HIGH COURT OF ANDHRA PRADESH

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TAX REVISION CASE No. 245 of 2003

Between:

M/s. Foods, Fats and Fertilizers Limited,
Tadepalligudem,
Tanuku Road,
West Godavari District

.....PETITIONER

AND

The State of Andhra Pradesh
Rep. by the State Representative
Before S.T.A.T,
Hyderabad

.....RESPONDENT

DATE OF JUDGMENT PRONOUNCED: **07.05.2024**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE HARINATH NUNEPALLY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

_____

RAVI NATH TILHARI, J

_____

HARINATH NUNEPALLY, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
&
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! Counsel for the Petitioner : Sri P. Karthik Ramana

Counsel for the Respondent : Sri T. C. D. Sekhar
GP for Commercial Taxes

< Gist :

> Head Note:

? Cases Referred:

1) (1977) 2 SCC 777
2) 2011 (269) E.L.T.485 (A.P)
3) 39 STC 478
4) 9 APSTJ 87
5) (2013) 9 SCC 549
6) (1997) 1 SCC 508
7) (1973) 2 SCC 438
8) (2021) 19 SCC 706
9) (2023) 6 SCC 1
10) (1973) 1 SCC 380
11) (2023) 8 SCC 35

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE HARINATH NUNEPALLY

TAX REVISION CASE No. 245 of 2003

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri S. Dwarakanath, learned senior counsel, assisted by Sri P. Karthik Ramana, learned counsel for the petitioner and Sri T. C. D. Sekhar, learned Government Pleader for Commercial Taxes, appearing for the respondent.

Facts of the Case:

2. This Tax Revision Case under Section 22 (1) of Andhra Pradesh General Sales Tax Act has been filed by the petitioner-M/s. Foods, Fats and Fertilizers Limited, Tadepalligudem, challenging the Order dated 31.12.2001, passed by the Sales Tax Appellate Tribunal (in short 'Appellate Tribunal') Andhra Pradesh Hyderabad in T.A.No.192 of 1997.

3. The petitioner-M/s. Foods, Fats and Fertilizers Limited is a registered company on the rolls of the Commercial Tax Officer, Tadepalligudem and dealer in vegetable oil, deoiled cake etc. During the year 1991-92 the petitioner sent consignment of vegetable oils to outside the State and sales through non-resident agents. The assessing authority-Commercial Tax Officer (CTO) vide proceedings in GI No.539/91-92 (CST), dated 29.02.1996 granted an exemption on a turnover of Rs.1,64,15,660/-. The Deputy Commissioner (Commercial Tax), in his revised Order dated 18.03.1997 has brought a turnover of

Rs.1,52,12,755/- to tax as inter-state sales. The assessee/petitioner filed Tribunal Appeal No.192 of 1997, which has been dismissed by the Appellate Tribunal by Order dated 31.12.2001.

4. The Deputy Commissioner (CT) in its Order has clearly observed that the Commercial Tax Officer examined the books of accounts of the dealers and a show cause notice dated 19.01.1993 was issued allowing exemption on the turnover of Rs.1,66,70,771/- in addition to other exemption relying on sale patties and F-forms filed by the dealer. The Commercial Tax Officer subsequently issued another show cause notice dated 03.07.1993 proposing withdrawal of exemptions on turnover of Rs.1,52,06,954/- In view of the verification of transactions and enquiries conducted by the Commercial Tax Officer, Tadepalligudem with the assistance of the Sales Tax officials at Bombay, which revealed that 5 agents were non-existent fictitious and the F-forms issued by those agents to the petitioner-dealer were not issued by the Sales Tax officials at Bombay and were not certified F-forms by the concerned Sales Tax officials at Bombay and consequently, the sale patties and other relevant records filed by the petitioner-dealer in support of the consignment sale could not be accepted as correct and valid. The enquiries also revealed that the agents had not paid any sales tax in their State to the concerned Sales Tax officials on the sale effected in respect of book transactions.

5. The assessee had filed objections. Subsequently further enquiries were made at Bombay in January 1997 by the Assistant Commercial Tax Officer of the Intelligence Wing with the help of Bombay Sales Tax authorities with

regard to the returns filed and the assessment made on the agents, which revealed that the agents were doing business in goods other than those claimed by the assessee and some of the agents were not available at the addresses given. Even F-forms were not supplied by Commercial Tax Department of Maharashtra State. The order of the Deputy Commissioner mentions that these facts were disclosed to the assessee in the show cause notice and the assessee company was also given an opportunity to go through the enquiry reports. Based on the further enquiries and information collected in the month of January 1997, a further show cause notice dated 30.01.1997 was issued and was served to the dealers on 03.02.1997 in continuation of the previous show cause notice, disclosing the enquiry contents with respect to each of the 5 agents and proposing to levy tax @10% on the turnover tracing the entire transactions effected at Bombay as outright inter-state sale to be taxed at the hands of the petitioner. To the above show cause notice dated 30.01.1997 the petitioner-dealer filed objections on 12.02.1997. He was also afforded personal submissions' opportunity on 25.01.1997 and 05.03.1997. The Deputy Commissioner on consideration held that no proof was filed by the petitioner that the agency transactions were correct, and mere production of F-forms without discharging the responsibility of burden of proof would not make the transactions as consignment sales. The order was passed.

