieved and dissatisfied by the aforesaid judgment and order passed by the Tribunal, the appellant preferred a Writ Petition in the High Court of Calcutta which was entertained. However, the High Court of Calcutta dismissed the writ petition by the impugned judgment and order dated 19.7.2002 which is under challenge in this appeal. B

6. Counsel appearing for the appellant submitted before us that the aforesaid show cause notice is illegal and without jurisdiction as a time period of 15 days which is required to be given was not extended to the appellant to submit its reply to the show cause notice. It was also submitted that the said notices were invalid due to non-mentioning of materials leading to the satisfaction of the authority for issuance of such a notice. C D

7. In support of the aforesaid contentions, counsel appearing for the appellant relied upon the provisions of section 11E (2) of the Act as also on the decision of the Calcutta High Court in *Apollo Tyres Ltd. Vs. Deputy Commissioner (Commercial Taxes) and Others* reported in 2001 38 Sales Tax Advices 4 and the decision in *Hindustan Lever Ltd. Vs. Director General (Investigation and Registration) and Anr.* reported in (2001) 2 SCC 474. E

8. Counsel appearing for the respondent, however, refuted the aforesaid submission contending inter alia that what is challenged in the present case is only a show cause notice and that no final order is yet passed. It was also submitted that the pre-condition as mentioned in the statutory provision is the satisfaction of the concerned Authority that the assessee had furnished incorrect statements of his turnover or incorrect particulars of the sale submitted under Section 10 or otherwise, and that such a satisfaction can be derived on the basis of the information received by that Authority or otherwise. F G

A 9. It was submitted that on fulfilling all the pre-conditions
mentioned in the statute itself and if the Commissioner is
satisfied of the aforesaid situation, it is possible for him to issue
such a show cause notice. He also submitted that the aforesaid
show cause notice cannot be said to be invalid because of
B paucity of time granted to the appellant. We have considered
the aforesaid submissions of the counsel appearing for the
parties in the light of the records placed before us.

10. Section 11 E (2) in terms of which the aforesaid show
cause notice is issued reads as follows:-
C

"Sec. 11E (2) - Where the Commissioner is satisfied on
information or otherwise that a registered dealer -

(a) has concealed any sales or particulars thereof, or

D (b) has furnished incorrect statement of his turnover or
incorrect particulars of his sales in the return submitted
under section 10 or otherwise.

*relating to an assessment made under sub-section (1)
E which has resulted in reduction of the amount of tax
payable by him under this Act in respect of any of the
periods, the Commissioner shall, subject to such
conditions as may be prescribed, within six years from
the date of such assessment, reopen in the prescribed
F manner the assessment for such period and, after giving
such dealer a reasonable opportunity of being heard,
make fresh assessment under sub-section (1) of section
11 for such period to the best of his judgement."*

G 11. The aforesaid provision makes it crystal clear that if
on information received by the Commissioner or even
otherwise, if he is satisfied that the assessee namely the
registered dealer has furnished incorrect statement of his
turnover or incorrect particulars of his sales in the return
submitted or even otherwise, he may issue a show cause notice
H to show cause as to why the assessment made should not be

re-opened. It is crystal clear that the show cause notice is issued with the purpose of giving the dealer a reasonable opportunity of being heard before an order is passed for re-opening of the assessment for the reason that he has furnished incorrect statement of his turnover or incorrect particulars of his sales in his return.

12. In *Sales Tax Officer, Ganjam Vs. M/s. Uttareswari Rice Mills* [(1973) 3 SCC 171], a similar issue as sought to be raised herein was urged before the Supreme Court. In the said case, a similar notice was issued by the Sales Tax Officer to the dealer contending inter alia that he had a reason to believe that his turnover for the quarter ending 1963-64 on which sales tax was payable under the Orissa Sales Tax Act, 1947 had escaped assessment/had been under-assessed. In that view of the matter, the dealer was called upon to submit his reply. The aforesaid notice was challenged by filing a writ petition in the High Court of Orissa whereas the High Court allowed the writ petition on the ground that the Sales Tax officer did not indicate any reason for issuing notice under Section 12(8) of the Act. On appeal being filed, this Court in that context considered sub-sections (5) and sub-sections (8) of Section 12. After considering the aforesaid provisions, the Supreme Court in paragraph 8 held as follows:-

"8. Although the opening words used in Section 12(8) are "if for any reason" and not "if the sales tax authority has reason to believe", the difference in phraseology, in our opinion, should not make such material difference. A reason cannot exist in vacuum. Somebody must form the belief that reason exists and looking to the context in which the words are used, we are of the view that it should be the sales tax authority issuing the notice who should have reason to believe that the turnover of a dealer has escaped assessment or has been under-assessed. The approach in this matter has to be practical and not pedantic. Any view which would make the opening words

