

ASST. COMMNR. OF COMMERCIAL TAXES & ORS.

v.

RUCHI SOYA INDUSTRIES LTD.

(Civil Appeal No.7231 of 2002)

APRIL 24, 2008

(ASHOK BHAN AND DALVEER BHANDARI, JJ.)

West Bengal Sales Tax Act, 1994 – s.66 proviso (a) & (b) – Seizure of dealer's accounts – Retention of seized records beyond prescribed period of one year – Conditions to be fulfilled – Held: Commissioner or Additional Commissioner as also officer appointed to assist Commissioner is to record reasons in writing for extending the period – Such officer is to seek approval of Commissioner also, otherwise retention is unlawful – However, there is no requirement to convey the reasons to assessee and that too before expiry of one year of seizure – On facts, order of High Court holding that reasons had to be communicated to assessee before expiry of one year of seizure and assessee was to be heard before passing such order, set aside to that extent – Additional Commissioner while granting sanction to retain seized records fulfilled the condition prescribed – Delay in receiving such order was not prejudicial to assessee – Moreover, books of accounts/ documents were returned to assessee, thus, appeal rendered infructuous – Further, in case investigation or assessment is incomplete then as and when called upon assessee is to produce books of accounts before the Authorities.

On 18.10.2000, the Commercial Tax Officer seized the books of accounts and documents of the respondent-dealer u/s 66 of the West Bengal Sales Tax Act, 1994 for carrying out the investigation. However, the assessment could not be completed within one year as stipulated u/s 66 of the Act. Respondent was issued notice to show cause as to why seized records should not be retained

A for further period of one year but none appeared. By order
dated 12.10.2001, the Additional Commissioner granted
sanction for retention of seized records till 18.10.2002 to
enable the investigation officer to complete the
examination of seized records. Respondent received
B notice as also sanction on 22.10.01. Respondent filed
application seeking a direction to assessing officer to
forthwith release the books of accounts and documents
seized and to quash the order dated 12.10.2001 on the
ground that the respondent was not given any
C opportunity before passing the order. The tribunal allowed
the application holding that the order of retention had
become invalid as the same was not communicated to
the applicant within the prescribed period of limitation.
Aggrieved, appellants filed writ application. High Court
D dismissed the same holding that sanction to retain the
seized records was not in conformity with proviso (b) to
s. 66 of the Act. It held that the entire exercise was
undertaken in a mechanical way as the order did not
mention whether the notice of hearing was received by
the respondent; or whether he had been heard or not or
E as to why was it necessary to retain the seized records
for examination for another year, although the said record
had already been in custody of the appellant for a period
of one year. Hence the present appeal.

F Disposing of the appeal, the Court

HELD: 1.1 A reading of proviso (a) and (b) of s. 66 of
the West Bengal Sales Tax Act 1994 makes it clear that
either of the two conditions must be fulfilled before such
extension is given, viz. (a) reasons in writing must be
G recorded by the Commissioner or Additional
Commissioner for extending the period or by a person
appointed under sub-Section (1) of Section.3 to assist the
Commissioner or the Additional Commissioner and (b) if
the books are to be retained by an officer appointed under
H sub-Section(1) of Section 3 to assist the Commissioner

then that officer shall not retain the seized books beyond A
the prescribed period unless he records reasons in writing
therefor and seeks approval of the Commissioner. (Para
9) [304-D, E, F]

1.2 An inference can well be drawn from these two B
provisions that if either of these two conditions are not
fulfilled, such extension shall become unlawful and the
concerned officer has to return the books or documents
forthwith. However, a bare perusal of the proviso (a) and C
(b) of Section 66 would show that there is no requirement
in law of either to convey the reasons or the orders passed
by the Commissioner/Additional Commissioner to the
assessee or that it should be conveyed before the expiry
of one year of the seizure of the books or the documents.
(Para 10) [304-F, G, H; 305-A]