6. The Appellate Tribunal also observed in its judgment that the turnover in question related to the transactions of the following 5 alleged agents.

Sl.No.	Alleged Agent	Turnover
1.	M/s. Atlas Trade Links, Bombay	52,48,353.40
2.	M/s. Shri Impex, Bombay	57,19,398.00
3.	M/s. United Trade Co., Bombay	32,68,451.95
4.	M/s. Heera Enterprises, Bombay	3,79,467.00
5.	M/s. Ashok Enterprises, Bombay	5,97,085.37
	Total	Rs.1,52,12,755,72

The Appellate Tribunal recorded that a copy of the letter of the Deputy Commissioner (Sales Tax) Enforcement, Bombay addressed to the Deputy Commissioner (CT), Eluru made it clear that the Sales Tax Department of Maharashtra had not supplied any 'F' forms to any of the 5 dealers, as mentioned above. M/s. Atlas Trade Links and M/s. Shri Impex were dealers in iron and steel. The registration certificate of M/s. United Trading Company was cancelled with effect from 19.02.1991, when it was found that the dealer was issued Hawala bills. The registration certificate of M/s. Heera Enterprises was cancelled with effect from 01.02.1991. It was dealing in food grains in addition to iron and steel. M/s. Ashok Enterprises was a dealer in iron and steel, yarn and food grains. The Appellate Tribunal, therefore, concluded and affirmed that the Order of the Deputy Commissioner (CT) that no dealer as mentioned above was a dealer in vegetable oils. Besides no 'F' forms were supplied to any of them and therefore, their issuing of 'F' forms to the present petitioner would not arise, unless they were obtained from sources other than from the Department directly. It concluded that there was no transaction between the

petitioner and the above mentioned dealers in respect of vegetable oils. It dismissed the appeal.

Submissions of the learned Counsel for the Petitioner:

7. Learned counsel for the petitioner confined his argument that, the opportunity of cross examination was not given to the petitioner and consequently, the impugned order suffers from violation of the principles of natural justice of affording opportunity of hearing to the petitioner. For want of opportunity of cross examination, the report of the Commercial Tax Department, Bombay could not be relied upon. He submitted that cross-examination is a facet of the principles of natural justice. He further submitted that if the said report was not so relied upon, there was no other material to support the finding recorded against the petitioner.

8. Learned counsel for the petitioner placed reliance in ***State of Kerala v. K. T. Shaduli Grocery Dealer***[1]. Copy of the said judgment was filed along with Memo dated 20.03.2024.

Submissions of the learned GP

9. Learned Government Pleader submitted that the Deputy Commissioner placed reliance on the report of the Commercial Tax Department at Bombay. The said report was based on record. Further, show cause notice dated 30.01.1997 was served on 03.02.1997 in view of further enquiries made at Bombay in January, 1997 with the assistance of Maharashtra Sales Tax Authorities in continuation to the previous show cause notice dated 18.11.1996.

[1] (1977) 2 SCC 777

He submitted that thus the opportunity of hearing was given to the petitioner. The opportunity of cross examination, under the circumstances, was not required and the same would not vitiate the proceedings or the Order.

10. Learned Government Pleader placed reliance in the case of ***Shalini Steels Pvt. Ltd. v. Commr.of Cus. & C. Ex., Hyderabad***[2].

11. We have considered the submissions advanced and perused the material on record.

Question of law:

12. The question of law that arises for consideration is as follows:

"Whether the report of the Commercial Tax Department at Bombay could be relied upon without affording an opportunity to the petitioner to cross-examine the Officers of Commercial Tax Department of the reports at Bombay?"

Analysis:

13. The Appellate Tribunal on the aforesaid point observed that when the Officers of the Government have issued a statement or sent an enquiry report on the basis of the records available, the question of cross-examining the Officers would not arise. It placed reliance in the case of ***State of Kerala v. Shaduli Yousuff***[3] wherein the Hon'ble Apex Court held that the Tax Officers are not bound by any technical rules of law of evidence. It also referred to the case of ***Sri Venkateswara Rice Shop v. State of A. P***[4] to observe that strict rules of evidence embodied in the Evidence Act do not apply to the proceedings

[2] 2011 (269) E.L.T.485 (A.P.)
[3] 39 STC 478
[4] 9 APSTJ 87

before the Assessing Authority and the only obligation of the Authorities is to observe the principles of natural justice.

