

**(2003) 04 P&H CK 0128**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 14479 of 2002**

Jindal Jewellers

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 21-04-2003

**Acts Referred:**

Punjab General Sales Tax Act, 1948 — Section 11(7), 14B, 14B(6), 14B(7), 20(1)

**Citation :** (2004) 138 STC 93

**Hon'ble Judges :** S.S. Grewal, J;G.S. Singhvi, J

**Bench :** Division Bench

**Advocate :** K.L. Goyal, for the Appellant; Salil Sagar, A.A.G. for respondent Nos. 1 and 2, for the Respondent

**Final Decision :** Allowed

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## Judgement

G.S. Singhvi, J.—In this petition, the petitioner has prayed for issuance of a direction to the Assistant Excise and Taxation Commissioner, Ludhiana (respondent No. 2) to refund 75 per cent of the bank guarantee furnished by it for release of the goods.

2. The petitioner is the sole proprietorship concern of Shri Rajinder Pal Jindal. It is engaged in the business of manufacturing purchase and sale of diamond studded gold jewellery (hereinafter described as "the goods") at Delhi. It is registered under the Punjab General Sales Tax Act, 1948 (for short, "the Act"). On July 15, 2002 the car in which the proprietor of the petitioner was carrying the goods was intercepted at Ludhiana by the officers of the Excise and Taxation Department, Punjab. They detained the goods on the ground of non-compliance of the provisions of Section 14B of the Act. The petitioner challenged the detention of the goods and also the constitutionality of Section 14B of the Act in C.W.P. No. 11232 of 2002 but withdrew the same on July 23, 2002. After two days, the petitioner's proprietor arranged a bank guarantee of Rs. 37,01,301 from Punjab National Bank, Kikkar Bazar Branch, Bhatinda (for short "the Bank") and approached respondent No. 2 for release of goods in terms of Section 14-

B(6)(ii) of the Act, but instead of releasing the goods, he passed an order imposing penalty of Rs. 37,01,302. He then accepted the bank guarantee and released the goods at about 6.00 P.M. The grievance of the petitioner is that respondent No. 2 did not supply copy of the penalty order and got the bank guarantee encashed with an ulterior motive of depriving it of the right to avail the remedy of appeal. In paragraphs 5 to 12 of the writ petition, the petitioner has given vivid details of the events which took place between July 25 2002 and July 30, 2002. These include the passing penalty order by respondent No. 2 on July 25, 2002, release of goods at about 6.00 P.M., sending of special messenger by respondent No. 2 from Ludhiana to Bhatinda to get the bank guarantee encashed, preparation of drafts by the Manager of Kikkar Bazar Branch of the Bank presentation of the draft on July 27, 2002 in R.C.C. Branch of the Bank at Ludhiana and clearance thereof on July 29, 2002, filing of C.W.P. No. 11567 of 2002-Jindal Jewellers v. State of Punjab for disposal thereof by the Division Bench of the High Court vide order dated July 29, 2002 (Annexure P3) and communication of the court's order to the manager of RCC Branch, Ludhiana, of the bank by the petitioner's advocate. The petitioner has challenged that the action of respondent No. 2 to get the bank guarantee encashed without supplying copy of penalty order passed on July 25, 2002 and issuing demand notice in terms of Section 11(7) by describing the same as patently illegal, arbitrary and tainted by mala fides.

3. In the written statement filed by Shri T.L. Jindal, Assistant Excise and Taxation Commissioner, Ludhiana-III, on behalf of respondent Nos. 1 and 2, an objection has been taken to the maintainability of the writ petition on the ground that the petitioner has got an effective alternative remedy by way of appeal. On merits, it has been averred that the goods were seized because the value thereof was much more than what was indicated in the documents produced by the proprietor of the petitioner and, therefore, it was treated as a case of attempted evasion of tax. In paragraph 5 of the written statement, it has been averred that since the detention of the goods, the petitioner had tried to influence and pressurise respondent No. 2 to release the goods without penalty, but he did not succumb to the pressure and passed the order imposing penalty. With regard to the petitioner's grievance about non-supply of the copy of penalty order, it has been averred that when it had made written request on July 26, 2002 for that purpose, the order was in the process of typing. Thereafter, it could not be dispatched because 27th, 28th, 30th and 31st July were declared gazetted holidays. According to respondent No. 2, copy of order dated July 25, 2002 was received by the petitioner on August 2, 2002. On the issue of encashing the bank guarantee, it has been averred that this was done by the concerned branch manager of the bank before the receipt of order dated July 29, 2002 passed by the High Court in C.W.P. No. 11567 of 2002.

