

(2003) 08 AHC CK 0173**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 324 of 1983

Raj Moti Dal Mills and Another

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision: Aug. 5, 2003**Acts Referred:**

- Evidence Act, 1872 - Section 114, 76, 77
- Uttar Pradesh Sales Tax Rules, 1948 - Rule 68

Citation: (2004) 136 STC 576**Hon'ble Judges:** D.P. Gupta, J; B.S. Chauhan, J**Bench:** Division Bench**Advocate:** Bharat Ji Agrawal and Vinod Kumar Agrawal, for the Appellant; S.P. Kesarwani, for the Respondent**Final Decision:** Allowed

Judgement

B.S. Chauhan, J.

This writ petition has been filed for issuing a writ or direction in the nature of certiorari quashing the notice dated March 3, 1983 (annexure 7) issued by the Sales Tax Officer, by which the petitioner has been directed to deposit a sum of Rs. 1,39,478.78 rejecting the claim of adjustment of refund, as directed by the appellate authority in respect of the assessment years 1975-76, 1977-78 and 1978-79.

2. Facts and circumstances giving rise to this case are that the petitioner-firm was assessed by the Sales Tax Officer and the tax was imposed. Being aggrieved, the petitioner-assessee filed Appeal Nos. 1142 of 1980 for the year 1975-76 ; 520 of 1981 for the year 1977-78 and 906 of 1981 for the year 1978-79 vide order dated May 25, 1982, all the appeals were allowed. Appeal No. 1142 of 1980 was allowed in toto while Appeal No. 520 of 1981 was partly allowed reducing the amount of tax. Appeal No. 906 of 1981 was also partly allowed reducing the amount of tax. Thus, an amount of Rs. 1,39,478.78 had to be refunded in view of the orders of the appellate

authority. The petitioner adjusted the said amount towards the sales tax from April to July, 1982 and January, 1983. A notice dated September 1, 1982 was issued by the authorities to the petitioner to explain as how the assessee could adjust the said amount. Petitioner immediately filed the reply submitting that the appeals had been allowed. However, the impugned order dated March 3, 1983 was passed directing the petitioner-assessee to deposit the said amount for the reason that the respondent-authority took the view that the appeals had never been decided and the order purported to have been passed in the said three appeals of the assessee were forged and fabricated documents thus nullity. Being aggrieved and dissatisfied, the petitioner approached this Court. This Court dismissed the said writ petition observing that the petitioner raised the disputed questions of fact which could not be decided in writ jurisdiction. Petitioner was given liberty to approach the civil court. Being aggrieved and dissatisfied, the assessee approached the honourable apex Court and while deciding the Civil Appeal No. 188 of 1997, vide order dated 10th March, 1997, the honourable Supreme Court remanded the case to this Court with a direction to decide the case by investigating the factual aspects of the matter. Hence this petition.

3. Shri Bharat Ji Agrawal, learned Senior Advocate appearing for the petitioner, has submitted that the petitioner being aggrieved of the assessment orders for the aforesaid assessment years, had filed the appeals which were heard and disposed by a common order dated May 22, 1982 after hearing the counsel for the petitioner and representative of the department. Certified copy of the said order was dispatched by the department to the petitioner-assessee on May 29, 1982, therefore, it cannot be said by the respondents that the order purported to be passed by the appellate authority as forged and fabricated document. It has further been submitted that in view of the judgment of this Court in Sales Tax Revision No. 149 of 1991 in Hind Lamps Ltd. v. Commissioner of Sales Tax, U.P., Lucknow dated July 24, 2003, [2004] 136 STC 483 supra it is permissible for the assessee to adjust the said amount which could have been refunded to the assessee.

4. On the contrary, it has been submitted by Shri S.P. Kesarwani, learned Standing Counsel that appeals were never heard and decided. No notice was given to the representative of the department. The order purported to have been passed by the appellate authority is forged and fabricated document, no proper entries have been made in various registers as required under the Rules, particularly Gosawara Register, Dispatch Register. Some of the employees of the department may be in collusion with the petitioner-assessee and as the record of the case is not traceable nor the orders passed by the appellate authority are available/traceable in the department, this Court should not give indulgence to the petitioner-assessee.