1.3 The High Court under some misconception D
assumed that the reasons had to be communicated
before the expiry of one year of the seizure of the books
or documents and/or the assessee was required to be
heard before passing the order extending the period E
beyond the prescribed period of one year. To that extent,
the order passed by the High Court is set aside. (Para 16)
[306-D, E, F]

1.4 The Additional Commissioner while granting F
sanction to retain the seized records has not only
recorded reasons therefor, but the same were
communicated. Thus, the condition prescribed by law to
record reasons is fulfilled. The order was despatched the
same day which was received by the assessee a few days
later. The delay in no way caused any prejudice to the
assessee. Moreover, the books of accounts/documents G
were returned to the assessee after the passing of the
order by the Tribunal. To that extent, the appeal has
become infructuous, but since the point involved is of
recurring nature, it is appropriate to record a finding
regarding the correctness or otherwise of the view taken H

A by the High Court on merits. (Para 17) [306-F, G; 307-A]

B 1.5 In case the investigation or assessment is not complete then the respondent whose books of accounts have been returned, he may not be asked to re-deposit the books of accounts with the assessing officer but as
C and when he is called upon to produce the books of accounts/documents which were returned to the assessee, the assessee shall be under an obligation to produce the documents before the authorities as and when asked to do so. The authorities would be at liberty to retain photostat copies of the documents, if not already kept by them while returning the books. (Para 18) [307-A, B, C]

D *C.I.T. West Bengal-III and others Vs. Oriental Rubber Works 1984(1) SCC 700* – relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7231 of 2002.

E From the Judgment dated 13.2.2002 of the Hight court at Calcutta in W.P.T.T. No. 32/2002

Rupesh Kumar, Tara Chandra Sharma and Neelam Sharma for the Appellants.

G.L. Rawal, D. Bharathi Reddy, Ashwani Kumar and D.R.K. Reddy for the Respondent.

F The Judgment of the Court was delivered by

ASHOK BHAN, J. 1. The State of West Bengal and others, the appellants herein, have filed this appeal against the final judgment dated 13/02/2002 of the High Court of Calcutta in W.P.T.T. 32 of 2002, by which the High Court has dismissed the writ application of the appellants herein holding, inter alia, that sanction to retain the seized records was not in conformity with proviso (b) to Section 66 of the West Bengal Sales Tax Act, 1994 (for short 'the Act')

H 2. The respondent is a re-seller of "Neutrela" Soya beans

food product, palm fatty acid distillate, acid oil and RBD Palmolein oil after importing the same from out side the State of West Bengal as well as by making purchases within the State of West Bengal. A

3. On 18th October, 2000, the files, books of accounts and documents kept at the place of the business of the respondent were seized pursuant to a search conducted by the officers attached with the Central Section of Commercial Tax Directorate. The books and documents were seized by the commercial Tax Officers for the reason that the respondent was evading payment of tax under the Act and the said books of accounts and documents as detailed in the seizure receipt are required for taking action under the provisions of the Act. In the report relating to the said seizure it was stated that the dealer was evading tax by floating dummy files and fabricating documents. According to the appellants since the seized books of accounts, registers and other documents, on the basis of which investigation was to be conducted, were of extensive nature, the assessment could not be completed within a period of one year as stipulated under Section 66 of the Act. The seizure in the instant case had taken place on 18th October, 2000. The period of one year was to expire on 17th October, 2001. Show cause notice dated 9th October, 2001 was sent to the respondent by speed post on 10th October, 2001 requiring its representative to appear before the Additional Commissioner, Commercial Taxes on 12th October, 2001 to show cause as to why the seized records should not be retained for a further period of one year beyond 18th October, 2001. As no one on behalf of the respondent appeared on 12th October, 2001 and only a few days were left before the prescribed period of one year was to lapse, the Additional Commissioner vide its order dated 12th October, 2001 granted sanction for retention of the seized records till 18th October, 2002 to enable the investigating officer to complete the examination of the seized records and the said order was sent to the respondent by speed post. The said sanction as well as show cause notice were received by the respondent on H

A 22nd October, 2001.