Case laws:

14. We would first consider the judgments cited as also other judgments on the rule of *audi alteram partem,* the principles of natural justice of affording opportunity of hearing, in particular the right of cross examination on which only, arguments have been advanced.

15. In ***K. T. Shaduli Grocery Dealer*** (supra), the question that fell for determination was whether under the provisions of the Kerala General Sales Tax Act, 1963, the opportunity of being heard which was to be given to the assessee, would include within its sweep the right of cross examination of a third party whose accounts were the basis of the best judgment assessments made by the Sales Tax Officer and the examination of which later on showed that the returns filed by the assesses were incorrect and incomplete. The Hon'ble Apex Court held as under in paragraphs-2 and 3:

> "**2.** Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. It is true, as pointed out by this Court in *Dhakeswari Cotton Mills Ltd.* v. *CIT* [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that **a taxing officer "is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice**. It is, however, necessary to remember that the rules of natural justice are not a

constant: they are not absolute and rigid rules having universal application. It was pointed out by this Court in *Suresh Koshy George* v. *University of Kerala* [AIR 1969 SC 198 : (1969) 1 SCR 317 : (1969) 1 SCJ 543] that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in *Russel* v. *Duke of Norfolk* [(1949) 1 All ER 109] :

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. **The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth**. Accordingly I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

3. One of the rules which constitutes a part of the principles of natural justice is the rule of audi alteram partem which requires that no man should be condemned unheard. It "is indeed a requirement of the duty to act fairly which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties because as pointed out by this Court in *A.K. Kraipak* v. *Union of India* [(1969) 2 SCC 262 : (1970) 1 SCR 457] "the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice" and justice, in a society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions. This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of *audi alteram*

partem requires that a particular specified procedure is to be followed. **It may be that in a given case the rule of *audi alteram partem* may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on facts and circumstances of each case."**

16. In the concurring judgment Hon'ble Justice Fazal Ali in ***K. T. Shaduli Grocery*** Dealer (supra) observed as under in paras-11 to 13, relevant part of which is reproduced as under:

"11. ……..There can be no doubt that the principle that as the tax proceedings are of quasi-judicial nature, the Sales Tax Authorities are not strictly bound by the rules of evidence which means that what the authorities have to consider is merely the probative value of the materials produced before them. This is quite different from saying that even the rules of natural justice do not apply to such proceedings so as to deny the right of cross-examination to the assessee where the circumstances clearly justify such a course and form one of the integral parts of the materials on the basis of which the order by the Taxing Authorities can be passed. The admissibility of a document or a material in evidence is quite different from the value which the authority would attach to such material. The Privy Council has held that **the Taxing Authorities can even base their conclusion on their private opinion or assessment provided the same is fully disclosed to the assessee and he is given an opportunity to rebut the same**. In these circumstances, therefore, we do not agree with Mr Gupte that merely because the technical rules of evidence do not strictly apply, the right of cross-examination cannot be demanded by the assessee in a proper case governed by a particular statute.

12. This Court further fully approved of the four propositions laid down by the Lahore High Court in *Seth Gurmukh Singh* v. *CIT* [(1944) 12 ITR 393

(Lahore HC)] . This Court was of the opinion that the Taxing Authorities had violated certain fundamental rules of natural justice in that they did not disclose to the assessee the information supplied to it by the departmental representatives. This case was relied upon by this Court in a later decision in *Raghubar Mandal Harihar Mandal case*where it reiterated the decision of this Court in *Dhakeswari Cotton Mills Ltd. case* [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] , and while further endorsing the decision of the Lahore High Court in *Seth Gurmukh Singh case* [(1944) 12 ITR 393 (Lahore HC)] pointed out the rules laid down by the Lahore High Court for proceeding under sub-section (3) of Section 23 of the Income Tax Act and observed as follows:

"The rules laid down in that decision were these: (1) While proceeding under sub-section (3) of Section 23 of the Income Tax Act, the Income Tax Officer is not bound to rely on such evidence produced by the assessee as he considers to be false; (2) if he proposes to make an estimate in disregard of the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going to found that estimate; **(3) he is not however debarred from relying on private sources of information, which sources he may not disclose to the assessee at all; and (4) in case he proposes to use against the assessee the result of any private inquiries made bv him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it if possible**."

It will thus be noticed that this Court clearly laid down that while the Income Tax Officer was not debarred from relying on any material against the assessee, justice and fair-play demanded that the sources of information relief upon by the Income Tax Officer must be disclosed to the assessee so that he is in a position to rebut the same and an opportunity should be given to the assessee to meet the effect of the aforesaid information.

