
(2009) 09 P&H CK 0052
In the Punjab And Haryana At Chandigarh

A.B. Sugars Limited	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11(3)

Citation : (2010) 29 VST 538

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The instant petition has been filed under article 226 of the Constitution with the prayer for quashing order dated March 31, 2005 (P9) passed by the Assistant Excise and Taxation Commissioner-cum-Assessing Authority, Hoshiarpur in respect of assessment year 2000-01. The principal ground of challenge is that the impugned order has been passed beyond the period of limitation prescribed u/s 11(3) of the Punjab General Sales Tax Act, 1948 (for brevity, "the Act").

2. Brief facts of the case are that the petitioner is a sugar manufacturing unit and is registered under the provisions of the Act. The petitioner-dealer filed returns of tax under the Act claiming sale of sugar as tax-free. On the purchase of sugarcane no tax was paid as the dealer was claiming that on purchase of sugarcane no tax is leviable under the Act. u/s 11(3) of the Act, the assessment of the dealer can be framed within three years from the last day prescribed for filing of the returns. In the instant case the last date for filing of return in respect of the assessment year 2000-01 was April 30, 2001 and therefore the assessment was required to be framed on or before April 30, 2004.

3. In the case of the petitioner the Assessing Authority, Hoshiarpur was the appropriate authority u/s 2(a) of the Act to frame the assessment but the case of the petitioner was transferred by respondent No. 3 to the file of Assistant Excise

and Taxation Commissioner (Inspector), Punjab, Patiala. Thereafter the case was transferred to the file of the Assistant Excise and Taxation Commissioner, Kapurthala. It is alleged that no copy of the order transferring the case from Patiala to Kapurthala was ever supplied to the petitioner. The Assistant Excise and Taxation Commissioner, Kapurthala issued notice on September 1, 2003 (P3). The case was then again transferred to Hoshiarpur. The petitioner appeared before the Assistant Excise and Taxation Commissioner and questioned the authority of the Department to frame its assessment for the year 2000-01 on the ground that the matter has already become time-barred. However, the Excise and Taxation Commissioner, Hoshiarpur vide order dated March 31, 2005 framed assessment levying tax on the purchases of sugarcane at eight per cent raising a demand of Rs. 1,92,97,175. On the issue of limitation, the Assessing Authority observed that vide order dated April 16, 2004, the Excise and Taxation Commissioner in exercise of powers u/s 11(10) of the Act has already granted extension to frame assessment up to March 31, 2005. The case of the petitioner is that no extension order was ever passed till date. In any case no such order has ever been communicated to the assessee so far.

4. The petitioner has challenged the notice on the ground that the Assessing Authority was required to finalise the assessment within a period of three years from the last date prescribed for furnishing the last return in respect of any period. Therefore, the period prescribed for finalising the assessment has come to an end on April 30, 2004 and the assessment in this case has become time-barred which has now been framed on March 31, 2005 (P9).

5. The stand of the respondents in the written statement is that although assessment u/s 11(3) in respect of the dealer is required to be completed within three years from the last date of filing of the return but by virtue of the provisions of Sub-section (10) of Section 11 of the Act, which was added with effect from April 20, 1998, the Commissioner is empowered to extend the period of three years for passing an order of assessment for such further period as he may deem fit. It is also observed in para 5 of the written statement that the Excise and Taxation Commissioner had transferred the assessment cases of the petitioner for various assessment years including the assessment years 1999-2000 and 2000-01 in exercise of powers under Rule 39C of the Punjab General Sales Tax Rules, 1949 (for brevity, "the Rules"). The petitioner had agreed to the transfer of cases as no objection was ever raised nor he demanded any copy of the order from the Commissioner when these assessment files were transferred from Hoshiarpur to Patiala. For some administrative reasons, the Assistant Excise and Taxation Commissioner, Patiala considered it proper to transfer the assessment file of the petitioner to the file of the Assistant Excise and Taxation Commissioner, Kapurthala on March 18, 2003 who issued notice in form ST XIV on September 1, 2003 for framing assessment in respect of the year 2000-01. The petitioner is stated to have not raised objection to the transfer of the case from Patiala to Kapurthala. Some objections were filed before the Assistant Excise and Taxation Commissioner, Jalandhar. The matter was pending

for final assessment when once again the Excise and Taxation Commissioner transferred the case of the petitioner to the Assistant Excise and Taxation Commissioner, Jalandhar. It is claimed that before transferring the matter grant of opportunity of hearing was not mandatory as it was in the discretion of the transferring authority under Rule 39C of the Rules.

6. The respondents have further claimed that assessment has been framed by the Assessing Authority, Hoshiarpur, after obtaining extension from the Commissioner vide order dated April 16, 2004 u/s 11(10) of the Act to finalise the assessment and accordingly assessment order has been passed on March 31, 2005 when the records were received back from Jalandhar.

7. Mr. K. L. Goyal, learned senior counsel for the petitioner has argued that there is palpable violation of the principles of natural justice. The files of the petitioners have been transferred from one Assessing Authority to another without granting any opportunity of hearing. He has also submitted that even for grant of extension of time u/s 11(10) of the Act, no opportunity of hearing was given and the time was extended beyond the period of three years without any reasons and justification.

8. We have heard the learned Counsel for the parties at some length and have perused the paper book with their assistance.