5. We have heard learned counsel for the parties and perused the record.

6. There is no dispute to the facts that being aggrieved of the assessment orders for the aforesaid assessment years, petitioner-assessee had filed the appeals. If the

appeals have not been decided by the said orders of the appellate authority, the department has not made any attempt whatsoever to decide the same. There is a presumption u/s 114, illustration (g) of the Evidence Act, 1872 that all actions of the State have been performed in accordance with law prescribed therein.

7. A Constitution Bench of the honourable Supreme Court in [Gopal Narain Vs. State of Uttar Pradesh and Another](#), held that there is a presumption when a statutory authority makes an order, that it has followed the prescribed procedure and such a presumption can only be rebutted by adducing appropriate evidence. However, the party, which makes an allegation that the act has not regularly been performed, the onus to prove lies upon him that the proper procedure has not been followed or the act has not been performed as was required under the law.

8. In [Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others](#), the honourable Supreme Court considered the scope of illustration (e) of Section 114 of the Evidence Act and the question was : whether the Deputy Commissioner, who performed the particular function, had even been authorised to act. The court held that if an official act is proved to have been done, it will be presumed to have been regularly done and in such an eventuality and circumstances, the court can reasonably presume that the Deputy Commissioner, under appropriate rules, was duly authorised to act on behalf of the authority concerned.

9. Another Constitution Bench of the honourable Supreme Court, in [Ajit Singh Vs. State of Punjab and Another](#), considered the case where the issue had been raised that the Consolidation Officer had never been appointed to perform the function of the said office and the order of his appointment had never been produced. The honourable court held that such an objection can hardly be entertained in the fact of presumption u/s 114 of the Indian Evidence Act and, thus, it was observed that the officers should have acted under due authorisation.

10. A Constitution Bench of the honourable Supreme Court, in [State of Punjab Vs. Satya Pal Dang and Others and Baldev Parkash and Others](#), dealt with the prorogation issued by the Governor. The court observed as under :

"We are bound to take judicial notice of the prorogation and presume the regularity of these actions which must be interpreted as far as possible so that the thing done may be valid rather than invalid."

11. In [Narayan Govind Gavate and Others Vs. State of Maharashtra and Others](#), the honourable Supreme Court observed that presumption provided in illustration (e) of Section 114 of the Evidence Act is based on well-known maxim of law "omnia praesumuntur rite esse acta" (i.e., all acts are presumed to have been rightly and regularly done). The court further held, this presumption is, however, one of the fact. It is an optional presumption can be displaced by the circumstances indicating that the power lodged in an authority or official has not been exercised in accordance with law.

12. Similar view has been reiterated in Ihaman Lal Vs. The State of Rajasthan and Others, Ganga Ram Vs. Smt. Phulwati, Saeed Ahmed Vs. Syed Qamar Ali and Another, Somasundarshan Goud Vs. The District Collector, Hyderabad and Another, Sone Lal and Others Vs. The State of U.P., Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc., K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, State Government of NCT Delhi v. Sunil (2000) 1 SCC 652, Kiran Gupta and Others Vs. State of U.P. and Others Etc., and Superintendent, Narcotics Central Bureau Vs. R. Paulsamy.

13. Thus, it is clear that in law there is a presumption that official acts have regularly been performed and such presumption can be rebutted only by adducing evidence. A mere bald denial of such a performance is not sufficient to rebut the said presumption. In the instant case respondents have not produced any evidence on the basis of which such a presumption can be held to have stood rebutted.

14. More so, certified copies of the public document are admissible in law in view of the provisions of Sections 76 and 77 of the Evidence Act. Petitioner-assessee has placed the certified copy of the said orders of the appellate authority which have been issued one Shri Vir Pal Sharma. In pursuance of the order of this Court, said Vir Pal Sharma has filed affidavit wherein he stated in crystal clear words that appeals were heard and decided by Shri Onkar Singh, appellate authority. He had taken the dictation and typed these orders ; dispatched certified copies and the said copies bear his signatures.

15. Shri Onkar Singh, appellate authority has also filed his affidavit supporting the case of the petitioner.

16. In AIR 1934 157 (Privy Council) it was observed that certified copies of documents are by statute deemed to be originals. A public document may be proved by production of the original like any other documents and it is on the ground of convenience that a public document is allowed to be proved by a certified copy.