13. We, however, find that so far as the present appeals are concerned, they are governed by the provisions of the Kerala General Sales Tax Act, the provisions of which are not quite identical with the provisions of the Income Tax Act and the Kerala Act appears to have fully incorporated all the essential principles of natural justice in Section 17(3) of the Act. In these circumstances, therefore, the answer to the Question posed in these appeals would have to turn upon the scope, interpretation and content of Section 17(3) of the Act, the proviso thereto and Rule 15 framed under the Act. **It is true that the words "opportunity of being heard" are of very wide amplitude but in the context of the sales tax proceedings which are quasi-judicial proceedings all that the Court has to see is whether the assessee has been given a fair hearing. Whether the hearing would extend to the right of demanding cross-examination of witnesses or not would naturally depend upon the nature of the materials relied upon by the Sales Tax Authorities, the manner in which the assessee can rebut those materials and the facts and circumstances of each case. It is difficult to lay down any hard and fast rules of universal application.** We would, therefore, first try to interpret the ambit of Section 17(3) and the proviso thereof in order to find out whether a right of cross-examination of witnesses whose accounts formed the basis of best judgment assessment is conferred on the assessee either expressly or by necessary intendment. Section 17(3) of the Act runs thus:

> "If no return is submitted by the dealer under sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment:
>
> Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of being heard and, where a return has been submitted, to prove the correctness or completeness of such return."

An analysis of this provision would show that this sub-section contemplates two contingencies — (*1*) where the assessee does not file his return at all; and

(*2*) where the assessee files his return which, however, is found to be incorrect or incomplete by the assessing authority. The sub-section further enjoins on the assessing authority a duty to consider the necessary materials and make an enquiry before coming to its conclusion. The proviso expressly requires the assessing authority to give to the assessee a reasonable opportunity of being heard even if the assessee had committed default in not filing the return. Since the statute itself contemplates that the assessee should be given a reasonable opportunity of being heard, we are not in a position to agree with the contention of the learned counsel for the appellant that if such an opportunity is given, it will amount to condonation of default of the assessee. The tax proceedings are no doubt quasi-judicial proceedings and the Sales Tax Authorities are not bound strictly by the rules of evidence, nevertheless the authorities must base their order on materials which are known to the assessee and after he is given a chance to rebut the same. This principle of natural justice which has been reiterated by this Court in the decisions cited above has been clearly incorporated in Section 17(3) of the Act as mentioned above. The statute does not stop here, but the second part of the proviso confers express benefit on the assessee for giving him an opportunity not only of being heard but also of proving the correctness or completeness of such return. In view of this provision it can hardly be argued with any show of force that if the assessee desires the wholesale dealers whose accounts are used against him to be cross-examined in order to prove that his return is not incorrect or incomplete he should not be conceded this opportunity. Apart from anything else, the second part of the proviso itself confers this specific right on the assessee. It is difficult to conceive as to how the assessees would be able to disprove the correctness of the accounts of Haji P.K. Usmankutty or the other wholesale dealers, unless he is given a chance to cross-examine them with respect to the credibility of the accounts maintained by them. It is quite possible that the wholesale dealers may have mentioned certain transactions in their books of account either to embarrass the assessee or due to animus or business rivalry or such other reasons which can only be established when the persons who are responsible for keeping the account are brought before the authorities and allowed to be cross-

examined by the assessees. This does not mean that the assessing authority is bound to examine the wholesale dealers as witnesses in presence of the assessees: it is sufficient if such wholesale dealers are merely tendered by the Sale-Tax Authorities for cross-examination by the assessees for whatever worth it is. In view of the express provision of the second part of the proviso, we are fully satisfied that the respondents had the undoubted right to cross-examine the wholesale dealers on the basis of whose accounts the returns of the assessees were held to be incorrect and incomplete. We are fortified in our view by a decision of this Court in *C. Vasantilal and Co.* v. *CIT* [(1962) 45 ITR 206, 209] where this Court observed as follows:

"The Income Tax Officer is not hound by any technical rules of the law of evidence. It is open to him to collect materials to facilitate assessment even by private enquiry. But if he desires to use the material so collected, the assessee must be informed of the material and must be given an adequate opportunity of explaining it."

It will be noticed that if the Sales tax authorites refused the prayer of the assessees to cross-examine the wholesale dealers, then such a refusal would not amount to an adequate opportunity of explaining the material collected by the assessing authority."

