(2014) 03 KL CK 0041

In the High Court Of Kerala

Case No : O.T. Rev. No. 110 of 2013

Al Ahali Business Trade Link (P) Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)
Kerala General Sales Tax Act, 1963 — Section 5(1)(iv), 5A, 5B, 7(7)
Kerala Value Added Tax Act, 2003 — Section 6, 8(f), 8(f)(1), 8(f)(i), 8(f)(i)(v)(d)

Citation : (2014) 72 VST 458

Hon'ble Judges : Dr. Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : K.P. Abdul Azees, C. Amrita and T. Archana, Advocate for the Appellant; Bobby John, Government Pleader, Advocate for the Respondent

Judgement

Dr. Dr. Manjula Chellur, C.J.—This revision petition is directed against the order of the Appellate Tribunal dated May 30, 2013. The brief facts that led to filing of this revision are as under:

The revision petitioner is running M/s. Al Ahali Business Trade Link (P.) Ltd., a registered dealer in jewellery of gold, silver and platinum group of metals with the brand name Malabar Gold at City Centre, Thrissur. The revision petitioner shifted its business premises to Sankara Iyer Junction, M.G. Road, Thrissur, after intimating assessing authority as per letter dated June 25, 2010. He filed an application for payment of tax at compounding rate for the year 2010-11 during which period the business premises was shifted. This came to be accepted. However, when an application came to be filed for payment of tax at compounding rate for the year 2011-12, same was rejected stating that business premises was shifted. The revision petitioner contends, it is not a sufficient reason for rejecting the application for composition under section 8(f)(ii) of the Kerala Value Added Tax Act, 2003 (for short, "the Act"). Aggrieved by the same, the assessee filed an appeal before the Appellate Tribunal, which came to be dismissed, against the same, the present revision is preferred.

The revision petitioner raised the following grounds upon which he seeks to set aside the order of the respondent-authority; the order refusing the application is beyond show-cause notice; change of business premises during the year 2010-11, which was approved, cannot be a ground for rejecting the application; prior approval of the District Deputy Commissioner as required under the statute was not obtained; shifting of business premises per se cannot be a ground to reject the application unless it is for valid reasons; there was no reason to reject the compounding application for the year 2011-12 when such compounding was permitted for 2010-11. Questions of law raised for decision by this court are as under:

"(a) Ought not the Tribunal should have found that the shifting of business premises per se is not sufficient reason unless it is supported by objective reasons and in the case on hand there are no such objective reasons so as to justify the rejection of the application for compounding?

(b) Having observed that the discretion sought to be exercised by the assessing authority in all respects shall be proper and reasonable and guided by judicial principles, has not the Tribunal committed an error in law by holding that the words contained in section 8(f)(ii) of the Kerala Value Added Tax Act 2003 granting power to reject the application for composition is, not discretionary?

(c) Having no dispute, that the shifting of the business premises was done during the year 2010-11 which was duly communicated and acknowledged by the assessing authority, has not the Tribunal failed to decide whether the assessing authority is justified in rejecting the application for composition under section 8(f) of the Kerala Value Added Tax Act, 2003 for the year 2011-12 (next year) when this issue was specifically raised before the Tribunal?

(d) Having complied with the requirements of section 8(f)(v)(d) of the Kerala Value Added Tax Act, 2003 by paying tax as provided therein during the year 2011-12, has not the Tribunal committed an error in law by holding that the rejection of the compounding facility for the year 2011-12 under section 8(f)(ii) of the Kerala Value Added Tax Act, 2003, is in order? (* year is changed as per order in I.A. No. 2578 of 2013 in O.T. Rev. No. 110 of 2013)

(e) Ought not the Tribunal should have interfered in the order of the assessing authority as per annexure A5, when the notice or the order as per annexures A3 and A5 issued by the assessing authority does not refer anything about the mandatory requirement of prior approval of District Deputy Commissioner as provided under proviso clause to section 8(f)(ii) of the Kerala Value Added Tax Act, 2003?

(f) Ought not the Tribunal should have found that the District Deputy Commissioner should have granted opportunity of being heard and for filing objections to the revision petitioner before granting approval to the assessing authority to reject the application for composition, if at all any such approval has been granted?