B 4. Aggrieved by the said order passed by the Additional Commissioner, Commercial Taxes, the respondent filed an application under Section 8 of the West Bengal Taxation Tribunal Act, 1987 before the West Bengal Taxation Tribunal, Calcutta (for short 'the Tribunal') being Revision Case No. RN 450/2001, seeking a direction to assessing officer to forthwith release the books of accounts, documents and records seized on 18th October, 2001 under Section 66 of the Act and to pass an order quashing and/ or setting aside the purported order dated 12th October, 2001 passed by the Additional Commissioner according sanction for retention of the seized books of accounts and records, till 18th October, 2002 under Section 66(1)(b) of the Act on the ground that no opportunity whatsoever was given to the respondent before passing the said order.

D 5. The Tribunal by its order dated 4th January, 2002 allowed the application of the respondent. Relying upon a decision in *C.I.T. West Bengal-III and others Vs. Oriental Rubber Works* [1984(1)SCC 700], the Tribunal held that the order of retention had become invalid as the same was not communicated to the applicant within the prescribed period of limitation and accordingly set aside the order dated 12th October, 2001 passed by Additional Commissioner of Commercial Taxes with a direction to release the books of accounts, records and documents seized on 18th October, 2000 forthwith.

F 6. Aggrieved by the order passed by the Tribunal, the appellants filed a writ application under Article 226 of the Constitution of India seeking setting aside of the order passed by the Tribunal. The High Court by the impugned order has dismissed the writ application thereby upholding the order passed by the Tribunal. It has been held by the High Court that the notice was issued to the respondent on 10th October, 2001 to attend the hearing on 12/10/2001 to show cause as to why the seized records should not be retained beyond the period of one year. The said notice was admittedly received by the

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respondent on 22nd October, 2001 which was beyond the period A
of one year as prescribed by Section 66, thus denying the
respondent an opportunity of being heard which was the object
of the notice. It was also held that the order passed by the
Additional Commissioner granting sanction to retain the seized B
records, was sent to the respondent on 18th October, 2001 which
was received by him on 22nd October, 2001. It is not expected
that an order dispatched on 18th October, 2001 would be served
on the same day. That the very purpose of issuance of such
notice was frustrated as the respondent was left with no time to C
submit his reply. That the entire exercise was undertaken in a
mechanical way as the order did not even mention as to (i)
whether the notice of hearing has been received by the
respondent, or (ii) whether he had been heard or not or (iii) as
to why was it necessary to retain the seized records for D
examination for another year, although the said record had
already been in the custody of the appellants for a period of one
year. The High Court thus agreed with the Tribunal and
dismissed the writ application.

7. The said order of the High Court is under challenge E
before us.

8. The relevant portion of Section 66 of the Act dealing
with extension of time is stated hereinbelow for reference:

"66. Seizure of dealer's accounts:- If the Commissioner, F
an Additional Commissioner or any person appointed
under sub-section (1) of Section 3 to assist the
Commissioner, has reason to suspect that any dealer is
attempting to evade payment of any tax, he may, for
reasons to be recorded in writing, seize such accounts, G
registers or documents of the dealer (including
computerised or electronic accounts maintained on any
computers or electronic media) as may be necessary and
shall grant a receipt for such accounts, registers or
documents seized by him and shall retain all or any of
them only for such period as may be necessary for H

A examination thereof or for prosecution or for any other purpose of this Act.

Provided that:-

B (a) the Commissioner or an Additional Commissioner shall not retain any of the accounts, registers or documents seized by him under this section for a period exceeding one year from the date of the seizure unless he records in writing the reasons therefor, and

C (b) any person appointed under sub-section (1) of Section 3 to assist the Commissioner shall not retain any of the accounts, registers or documents seized by him under this section for a period exceeding one year from the date of seizure unless he states the reason in writing therefor and obtains sanction of the Commissioner in writing in respect thereof.”

