
(1978) 05 AHC CK 0112
In the Allahabad High Court
Case No : S.T.R No. 769 of 1974

Commissioner, Sales Tax

APPELLANT

Vs

Manohar Glass Works

RESPONDENT

Date of Decision : 24-05-1978

Acts Referred:

Constitution of India, 1950 — Article 136, 226

Criminal Procedure Code, 1973 (CrPC) — Section 10, 10(2), 10(4), 421, 9

Citation : (1978) 2 ELT 700

Hon'ble Judges : Satish Chandra, C.J;R.M. Sahai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—The petitioner is a registered dealer. He submitted his return of turnover. That was rejected and the turnover was enhanced by the Sales Tax Officer. He, thereupon filed stay application before the Additional Revising Authority for stay of the disputed tax and also made an application for waiver of one-third of the disputed tax. This application was made u/s 10(4) of the Act. The Additional Revising Authority rejected the application for waiver vide order which is in the following terms:-

"Heard the parties and gone through the papers. In my opinion, no special and adequate reasons are made out. Waiver is rejected."

2. The petitioner has challenged this order on the ground that no reasons are given by the Revising Authority for passing the impugned order.

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5. Coming now to the merits of the controversy viz. as to whether it was incumbent on the Revising Authority to give reasons for rejecting the applications.

6. The Revising Authority discharges judicial functions while deciding] the revision and the stay and waiver applications. The order u/s 10(4) of the Act is

subject to scrutiny under Articles 136 and 226 Of the Constitution. The order as such must be a speaking order, and the decision given must be supported by reasons, so that the Superior Court is assured that it is in accordance with law and is not a result of caprice, whim, fancy, or reached "on the basis of policy or expediency [see Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, : Travancore Rayon Ltd. Vs. Union of India (UOI), . Absence of reasons vitiates the conclusions of a judicial authority. In the Travancore Rayons case the order passed by the Government of India ran as under :-

"Government of India have carefully considered the points made by the applicants, but see no justification of interfering with the order under appeal."

The order was struck down on the ground that reasons for rejecting the points in appeal had not been disclosed. In Bharat Raja Vs. The Union of India (UOI) and Others, , the Supreme Court deprecated the practice of one word order of the type "rejected" or "dismissed".

7. Similarly, in case of Dhondiba Gundu Pomaje and Others Vs. The State of Maharashtra, the High Court had dismissed a criminal appeal summarily u/s 421 of the Cr. P. C. by one word order "dismissed," it was held that some reasons should have been given by the High Court when no arguable case was made put on a perusal of the record. There is a vital difference between the conclusions and reasons. Reasons are the links between the material on which conclusions are based. The actual conclusion should disclose how the mind is applied to the subject matter for a decision, and should reveal a rational nexus between the facts considered and the conclusion reached. See Union of India (UOI) Vs. Mohan Lal Capoor and Others, . What is the position here? We have already extracted the order. It discloses that the Revisional Authority heard the parties and went through paper. It, however, did not give any reasons for its conclusions. It is not possible for this Court to guess what weighed with the judge (Revisions) for holding that the petitioner had not made out a case for the exercise of its desertion u/s 10(4) of the Act. The standing counsel contended that whatever may be the position under general law, in as much as the second proviso to Section 10(4) contemplates speaking order only in cases where the Revising Authority decides to waive or relax the requirements of the first proviso, it is not necessary to give any reason for rejecting the application. According to him reasons are necessary only in cases where the Revising Authority allows the application.

8. We are unable to accept this contention. The second proviso does not absolve the revisional authority from giving reasons for rejecting an application. All that it provides for is that the waiver application should be allowed only for special and adequate reasons, and not as a matter of course. If this contention of the standing counsel is to be accepted, the revisional authority would be absolved from given reasons for its revisional order also, for Section 10(2) does not contain any explicit provision for the revisional authority giving any reasons for its ultimate order. Similar is the position u/s 9. But as against an order passed u/

s 9, a revision lies and reference lies against an order passed u/s 10 to this Court, it is incumbent on those authorities to give reasons while disposing of the appeal and the revisions. The legislature need not provide for the obvious, and as the necessity for giving reasons is inherent in the nature of judicial function, the omission to provide by statute the necessity for giving reasons, does not lead one to the result that the revision and appellate authorities can pass orders with faces of sphinx. Such a course is an antithesis of the judicial process. This is however, not to say that detailed reasons need be given for refusing stay or waiver applications. All that law requires is that reasons appropriate to the controversy should be recorded.

9. Thus, in stay or waiver application all that is required is that some reasons should be given to support the conclusion reached for rejecting the application. Our attention is drawn to a single Judge decision of this Court in *Raza Textiles Ltd. v. Additional Judge (Revisions) Sales-tax, Moradabad* (1977 ST1 31 where an order of the type with which we are concerned had come up for consideration. The writ petition was dismissed on the ground that as the order was discretionary, it was not appropriate case for interference under Article 226 of the Constitution. With respect, we are unable to agree with this view. The mere fact that the Revising, Authority had a discretion to grant or refuse stay of waiver application, does not take the case out of the ambit of Article 226 of the Constitution of India. Even discretionary orders are amenable to interference under Article 226 of the Constitution where a case had been made out for interference. Lack of any reasons for passing an order under the principle initiated by their Lordships of the Supreme Court, in the case mentioned earlier. The Madras High Court in the case of *the Chessborough Ponds Inc. v. Appellate Asst. Commr.* 32 STC 464 has with respect, rightly held that although, the power of stay under laconic order unsupported by reasons cannot be upheld.

10. We accordingly allow the writ petition, and quash the impugned order. As the appeal filed by the petitioner has been pending before the Appellate Authority for a considerable length of time, we direct the Appellate Authority to dispose of the appeal within a month of the receipt of this order. The said period to run as from the date on which the order is communicated to it by the assessee and on the assessee putting in appearance. The stay order is discharged. No order as to costs.

11. This order will govern writ petitions Nos. 756 of 1976, 250 of 1977, 233 of 1977, 187 of 1977, 323 of 1977, 334 of 1977, 7 of 1977, 219 of 1977 and 231 of 1977.