(g) Having alleged in the notice in annexure A3 that the revision petitioner has not intimated the opening of the business place at Sankara Iyer Road, whereas in the order in annexure A5, it was found that opening of the business place at Sankara Iyer Road was duly informed, ought not the Tribunal should have found that the reasons stated in the annexure A3 notice for rejection of the application for composition is not what is relied upon in the annexure A5 order?"

2. As against this, learned Government Pleader placed his arguments on the following lines:

The option exercised by the assessee for compounding under section 8(v) of the Act for the year 2010-11 was permitted by an order dated May 31, 2010. The assessee shifted his place of business from City Centre, Thrissur to Sankara Iyer Junction, M.G. Road, Thrissur with effect from July 1, 2010. Therefore, the assessing authority rejected the application for compounding for the year 2011-12 relying on sub-section (ii) of section 8(f) of the Act only after hearing the assessee. The said provision contains several reasons upon which the concerned authority can refuse permission for compounding which includes shifting of place of business as well. The Tribunal considered all the relevant facts while dismissing the appeal. Since the scope of tax revision is very limited, the assessee cannot assail conclusion arrived at on the basis of factual issue in the absence of perversity or arbitrariness in the said order. The challenge so far as validity of the provision is beyond the scope of tax revision, therefore, revision petition cannot be entertained. According to the Revenue, compounding being an option, it is wholly within the choice and pleasure of the dealer. No compulsion to opt exists. It is hassle-free method of taxation as against the regular assessment. The dealer who is aware of the scheme of compounding cannot doubt the same. Subsequently, it is not correct on the part of the assessee to complain about any of the conditions or restrictions imposed in the scheme or provision. If it is not beneficial, no one can compel him to opt the same, therefore, the revision petitioner has to blame itself for the situation in which it is now placed.

3. The learned counsel for the revision petitioner relies upon Chitturi Subbanna Vs. Kudapa Subbanna and Others, to contend that pure question of law if not depending on facts can be raised as a new plea. He also relies upon Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishan and Others, regarding presumption of constitutionality. He further contends, while considering the validity of a statute, presumption is always in favour of its constitutionality and the burden is upon the person who attacks it to show that there has been a clear transgression of constitutional principles. He further contends that it must always be presumed that Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds. Courts will be justified in giving a liberal interpretation to the section in order to avoid constitutional invalidity. These principles have given rise to the rule of reading down the sections if it becomes

necessary to uphold the validity of the sections.

4. He further relies upon K. GOVINDAN and SONS Vs. COMMISSIONER OF INCOME TAX, again to stress upon the principle that interpretation that leads to absurdity must be avoided.

5. The learned Government Pleader relies upon several decisions in support of his contentions. State of Maharashtra and Others Vs. V.S. Naik, is relied upon, which pertains to service matter and the controversy that arose was, whether the impugned notice-cum-order of compulsory premature retirement from service passed against the respondent was in strict compliance with rule 8, note (1) of the Revised Pensions Rules, 1950. The said rule required to record the exact reasoning in writing in each case. It was held that reason may be recorded in the concerned file and need not be mentioned in retirement order. The expression "such as" in the said rule indicates, grounds are only illustrative and there can be other grounds also. It is contended that rule 8(f)(ii) indicates certain instances only where registration could be rejected or withdrawn, therefore the reasons mentioned thereunder are only illustrative and not exhaustive.

6. State of Kerala and another Vs. Builders Association of India and others, is relied upon. The question that arose in the said case was whether the provisions of the Kerala General Sales Tax Act, i.e., sections 5(1)(iv), 7(7), (7A), (11) and (12) were beyond the legislative competence of State Legislature. In that context, their Lordships, by referring to R.K. Garg and Others Vs. Union of India (UOI) and Others, opined that object of subsections (7) and (7A) is the same as that of section 5(1)(iv). It is only a different route to arrive at the same destination. Their Lordships further opined that every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.