9. Before we embark upon the close examination it would first be necessary to set out Section 11(10) of the PGST Act which reads thus:

Section 11 Assessment of tax.-(1) to (9) ...

(10) The Commissioner may, for reasons to be recorded in writing, extend the period of three years, for passing the order of assessment for such further period as he may deem fit.

10. A perusal of the aforesaid provision shows that the Commissioner is empowered to extend the period of limitation. But he has to record reasons for passing the order granting extension of time. The Commissioner cannot arrive at valid and acceptable reasons unless he affords an opportunity of hearing to the assessee. It is well-settled that the principles of natural justice have to be implied in a statute even if there is no specific provision made in a statute unless there is express exclusion or it could be inferred from statutory provision being a necessary intendment. For the aforesaid proposition reliance could be placed on following observations of the honourable Supreme Court in the case of Basudeo Tiwary Vs. Sido Kanhu University and Others, .

10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing- it may be implied from the nature of the power- particularly when the right of a party is affected adversely. The justification for

reading such a requirement is that the court merely supplies omission of the Legislature (vide *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and except in case of direct legislative negation or implied exclusion (vide *S.L. Kapoor Vs. Jagmohan and Others*, .

(emphasis supplied)

11. The same principle has been echoed in the observations made by the honourable Supreme Court in para 106 of the judgment rendered in the case of *Swadeshi Cotton Mills v. Union of India* [1981] 1 SCC 664.

106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . They are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of preemptive action, if the statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of judges to apply the principles of natural justice, where there is suspicion of public mischief and only property rights and vested interests are involved.

(emphasis supplied)

12. Similar principles have been followed and applied in cases of *Dr Rash Lal*

Yadav Vs. State of Bihar and Others, . Para 9 of the judgment which deals with the issue in hand reads thus:

9. What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences...

13. When we apply the aforesaid principles to the facts of the present case and examine the provisions of Section 11(10) it becomes evident that there is no prohibition incorporated by the legislation to follow the principles of natural justice. Even otherwise there is no legislative intendment either in the preceding or in the succeeding provisions to imply any such prohibition to comply with the principles of natural justice. Therefore, it follows that the principles of natural justice are inherent and have to be read in Sub-section (10) of Section 11 of the Act expressly required the Commissioner cognizance in writing for extending the period of three years provided by Section 11(3) for passing the order of assessment. As already observed in the preceding paras, the process of recording reason cannot be a unilateral act of the Commissioner. The association of the assessee to reach the correct reasons and whether any such reason was justified or not, would be essential, therefore, the so called order dated April 16, 2004 extending the period of limitation passed by the Commissioner cannot be relied upon by the respondent. The other impelling reason for reaching the aforesaid conclusion is that no such order has ever been communicated to the petitioner-assessee. It is well-settled that communication of the order passed by the Government is sine qua non in order to confer on such a letter the character of an order. In that regard reliance may be placed on a judgment of honourable the Supreme Court delivered by a Constitution Bench in the case of Bachittar Singh v. State of Punjab [1962] Supp. 3 SCR 713. The aforesaid view has been repeatedly followed in a number of cases including the judgment of honourable the Supreme Court rendered in State of Assam etc. Vs. Kripanath Sarma and Others etc., . It is evident from the paper book that the order has neither been communicated nor it has been placed on record, which further shows the hesitation on the part of the respondent to be transparent in their conduct. Accordingly, the order extending the period of limitation passed u/s 11(10), cannot stand judicial scrutiny and is thus liable to be set aside.

14. There is another aspect of the matter. The proceedings of the petitioner's case have been transferred four times. First, it was transferred from Hoshiarpur to Patiala, then to Kapurthala, and then for the third time to Jalandhar and fourthly to Hoshiarpur again. There is nothing on the record to show why such a course was adopted. Moreover, no opportunity was afforded and there are no reason to justify why an opportunity could not be given. Rule 39C of the Punjab General Sales Tax Rules, 1949 reads thus:

39C. (1) The Commissioner may, after giving the dealer a reasonable opportunity of being heard, wherever it is possible to do so, and after recording his reasons

for doing so, transfer any case from an Assessing Authority to any other Assessing Authority subject to the pecuniary jurisdiction prescribed in this behalf:

Provided that in case of transfer from an Assessing Authority to any other Assessing Authority in the same district, no such opportunity shall be required to be given.

(2) The transfer of any case under Sub-rule (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Authority from whom the case is transferred.

15. A perusal of the aforesaid provision shows that wherever opportunity of hearing could possibly be given it should be afforded and the Commissioner could transfer a case from one Assessing Authority to the other after recording reasons. The facts of the present case do not disclose any such reasons nor any argument to that effect has been advanced by the learned State counsel. Therefore, on that count also the order of transfer of case belonging to the petitioner could not be justified.

16. From the aforesaid discussion, no doubt is left that the order dated April 16, 2004 purported to have been passed u/s 11(10) of the Act and Rule 39C of the Rules flagrantly violates the principles of natural justice. Such an order cannot be regarded an order in the absence of its communication to the petitioner. Therefore, the respondent cannot take any support from such an order and the impugned order dated March 31, 2005 (P9) is set aside as it is beyond the period of three years prescribed by Section 11(3) of the PGST Act.

17. The writ petition is allowed in the abovesaid terms.