17. In ***K. T. Shaduli Grocery Dealer*** (supra) upon which learned counsel for the petitioner placed reliance, Section 17 (3) of the Kerala General Sales Tax Act used the expression 'opportunity of being heard'. The Hon'ble Apex Court observed that the words "opportunity of being heard" are of very wide amplitude but in the context of the sale tax proceedings which are quasi-judicial proceedings all that the Court has to see is whether the assessee has been given a fair hearing. Whether the hearing would extend to the right of demanding cross examination of witnesses or not would naturally depend upon the nature of the materials relied upon by the sales tax authorities, the manner

in which the assessee can rebut those materials and the facts and circumstances of each case. It was observed that it was difficult to lay down any hard and fast rules of universal application. In the said case, considering the provisions of Section 17 (3) of the Kerala General Sales Tax Act, 1963, its proviso, which provided that before taking action under sub-section (3) of Section 17, the dealer shall be given a reasonable opportunity of being heard and, where a return has been submitted, to prove the correctness or completeness of such return, it was held that Section 17 (3) incorporated all the essential principles of natural justice and there was undoubted right to cross examine the wholesale dealers on the basis of whose accounts the returns of the assessees were held to be incorrect and incomplete. There, the proviso to Section 17 (3) also provided that "…….where a return has been submitted, to prove the correctness or completeness of such return". The Hon'ble Apex Court held that if the assessee desired the wholesale dealers whose accounts were used against him to be cross examined, in order to prove that his return was not incorrect or incomplete he should be conceded the opportunity of cross-examination and it was difficult to conceive as to how the assessee would be able to disprove the correctness of the accounts of the wholesale dealers, unless he was given a chance to cross examine them with respect to the credibility of the accounts maintained by them. Consequently, the opportunity of cross-examination was held to be incorporated in Section 17 (3) itself.

18. In ***Shalini Steels Pvt. Ltd.*** (supra), the Andhra Pradesh High Court held that the cross-examination of a witness, on whose statement reliance is

placed by the adjudicating authority, is no doubt a facet of the principles of natural justice, however, natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to administrative realties and other factors of a given case can be exasperating. It was further held that to sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused by non-observance thereof, more so, on the ground of absence of opportunity of cross-examination.

19. Paragraphs 9 and 10 in ***Shalini Steels Pvt. Ltd.*** (supra) read as under:

> "9. Cross-examination of a witness, on whose statement reliance is placed by the adjudicating authority, is no doubt a facet of the principles of natural justice. It is, however, well to remember thatnatural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. **If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of**. Unnatural expansion of natural justice, without reference to administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. (Chairman, Board of Mining Examination and ChiefInspector of Mines v. Ramjee – {(1997) 2 SCC 256}. Whether any particular facet of the principles of natural justice would be applicable to a **particular situation**, or whether there has been any infraction of the application of that principle, has

to be judged in the light of the facts and circumstances of each particular case. The basic requirement is that there must be fair play in action. (K.L. Tripathi v. State Bank of India {(1984) 1 SCC 43}. **The doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula, and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in a particular case**. (Union of India v. P.K.Roy {AIR 1968 SC 850}; Channabasappa Basappa Happali v. State of Mysore {AIR 1972 SC 32}. It is not possible to lay down rigid rules as to when the principles of natural justice are to apply,nor as to their scope and extent. There is no such thing as a merely technical infringement of natural justice. The requirementsof natural justice must depend on the facts and circumstances ofthe case, the nature of the inquiry, the subject-matter to be dealt with, and so forth. (Wade's Administrative Law (5th Edn., pp. 472-75).

10. To sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused by non- observance thereof, (Syndicate Bank vs. Venkatesh Gururao Kurati {AIR 2006 SC 3542}; K.L. Tripathi[5]; Rajendra Singh v. State of M.P. {AIR 1996 SC 2736}; Aligarh Muslim University v. Mansoor Ali Khan {(2000) 7 SCC 529} and State Bank of Patiala vs. S. K. Sharma {AIR 1996 SC 1669}, more so on the ground ofabsence of opportunity of cross-examination. (Jankinath Sarangi v. State of Orissa {(1969) 3 SCC 392}; K.L. Tripathi – {(1984) 1 SCC 43}. All that the Courts haveto see is whether the non-observance of any of these principles, ina given case, is likely to have resulted in deflecting the course of justice. (State of U.P. vs. Om Prakash Gupta {AIR 1970 SC 679}. Where, on the admitted and indisputable facts, only one view is possible noprejudice can be said to have been caused. (S.L. Kapoor v. Jagmohan {(1980) 4 SCC 379}; Aligarh Muslim University – (2000) 7 SCC 529; Dr.Gurjeewan Garewal v. Dr. Sumitra Dash {(2004) 5 SCC 263}. Where the facts are not in dispute, an inquiry would be an empty formality. (Anil Bajaj (Dr) v. Postgraduate Institute of Medical Education & Research {AIR 2002 SC 2414}. Violation

> of principles of natural justice may not,by itself, necessitate interference by this Court under Article 226 of the Constitution of India, in all cases. Interference would be justified only where manifest injustice would otherwise ensue or where larger public interest would so require."