7. He refers to the decision in Mycon Construction Ltd. Vs. State of Karnataka and Another, wherein constitutional validity of the method of tax, composition of tax in lieu of regular assessment under section 5B, providing an enhanced composition fee with retrospective effect from April 1, 1988, was the subject-matter. It was held that State Legislature is competent to enact such a provision. There is no compulsion for the assessee to opt for the composition scheme, hence no prejudice is caused in any manner whatsoever. Challenge to the provisions as constitutionally invalid was repelled.

8. The decision in The State of Tamil Nadu Vs. M.K. Kandaswami and Others, is relied upon to contend that while comparing section 5A of the Kerala General Sales Tax Act, their Lordships had an occasion to deal with section 7A of the Madras General Sales Tax Act. Section 7A of the Madras General Sales Tax Act was challenged, questioning the competency of State Legislature to impose tax

on the use and consumption of goods, therefore the said section was ineffective. While referring to the judgment of the Kerala High Court in Yusuf Shabeer and Others Vs. State of Kerala and Others, , their Lordships opined that goods, the sale or purchase of which is liable to tax under the Act in section 7A(1) means, taxable goods, that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of the seller but the purchase of the same, by a dealer in the course of his business may subsequently become taxable. It was further held that section 7A itself is a charging section and creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act have not, due to the circumstances of particular sales, suffered tax under section 3, 4 or 5, and which after the purchase have been dealt with by him in any of the modes indicated in clauses (a), (b) and (c) of section 7A(1).

9. He relies upon the decision in Commissioner, Sales Tax, U.P. v. Kumaon Tractors & Motors [2002] 9 SCC 379 , in which it was held that under section 11 of the U.P. Trade Tax Act, 1948, the jurisdiction of a High Court was only to interfere with the Tribunal''s order and the scope is a limited jurisdiction to interfere on the question of law which has to be precisely stated or formulated. Therefore, the order of the High Court was set aside opining that the High Court re-appreciated the evidence and ignored the material documents and held that the assessee was not a dealer but was entitled to receive commission. He also relies upon Commissioner of Trade Tax, U.P. Vs. J.U. Pesticides and Chemical P. Ltd, to stress upon the fact that while exercising the revisional power, court has limited jurisdiction to interfere with the orders of the Tribunal and interference can only be on the question of law which has to be precisely stated and formulated. Interference with the orders of the Tribunal on factual aspects is not proper, therefore it is to be set aside.

10. The stand of the Revenue is, the object of section 8(f) of the Act is to provide an alternate scheme of taxation without sacrificing the interest of the Revenue. While computing the compounding tax, annual tax and the tax paid/payable for previous year has much relevance. Therefore, place of business is a crucial aspect which goes to the root of method of taxation and the restriction contained in sub-section (ii) of section 8(f) is in consonance with the object and purpose of the scheme. Even otherwise, it is a matter of common knowledge that place of business is a relevant factor in order to avoid any scrupulous dealer taking advantage of the situation by opting for compounding based on the turnover and the tax paid for previous year for a shop situated in the suburbs of city and subsequently, shifting the place of business to the heart of the city. One of the grounds introduced was shifting the place of business. Therefore, shifting of place of business itself is a sufficient ground to refuse permission for compounding. Approval of higher authorities is only an administrative check on the assessing authorities. The same was received before issuance of the order to the assessee. No material was produced by the dealer before the fact-finding authority that shifting of business premises has not resulted in substantial

increase in the turnover. During the year 2010-11, the assessee conducted business in the old building for three months and thereafter for nine months in the new building. Hence, the sales tax turnover comparison has to be done month-wise during 2010-11 and 2011-12.

11. In order to understand the real question of controversy, it would be apt to refer to the statutory provision, i.e., section 8(f) of the Act, which reads as under:

"8. Payment of tax at compounded rates.--

Notwithstanding anything contained in section 6,--

...

(f)(1) any dealer in ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at,--

(a) one hundred and fifteen per cent, in case their annual turnover for the above goods for the preceding year was rupees ten lakhs or below;

(b) one hundred and twenty per cent, in case their annual turnover for the above goods for the preceding year was above rupees ten lakhs and up to rupees forty lakhs;

(c) one hundred and thirty five per cent, in case their annual turnover for the above goods for the preceding year was above rupees forty lakhs and up to rupees one crore; and at

(d) one hundred and fifty per cent, in case their annual turnover for the above goods for the preceding year exceeded rupees one crore;

of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such option relates.