17. The document being a certified copy of a public document need not be proved by calling a witness (vide Madamanchi Ramappa and Another Vs. Muthalur Bojjappa,

18. Any tax assessment order is a public document and admissible under Sections 76 and 77 of the Evidence Act [vide Katikineni Venkata Gopala Narasimha Rama Rao Vs. Chitluri Venkataramayya, and Suraj Narain Vs. Seth Jhabbu Lal and Others, .

19. In Allah Bux Vs. Ratan Lal Jain, the court held that assessment order passed by Sales Tax Officer is a public document and the sales tax return filed by the assessee is also a public document.

20. Thus, in view of the above, we reach the conclusion that assessment orders under the Trade Tax Act are public documents and certified copies are admissible under Sections 76 and 77 of the Act.

21. Instant case requires to be considered in the light of the aforesaid settled legal proposition.

22. In the writ petition, it has been submitted that appeals of the assessee had been decided after hearing the departmental representative, Shri Mohd. Zafar, Sales Tax Officer, Grade-II, who was posted as departmental representative before the Assistant Commissioner (Judicial), Sales Tax, Hathras Range, Hathras and at the time of hearing the appeals, said Shri Mohd. Zafar had verified the purchase made on behalf of the ex-U.P. principals in pursuance of the orders received from the ex-U.P. principals and their account books and other documents. In the counter-affidavit filed by the department, there is no reply to the said averments at all. A parrot like narrations have been made over and again that appeals were not heard, the orders of the appellate authority are forged and fabricated documents to fortify their case. It has been submitted by learned counsel for the petitioner that there had been no entry in the registers as required under the Rules and particularly in Gosawara Register. It would be presumed that appeals were heard and decided. On the contrary, documents have been filed by the petitioner showing that the orders of the appellate authority had been communicated to other authorities and it has been supported by the appellate authority himself, who has submitted that he had decided the appeals after giving full opportunity of arguments and hearing the departmental representative, Shri Mohd. Zafar. Allegations made by the department were not correct and the appeals were decided after the documents had been verified by the departmental representative as required under Rule 68(a) of the U.P. Sales Tax Rules, 1948.

23. For the reasons best known to the department, said Shri Mohd. Jafar has not been asked to file affidavit by the department and no explanation has been furnished as under what circumstances he has not been examined.

24. Thus, in view of illustration (g) of Section 114 of the Evidence Act, the Labour Court had no option but to draw an adverse inference against the petitioner-employer, [Vide T.S. Murugesam Pillai v. M.D. Gnana Sambandha Pandara Sannadhi AIR 1917 PC 6 , Hiralal and Others Vs. Badkulal and Others, , Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, , Union of India (UOI) Vs. Mahadeolal Prabhudayal, , Mahant Shri Srinivasa Ramanuj Das Vs. Surajnarayan Dass and Another, , Srichand K. Khetwani Vs. State of Maharashtra, , Mst. Ramrati Kuer Vs. Dwarika Prasad Singh and Others, , Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, , The Bihar State Board Religious Trust, Patna Vs. Mahant Sri Biseswar Das, , Harjit Singh Mann Vs. S. Umrao Singh and Others, and H.D. Singh Vs. Reserve Bank of India and Others,

25. In Indira Kaur and Ors Vs. Sheo Lal Kapoor, and Mohinder Kaur Vs. Kusam Anand, the honourable Supreme Court held that adverse inference may not be drawn where there was no occasion for the party to adduce evidence. Adverse inference can be drawn provided a party is required to lead evidence or has been

directed to produce the same in view of the specific averment made by the other party and the document was in its possession.

26. In the instant case where dispute relates as to whether the appeals were decided or not and whether the order of the appellate authority is genuine or forged and fabricated documents it was necessary for the respondents to file affidavit of Shri Mohd. Jafar and as they have chosen not to file any affidavit of said Shri Mohd. Jafar and no explanation has been furnished for not filing such an affidavit, we draw adverse inference against the department.

27. To sum up, petitioner succeeds in establishing that his appeals for the aforesaid assessment years were heard and decided by a common order dated May 22, 1982 and Revenue dispatched him the certified copy of the said order, which is admissible under the law. Department miserably failed to demolish petitioner-assessee's case.

In view of the above, petition succeeds and is hereby allowed. Impugned notice dated March 3, 1983 is hereby quashed. No order as to costs.