20. In ***Telstar Travels Private Limited v. Enforcement Directorate***[5] the adjudication order was passed under the Foreign Exchange Regulation Act, 1973 (in short 'FERA') and the challenge was also on the ground of violation of the principles of natural justice for not providing the opportunity of cross examination. It was argued in that case that the adjudicating authority had relied upon the statements and the reports which were inadmissible in evidence as the request for an opportunity to cross examine the witnesses had been declined and thereby violating the principles of natural justice. The Hon'ble Apex Court observed that the rules of procedure do not apply to adjudication proceedings. But that does not mean that in a given situation, cross examination may not be permitted to test the veracity of a deposition sought to be issued against a party against whom action is proposed to be taken. It was observed that it is only when a deposition goes through the fire of cross examination that a Court or statutory authority may be able to determine and assess its probative value. Using a deposition that is not so tested, may therefore amount to using evidence, which the party concerned has had no opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the right of the citizen. The Hon'ble Apex Court however

[5] (2013) 9 SCC 549

further observed that the answer to the question whether failure to permit the party to cross examine has resulted in any prejudice so as to call for reversal of the orders and a *de novo* enquiry into the matter, would depend upon the facts and circumstances of each case. It referred to the previous pronouncement in the case of ***Surjeet Singh Chhabra v. Union of India***[6] in which it was observed that the cross examination of the witness would make no material difference in the facts and circumstances of that case.

21. In ***Telstar Travels Private Limited*** (supra) the Hon'ble Apex Court further referred to its another pronouncement in the case of ***Kanungo & Co. v. Collerctor of Customs***[7] in which it was observed that the principles of natural justice do not require that in each case the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross examined by them on the statements made before the Customs Authorities. In ***Kanungo & Co.*** (supra) the adjudicating authority had mainly relied upon the statements of the appellants therein and the documents seized in the course of the search of their premises. Apart from that, the adjudicating authority had also placed reliance upon the documents produced by two witnesses. Those documents were disclosed to the appellants therein who were permitted to inspect the same. The Hon'ble Apex Court observed that production of documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents are not subjected to cross examination. Such

[6] (1997) 1 SCC 508
[7] (1973) 2 SCC 438

being the case, the refusal of the adjudicating authority to permit cross examination of the witness producing the documents could not even on the principles of the Evidence Act be found fault with. The Hon'ble Apex Court in clear terms observed that at any rate, the disclosure of the documents to the appellants therein and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice.

22. Paragraphs-27 and 28 of ***Telstar Travels Private Limited*** (supra) are reproduced as under:

> **"27.** In appeal before this Court, one of the four arguments advanced on behalf of the appellant was that the adjudicating officer had breached the principles of natural justice by denying them the opportunity to cross-examine the persons from whom enquiries were made by the Customs Authorities. The Supreme Court rejected this argument stating as follows: (*Kanungo & Co. case* [(1973) 2 SCC 438 : 1973 SCC (Cri) 846] , SCC p. 442, para 12)
>
> "*12.* We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on 21-8-1961, **all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities.** Accordingly we hold that there is no force in the third contention of the appellant."
>
> **28.** Coming to the case at hand, the adjudicating authority has mainly relied upon the statements of the appellants and the documents seized in the course of

the search of their premises. But, there is no dispute that apart from what was seized from the business premises of the appellants, the adjudicating authority also placed reliance upon the documents produced by Miss Anita Chotrani and Mr Raut. **These documents were, it is admitted, disclosed to the appellants who were permitted to inspect the same.** The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the adjudicating authority to permit cross-examination of the witnesses producing the documents cannot even on the principles of the Evidence Act be found fault with. **At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice.** That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the courts below. The third limb of the case of the appellants also in that view fails and is rejected."

23. In ***State of Uttar Pradesh v. Sudhir Kumar Singh***[8] the Hon'ble Apex Court on an analysis of various judgments observed and held as under in paragraph-42:

"**42.** An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

[8] (2021) 19 SCC 706

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

24. In ***SBI v. Rajesh Agarwal***[9] the Hon'ble Apex Court elaborately explained on the principles of natural justice. Paragraph-36 of the report is reproduced as under:

"**36.** We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (*i*) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (*ii*) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural

[9] (2023) 6 SCC 1

justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. **Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.** [*Union of India* v. *J.N. Sinha*, (1970) 2 SCC 458].