...

(ii) The assessing authority, for valid and sufficient reasons, such as shifting of place of business, holding of stock exceeding double the quantity held in the previous year, furnishing of false information, suppression of relevant information, failure to furnish such information demanded, may refuse permission to pay tax under this section and cancel the permission if any granted:

Provided that no orders under this sub-clause shall be issued without giving the dealer an opportunity of being heard and without prior approval of the District Deputy Commissioner."

12. Reading of the above provisions clearly indicates, there could be several valid and sufficient reasons upon which the assessing authority may refuse permission to pay tax under the above section and can even cancel the permission if already

granted. Some of the reasons are enumerated under sub-section (ii) of section 8(f), i.e., shifting of place of business, furnishing of false information, etc. The reasons enumerated in the provision are only illustrative and not exhaustive. There may be instances where the reasons could be altogether different from what is enumerated under sub-section (ii). Section 8(f)(1) provides option for a dealer in ornaments or articles of gold, silver, platinum group metals to pay tax at compounding rate instead of paying tax in accordance with the provisions of section 6. No doubt, this is a benefit or concession given to the dealer to opt a method under which he intends or desires to pay tax depending upon the turnover. By this method, no doubt, interest of the Revenue is also protected. However, in the present case, one has to see whether there is strict compliance of the provision by the authority while considering the application of the dealer for compounding rate of tax for the year 2011-12 and whether authority concerned did exercise its power in accordance with the provisions contemplated.

13. So far as the proviso to section 8(f)(ii), according to the revision petitioner, there is nothing on record to show that there was prior approval of the District Deputy Commissioner before rejecting the application of the dealer seeking permission for payment of tax at compounding rate. According to the revision petitioner, there was no application of mind on the part of the competent authority before it rejected the application of the dealer. This must be evident from the facts borne on record. Therefore, on perusal of the show-cause notice at annexure A3 and the proceedings at annexure A5 rejecting the claim of the dealer for compounding, it clearly indicates that there was no application of mind by the competent authority. Annexure A3 reads as under:

"Take notice that you have filed return in form 10 for the month of April 2011 opting to pay tax at 125 per cent of the average monthly tax paid during the last financial year (10-11). It may be noted that during the last financial year, after opting for compounding you have shifted your place of business from City Centre, Thrissur to Shankara Iyer Road, Thrissur. But you have not changed the address of your business place, and have not intimated the opening of branch business place at Shankara Iyer Road. It is therefore proposed to reject the claim for compounding at 125 per cent of the compounded tax paid during 10-11 under section 8(f)(ii) of the Act.

Your objection to the proposal, if any, should be filed within seven days of receipt of this notice. You are also given an opportunity of being heard."

14. Annexure A5 reads as under:

"M/s. Al-Ahali Business Trade Links (P.) Ltd., is an assess on the rolls of this office doing business in jewellery of gold, silver and platinum group of metals with the branch name Malabar Gold at Door No. 19/441/1-2, Sankara Iyer Junction, MG Road, Thrissur. The dealer had opted and paid tax at Rs. 8,28,083 per mensem including cess under section 8(f)(v) for the year 2010-11 as per the proceedings issued from this office No. UN 32080262152 dated May 31, 2010 at

Door No. XXV/1130/1 at City Centre, Round West. But from July 1, 2010 the dealer had shifted their place of business from Door No. XXV/1130/1 to City Centre, Round West to Door No. 19/441/1 & 2-Sankara Iyer Junction, MG Road, Thrissur.

As per section 8(f)(ii) the assessing authority for valid and sufficient reason such as shifting of place of business holding of stock exceeding double the quantity held in the previous year, furnishing of false information, suppression of relevant information, failure to furnish such information demanded may refuse permission to pay tax under this section and cancel the permission if any granted.