A of Section 12(8) unworkable has to be avoided. It may be
 noted in this context that in Form VI appended to the rules,
 which has been prepared in pursuance of Rule 23, the
 words used are "whereas I have reason to believe that your
 turnover has escaped assessment
 B"

13. Then again in paragraph 14, this Court further held in
 the following manner:-

C "14. There is nothing in the language of Section 12(8) of
 the Act which either expressly or by necessary implication
 postulates the recording of reasons in the notice which is
 issued to the dealer under the above provision of law. To
 hold that reasons which led to the issue of the said notice
 should be incorporated in the notice and that failure to do
 D so would invalidate the notice, would be tantamount to
 reading something in the statute which, in fact, is not there.
 We are consequently unable to accede to the contention
 that the notice under the above provision of law should be
 quashed if the reasons which led to the issue of the notice
 E are not mentioned in the notice. At the same time, we
 would like to make it clear that if the Sales Tax Officer is
 in possession of material which he proposes to use
 against the dealer in proceedings for reassessment, the
 said officer must before using that material bring it to the
 F notice of the dealer and give him adequate opportunity to
 explain and answer the case on the basis of that material."

G 14. In our considered opinion, the ratio of the aforesaid
 decision of this Court is squarely applicable to the facts of the
 present case. The expression used in Section 11 E of the Act
 is that the Commissioner must be satisfied on information or
 otherwise that the registered dealer has furnished incorrect
 statement of his turnover or furnished incorrect particulars of his
 sale in the return. A show cause notice is issued to the dealer
 with the purpose of informing him that the department proposes
 H to re-open the assessment because the Commissioner himself

is satisfied that the dealer has furnished incorrect statement of his turnover or incorrect particulars of his sales in the return submitted, so as to enable the dealer to reply to the show cause notice as to why the said power vested on the Commissioner should not be exercised. A

15. A notice was issued in order to provide an opportunity of natural justice to the dealer. There is nothing in the language of the aforesaid provision which either expressly or impliedly mandates the recording of any reasons. The provision of the Act nowhere postulates that the reasons which led to the issue of the said notice should be incorporated in the notice itself, and that in case of failure to do so, the same would invalidate the notice. B C

16. The aforesaid provision is clear and explicit and there is no ambiguity in it. If the legislature had intended to give any other meaning as suggested by the counsel appearing for the appellant it would have made specific provision laying down such conditions explicitly and in clear words. It is a well-settled principle in law that the court cannot add anything into a statutory provision, which is plain and unambiguous. Language employed in a statute itself determines and indicates the legislative intent. If the language is clear and unambiguous it would not be proper for the court to add any words thereto and evolve some legislative intent not found in the statute. D E

17. Here is a case where the section provides that if the Commissioner is satisfied that the assessee namely the registered dealer has furnished incorrect statement of his turnover or incorrect particulars of his sales in the return submitted or even otherwise and in that event a notice would be issued as envisaged therein to the dealer to show cause as to why the assessment made should not be re-opened. Therefore, notice issued in the present case giving the dealer an opportunity to show cause within a stipulated period does not in any manner prejudice the right of the appellant to file an effective reply. It was always possible for the appellant to seek F G H

A for further time, if according to him the time given by the authority for filing the reply was required to be extended in order to enable him to collect some record. It cannot therefore be said that if detailed reasons for issuance of notice being absent in the show cause notice, the same was invalid and void.

B
18. The aforesaid Section 11 E (2) nowhere specifically mentions that factual basis of the ground of Deputy Commissioner's satisfaction on either or both the points mentioned in sub-Section 2(a) or 2(b) of Section 11 of the Act are required to be incorporated in the notice for re-opening of the deemed assessment and supplied to the dealer.

C
19. The appellant at this stage is simply called upon to file his objection or show cause as to why the re-opening of the assessment should not be done. Once he submits his reply to the show cause, he would also be heard and would also be allowed to produce his records namely books of accounts; only after which a decision would be taken whether the assessment already done should be re-opened or not. Even after that, the appellant would definitely get an opportunity of hearing in the fresh assessment proceeding. In that view of the matter, we are of the considered opinion that the appellant would not in any manner be prejudiced due to issuance of the aforesaid show cause notice. We therefore, dismiss the appeal filed by the appellant, maintain the judgment and order passed by the Tribunal and upheld by the High Court.

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20. The appeal has no merit and is dismissed.

N.J.

Appeal dismissed.