25. The Hon'ble Apex Court referred *inter alia* to its earlier judgment in ***Canara Bank v. V. K. Awasthy*** {(2005) 6 SCC 321} in which it was held *inter alia* that what particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. Paragraph-45 of ***Rajesh Agarwal*** (supra) is as under:

"45. In *Canara Bank* v. *V.K. Awasthy* [*Canara Bank* v. *V.K. Awasthy*, (2005) 6 SCC 321 : 2005 SCC (L&S) 833] , a two-Judge Bench of this Court succinctly summarised the history, scope, and application of the principles of natural justice to administrative actions involving civil consequences in the following terms : (SCC pp. 331-32, para 14)

"*14*. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. *Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary*

damages. In its wide umbrella comes everything that affects a citizen in his civil life."

(emphasis supplied)"

26. The Hon'ble Apex Court also referred to its judgment in ***Keshav Mills Co. Ltd. v. Union of India***[10]. In the said case, the issue was whether the report of an investigating body appointed by an administrative authority should be made available to the person concerned before the authority takes a decision upon that report. It was laid down that there may be certain situations where an investigation report is required to be furnished to the party concerned to make an effective representation about the proposed action. The Hon'ble Apex Court in ***Keshav Mills Co. Ltd.*** (supra) observed that it was not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. It was further observed that the answer to the said question also must always depend on the facts and circumstances of the case. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case. Paragraph-78 of ***Rajesh Agarwal*** (supra) reads as under:

"**78.** In *Keshav Mills Co. Ltd.* v. *Union of India* [*Keshav Mills Co. Ltd.* v. *Union of India*, (1973) 1 SCC 380] , this Court was dealing with the issue of a takeover of a company by the Government under the IDR Act, 1951 after completion of a full investigation into the affairs of the company. The issue was whether the report of an investigating body appointed by an

[10] (1973) 1 SCC 380

administrative authority should be made available to the person concerned before the authority takes a decision upon that report. While deciding to lay down a general principle, this Court observed that there may be certain situations where an investigation report is required to be furnished to the party concerned to make an effective representation about the proposed action : (SCC p. 393, para 21)

"*21*. In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. *The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case*. We have no doubt that in the instant case non-disclosure of the report of the Investigating Committee has not caused any prejudice whatsoever to the appellants."

(emphasis supplied)

27. The Hon'ble Apex Court in ***Rajesh Agarwal*** (supra) held that *Audi alteram partem* has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected and be informed of the proposed action and be allowed to represent why the proposed action should not be taken. Paragraph-81 of ***Rajesh Agarwal*** (supra) reads as under:

"81. *Audi alteram partem*, therefore, entails that an entity against whom evidence is collected must: (*i*) be provided an opportunity to explain the

> evidence against it; (*ii*) be informed of the proposed action, and (*iii*) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, **principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified** as fraud under the Master Directions on Frauds."

28. In ***Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey***[11] the appellants therein were not given an opportunity to file objections to the recommendations made by the Committee constituted by the National Green Tribunal (in short 'NGT'). The question was of violation of the principles of natural justice and its effect on the ultimate order passed against the appellants therein. The Hon'ble Apex Court held that the NGT is a judicial body and exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with. The Hon'ble Apex Court referred to the **doctrine of "official notice"** and observed that although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on

[11] (2023) 8 SCC 35

which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. The Hon'ble Apex Court observed that the said doctrine applies with greater force to a judicial/adjudicatory body.

29. In ***Singrauli Super Thermal Power Station*** (supra) the factual information came to the knowledge of NGT on the basis of the report of the Committee constituted by it. Consequently it was held that if the same was to be relied upon by the NGT, the same must be disclosed to the parties for their response and a reasonable opportunity must be accorded to present their observations or comments on such a report to the Tribunal. It was found that the respondents therein were not given an opportunity to file objections to the recommendations made by the Committee constituted by the NGT and the final order was passed based on such report. The Hon'ble Apex Court held that there was non-compliance with the principles of natural justice.

30. Paragraphs-21 to 25 of ***Singrauli Super Thermal Power Station*** (supra) are reproduced as under:

> "**21.** A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

22. In this context, it would be useful to refer to what is known as the "official notice" doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial/adjudicatory body.

23. Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an Expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

24. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the Expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.