In view of the above provision a notice dated May 24, 2011 was served on the assessee stating that they are not eligible to pay tax at 125 per cent of the tax paid during the previous year under section 8(f)(v) of the Act as they have shifted their place of business during the year 2010-11 after obtaining the compounded proceedings at the old business place in Door No. XXV/1130/1, City Centre, Round West. In reply to the notice they have stated that the business place was shifted with effect from July 1, 2010 from City Centre to Sankara Iyer Road, and the fact has been communicated to the assessing authority sufficiently early as per their Lr. No. M/TCR/2010-2011 dated June 25, 2010 under proper acknowledgment.

The then assessing authority issued a notice to the assessee under clause VI of section 8(f)(i) introduced as per the Finance Act, 2010, that since the dealer is doing the business under a brand name, they have to disclose the highest tax payable by the principal or the franchisee who were selling the goods in brand name Malabar Gold, for treating the business place as a branch or franchisee. For that notice the assessee gave no reply. However, the compounding proceedings was not cancelled.

Since the dealer had requested for a personal hearing, an opportunity for hearing was granted. Sri P. Abdul Karim, Authorized Representative appeared and was heard. Since the assessee has been doing business not as a branch or franchisee of Malabar Gold and since they have shifted their place of business from Door No. XXV/1130/1, City Centre, Round West to Door No. 19/441/1&2, Sankara Iyer Junction, M.G. Road, Thrissur, a more spacious show room at a conspicuous location in the heart of the city, they are not eligible to continue to pay tax under section 8(f)(i)(v)(d) of the Act and hence the following orders are issued.

Order No. 32080262152/2011-2012 Dated June 22, 2011

In the circumstances explained above, the application filed by M/s. Al Ahali Business Trade Links (P.) Ltd., opting to pay tax under section 8(f)(v)(d) of the KVAT Act, 2003 for the year 2011-12 at 125 per cent of the tax paid during the previous year is rejected."

15. As per annexure A3 show-cause notice, the reason proposed to reject the claim was after opting for compounding dealer has shifted his place of business

from City Centre, Thrissur to Sankara Iyer Junction, M.G. Road, Thrissur. Further, in spite of such shifting of place of business, the dealer has not changed the address of business place and there was no intimation regarding opening of branch business place at Sankara Iyer Road. The proceedings at annexure A5 clearly indicate altogether a different reason for rejecting the claim of the dealer. Further, proviso to section 8(f)(ii) requires prior approval of the District Deputy Commissioner before proceeding with orders. So far as the first part of the proviso, the dealer must be given an opportunity of being heard. There is no application of mind so far as the reason indicated at annexure A3, since as early as June 25, 2010, the Assistant Commissioner concerned was informed by the dealer that they were proposing to shift their place of business from City Centre, Round West, Thrissur to Sankara Iyer Junction, M.G. Road, Thrissur with effect from July 1, 2010. This is clear from annexure A1. Annexure A1(3) clearly indicates, as on June 28, 2010, there is acknowledgment of such intimation by the Department with its seal. In spite of receiving intimation at annexure A1 if the Department were to issue annexure A3, it amounts to non-application of mind by the concerned authority.

16. On going through the contents of annexure A5, further deficits are revealed. From this, there is no denial of receipt of intimation at annexure Al. The reason for rejecting the claim was altogether different. They say, the assessing officer issued notice to the dealer asking them to disclose the highest tax payable by the principal or the franchisee who were selling the goods in brand name Malabar Gold, for treating the business place as a branch or franchisee. But no reply was given. However, compounding proceedings were not cancelled initially and later, since the assessee has been doing business not as a branch or franchisee of Malabar Gold and since they have shifted their place of business to a more spacious show room at a conspicuous location in the heart of the city, they are not eligible to the benefit under section 8(f)(i)(v)(d) of the Act. So far as this reasoning of the Assistant Commissioner, no opportunity of being heard was given to the revision petitioner. The reason indicated at annexure A3 is altogether different from annexure A5. Therefore, there is no application of mind.