D 9. A reading of proviso (a) and (b) of Section 66 makes it clear that either of the two conditions must be fulfilled before such extension is given, viz. (a) reasons in writing must be recorded by the Commissioner or Additional Commissioner for extending the period or by a person appointed under sub-Section (1) of Section 3 to assist the Commissioner or the Additional Commissioner and (b) if the books are to be retained by an officer appointed under sub-Section(1) of Section 3 to assist the Commissioner then that officer shall not retain the seized books beyond the prescribed period unless he records reasons in writing therefor and seeks approval of the Commissioner.

G 10. An inference can well be drawn from these two provisions that if either of these two conditions are not fulfilled, such extension shall become unlawful and the concerned officer has to return the books or documents forthwith. However, a bare perusal of the proviso (a) and (b) of Section 66 would show that there is no requirement in law of either (i) to convey the reasons or the orders passed by the Commissioner/Additional Commissioner to the assessee or (ii) that it should be conveyed

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before the expiry of one year of the seizure of the books or the documents. A

11. This Court in *C.I.T. West Bengal-III and others Vs. Oriental Rubber Works* (supra) while interpreting Section 132(8) of the Income tax Act which in substance is identical with the provisions of Section 66 of the West Bengal Sales Tax Act held: B

“...It is true that sub-section (8) does not in terms provide that the Commissioner's approval or the recorded reasons on which it might be based should be communicated to the concerned person but in our view since the person concerned is bound to be materially prejudiced in the enforcement of his right to have such books and documents returned to him by being kept ignorant about the factum of fulfilment of either of the conditions it is obligatory upon the Revenue to communicate the Commissioner's approval as also the recorded reasons to the person concerned. In the absence of such communication the Commissioner's decision according his approval will not become effective.” C D

12. No doubt it is laid down in this judgment that the Commissioner's approval as also the recorded reasons may be communicated to the person whose books of account have been seized but it does not say that such approval and the reasons therefor be communicated before the expiry of the maximum period prescribed for retention of books of account. E F

13. This Court in the said judgment has further dealt with sub-sections (10) and (12) of Section 132 of the Income Tax Act. These two provisions read as under :

“(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1-A) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books G H

A of account or other documents.

(11)

(12) On receipt of the application under sub-section (10) the Board ... may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit."

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14. As per these provisions a statutory right vests in the person, whose books have been seized, to approach the Board to object to the approval. Therefore, as a logical corollary, it was necessary to communicate the Commissioner's approval as also the reasons therefor.

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15. It may not be out of place to mention here that in the said judgment this Court was dealing with the provisions of Income Tax Act and in the present case, we are concerned with the provisions of West Bengal Sales Tax Act, 1994 and there is no provision in the Act parallel to sub-sections (10) and (12) of the Income Tax Act in the Act being dealt with here.

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16. The High Court under some misconception assumed that this Court had held that the reasons had to be communicated before the expiry of one year of the seizure of the books or documents and/ or the assessee was required to be heard before passing the order extending the period beyond the prescribed period of one year. To that extent, the order passed by the High Court deserves to be set aside and is accordingly set aside.

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17. The Additional Commissioner while granting sanction to retain the seized records has not only recorded reasons therefor, but the same were communicated also in accordance with the judgment of this Court in the case of *Oriental Rubber Works* (supra). Thus, the condition prescribed by law to record reasons is fulfilled. The order was despatched the same day which was received by the assessee a few days later. The delay in no way has caused any prejudice to the assessee. Moreover, we are informed that the books of accounts/documents were returned to the assessee after the passing the order by the

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Tribunal. To that extent, the appeal has become infructuous, but A
since the point involved is of recurring nature, we thought it
appropriate to record a finding regarding the correctness or
otherwise of the view taken by the High Court on merits.

18. In case the investigation or assessment is not complete B
then the respondent whose books of accounts have been
returned, he may not be asked to re-deposit the books of
accounts with the assessing officer but as and when he is called
upon to produce the books of accounts/documents which were C
returned to the assessee, the assessee shall be under an
obligation to produce the documents before the authorities as
and when asked to do so. The authorities would be at liberty to D
retain photostat copies of the documents, if not already kept by
them while returning the books.

19. The appeal stands disposed of in the above terms D
and there will be no orders as to costs.

N.J.

Appeal disposed of.