25. We have perused the impugned order [*Ashwani Kumar Dubey* v. *Union of India*, 2022 SCC OnLine NGT 120] of the NGT and particularly para "16" which has been extracted above. **It is apparent that the appellant(s) herein who were respondents before the NGT were not given an opportunity to file their objections to the recommendations made by the Committee constituted by the NGT** which is apparent by the fact that the recommendations were uploaded on 15-1-2022 and the final order [*Ashwani*

Kumar Dubey v. *Union of India*, 2022 SCC OnLine NGT 120] of the NGT was passed three days later on i.e. 18-1-2022. **Thus, this is a clear case of there being non-compliance with the principles of natural justice.** On the said ground alone the impugned order [*Ashwani Kumar Dubey* v. *Union of India*, 2022 SCC OnLine NGT 120] is set aside, the matter is remanded to the NGT for re-consideration from the stage of the recommendations filed by the Expert Committee constituted by the NGT. The appellant(s) herein are permitted to file their objections, if they are so advised. The NGT shall consider the objections, if any, filed to the recommendations and thereafter dispose of the applications in accordance with law and after giving a reasonable opportunity to all parties."

Some settled principles:

31. On consideration of the judgments aforesaid, it is thus well settled in law that;

(i) the tax proceedings are of quasi-judicial nature. The Tax Authorities are bound to comply with the principles of natural justice though they are not strictly bound by the rules of evidence;

(ii) The rule which requires an opportunity to be heard to be given to the person likely to be affected by a decision is, however, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision;

(iii) The right of cross-examination is undoubtedly a facet of natural justice and where the circumstances clearly justify such a course, it cannot be denied; To put it differently, in a given case the rule of *audi*

alteram partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the enquiry, should be permitted to be cross examined by the party affected while in some other case it may not;

(iv) The Taxing Authorities can even base their conclusion on their private opinion or assessment or reports called without the need formally to introduce them in evidence, but (a) the same must be fully disclosed to the assessee, and (b) he is given an opportunity to rebut the same;

(v) The position in law is to this effect that the Tax Officer though not debarred from relying on any material against the assessee, but justice and fair play demand that the source of information relied upon by the Tax Officer must be disclosed to the assesse so that he may be in a position to rebut the same and an opportunity should be given to the assessee to meet the effect of the said information.

(vi) If the statutory provision provides for right of cross examination or such a right directly or even by necessary implication flows from opportunity of hearing, depending upon the nature of enquiry, the nature and character of the rights effected and consequences flowing from the decision, the right of cross examination cannot be denied.

32. We now proceed to consider if in the facts and circumstances of the present case, the petitioner had a right to cross examine the officials of Tax Department of Bombay on their report, and for denial of such opportunity if

there was non-compliance with the principles of natural justice so much so as to interfere with the order under challenge on such ground.

33. The Deputy Commissioner (CT) has recorded in his order that a show cause dated 03.07.1993 proposing to withdraw the exemptions on turnover of Rs.1,52,06,954/- was issued and pursuant to the report of further enquiries made subsequently at Bombay in January, 1997 by the Assistant Commercial Tax Officer of the Intelligence Wing with the help of Bombay Sales Tax Authorities, a further show cause dated 30.01.1997 was issued and served to the petitioner on 03.02.1997 disclosing the enquiry contents. The enquiry report was also permitted to be inspected and gone through. The petitioner filed objections on 12.02.1997. He was also afforded personal submissions' opportunity on 25.01.1997 and 05.03.1997. The said facts have not been disputed.

34. The enquiry report is based on record, F-forms were not issued by the Tax Department to the petitioner's 5 alleged agents and those were doing business in goods other than those claimed by the petitioner assessee. Some of the agents were not available at the addresses given. To disprove those facts of the report it was not necessary to afford opportunity of cross examination of the Officers of the Tax Department at Bombay. Those facts if not correct, could have been controverted by the petitioner by filing material to evidence that those agents were at the addresses given and they were dealing in goods not other than those claimed by the petitioner as also that F-forms were issued to those agents by the Tax Department at Bombay.

35. The judgment in ***K. T. Shaduli Grocery Dealer*** (supra) relied upon by the petitioner's counsel is of no help, for the discussion made herein above in para-17 of this judgment. In that case, the Hon'ble Apex Court held that the opportunity of cross examination was necessary. The principles of natural justice were incorporated in Section 17 (3) proviso of the Kerala General Sales Tax Act and on its language, the cross examination could not be denied. Any such provision has not been brought to Our notice by the learned counsel for the petitioner in the present case.

36. In view of the aforesaid, We are of the considered view that in passing the impugned orders there is no violation of the principles of natural justice. It could not be argued as to what prejudice has been caused to the petitioner for want of opportunity of cross examination. The procedure followed is fair and just, complying with the rules of natural justice.

Conclusion:

37. We conclude on the question of law framed that the procedure followed is just, fair and in consonance with the principles of natural justice. No opportunity of cross examination to the petitioner was required to be given. It has not resulted in violation of the principles of natural justice so as to interfere with the order under challenge.

38. No case for interference is made out in the exercise of revision jurisdiction.

Result:

39. The Tax Revision Case is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

HARINATH NUNEPALLY, J

Date: 07.05.2024
Dsr

Note:
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