17. In the case of Josco Gold Corporation Pvt. Ltd. Vs. The Commercial Tax Officer and Others, , a Division Bench of this court had an occasion to deal with the provisions of section 8(f) of the Act where new branch was opened during 2010-11 and permission was granted to pay compounded rate of tax for the year 2010-11. Later, opining that dealer held stock exceeding double the quantity held in the previous year, which is in violation of the mandatory provision, refused to grant permission to pay tax at compounding rate. When challenge was made to the provision on the ground of violation of freedom under article 19(1)(g) of the Constitution, their Lordships opined that once an objective criteria is fulfilled, the authority can exercise its power in terms of the statute. Therefore, challenge to section 8(f)(ii) was repelled and the request to read down the provision on the basis of article 14 as without any basis was also repelled.

18. In the above case, a writ petition was filed before the learned single judge reported as Josco Gold Corporation (Pvt.) Ltd. Vs. Commercial Tax Officer, challenging the provisions of section 8(f)(ii) as unconstitutional if it were to be interpreted as meaning that the officer is bound to cancel the permission granted irrespective of the circumstances. The learned single judge reported as Josco Gold Corporation (Pvt.) Ltd. Vs. Commercial Tax Officer, rejected the said contention wherein he opined that none of the circumstances which would render the statute vulnerable existed in that case. He further opined that the appellant must be treated as aware of the provisions as per which there were stock exceeding double the quantity held in the previous year, the party is not entitled to compound and what is more, he is liable to be visited with an order of cancellation. The Division Bench opined that it is well-settled law that article 19(1)(g) of the Constitution confers fundamental freedom on citizens and it has to be exercised by individuals and not by a corporate body. It was further opined that the ground raised by the appellant was absolutely an objective criteria and there was no element of subjectivity, therefore the challenge to the provisions of section 8(f) is to be rejected and the request to read down the provision deserves to be rejected.

19. In the present case, it is not a writ appeal against the orders of a learned single judge reported as Josco Gold Corporation (Pvt.) Ltd. Vs. Commercial Tax Officer, in a writ petition. Question of considering the validity of the statute does not arise here. We are dealing with a situation where this court is required only to see whether provisions of section 8(f)(ii) are complied with by the authority concerned or not. As already stated above, the assessing authority, only for valid and sufficient reasons, can refuse permission to pay tax at compounding rate or cancel the permission already granted. It says valid and sufficient reasons like shifting of business place, furnishing of false information, etc. If shifting of business place was to be a valid and sufficient reason, instead of just opining registration is cancelled on account of shifting of place of business, the assessing authority must give a valid reason why such shifting deserves such treatment. Unless such reasoning is mentioned per se, shifting of place of business may not be a ground upon which permission can be cancelled without valid and sufficient reason. In the absence of such valid and sufficient reason, it is nothing but arbitrary and illegal. As already stated above, the reasoning in the show-cause notice is enlarged to much larger issue by the time permission came to be cancelled at annexure A5. Therefore, the assessing authority has not applied its mind while canceling the permission. Further, there was no opportunity to the assessee to explain the valid and sufficient reason to shift his place of business before canceling the permission on the ground of shifting the place of business. Consequences of shifting the place of business being a valid and sufficient reason were never indicated in the notice at annexure A3.

20. That apart, the proviso to section 8(f)(ii) provides that orders, either to cancel the permission or refuse permission cannot be issued without prior approval of the District Deputy Commissioner. The original files clearly indicate

no such prior approval of the District Deputy Commissioner was obtained before issuing orders under the Act. Therefore, this is also not properly indicated. The decision of the authority canceling the permission on the ground of shifting of business place was never intimated which is nothing but perversity in appreciating the materials on record as such intimation was received and it was very much within the knowledge of the Department. Having said such being a valid and sufficient reason for canceling the permission, annexure A5 is entirely on a different ground for cancellation. Therefore, the assessee did not have an opportunity of being heard so far as the ground upon which such permission was cancelled as per annexure A5 order. Further, the District Deputy Commissioner''s prior approval was also not obtained before issuing the order. In the light of the above observations, we are of the opinion, that the orders of the Tribunal lacks consideration of relevant facts, in order to understand whether provisions of the statute are complied with or not. They were never discussed and under these circumstances, orders deserve to be set aside. Accordingly, the revision is allowed setting aside, the orders of the Tribunal.