4. Respondent No. 3 has filed separate reply. In paragraph 7 thereof, he has admitted that some person of respondent No. 2 had contacted him on July 26, 2002 with the request to issue demand drafts in respect of the bank guarantee.

Accordingly, the bank issued demand drafts payable at R.C.C. Branch at Ludhiana.

5. In his written statement, respondent No. 4 has averred that he had received four demand drafts dated July 26, 2002 issued by Kikkar Bazar, Bhatinda Branch of the Bank and the same were cleared on July 29, 2002 at about 11.00 A.M. Thereafter, he received a special fax message at 12.17 P.M. on the letter-head of Shri Kashmiri Lal Goyal, Advocate, vide which he informed that the High Court has granted stay in the matter. However, by that time the payment had been released.

6. The petitioner has filed replications to the written statements of respondent Nos. 1 and 2 and respondent No. 4. In paragraph 5 of the first replication, it has denied the allegation that attempt was made to influence or pressurise respondent No. 2 for releasing the goods without payment of penalty. In the second replication, it has reiterated that Manager of R.C.C. Branch of the Bank at Ludhiana had intentionally encashed the demand drafts after coming to know of the order passed by the High Court.

7. Shri K.L. Goyal, learned counsel for the petitioner referred to the provisions of sections 11, 14B and 20 of the Act and argued that the action of respondent No. 2 to encash the bank guarantee without supplying the copy of penalty order and without issuing demand notice in terms of Section 11(7) should be declared illegal and a direction may be issued to respondent Nos. 1 and 2 to refund 75 per cent of the bank guarantee because an appeal can be filed after depositing 25 per cent of the penalty. Shri Goyal further argued that respondent No. 2 was under a legal obligation to supply copy of the penalty order to the petitioner free of cost and he could not have encashed the bank guarantee before the expiry of the statutory period of limitation (60 days) prescribed u/s 20 of the Act for filing an appeal. In support of this argument, Shri Goyal relied on orders dated May 30, 2002 passed in C.W.P. No. 19651 of 2002 -Oswal Agro Mills Ltd., New Delhi v. Excise and Taxation Officer-cum-Assessing Authority, Ludhiana and C.W.P. No. 5647 of 2002 -Latest Collection v. Assistant Excise and Taxation Commissioner-cum-Assessing Authority.

8. Shri Salil Sagar, learned Additional Advocate-General, Punjab, fairly conceded that it was the duty of respondent No. 2 to supply copy of penalty order to the petitioner, but argued that his action to enforce the bank guarantee immediately after imposing penalty cannot be termed as malicious because the officer concerned did not have any personal ill-will against the petitioner. Shri Salil Sagar pointed out that copy of the penalty order was dispatched to the petitioner immediately after the holidays. He then argued that imposition of penalty by respondent No. 2 does not suffer from any legal infirmity because the proprietor of the petitioner was found carrying the goods without disclosing their true value and this was clearly indicative of his intention to evade the payment of tax. Shri Salil Sagar also gave out that after receiving copy of the order of penalty, the petitioner has availed the remedy of appeal and, therefore, the writ petition may be disposed of as infructuous.

9. We have thoughtfully considered the respective arguments. Sections 11(7), 14B (6) and (7)(ii) and (iii) and 20(1) and (5) of the Act, which have bearing on the decision of this petition, read as under :

11(7). The amount of any tax, penalty or interest payable under this Act shall be paid by the dealer in the manner prescribed, by such date as may be specified in the notice issued by the Assessing Officer for the purpose and the date so specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice :

Provided that the Assessing Authority may, with the prior approval of the Assistant Excise and Taxation Commissioner, incharge of the district extend the date of such payment or allow payment by instalments against an adequate security or bank guarantee.

.....

14-B. Establishment of check-posts or information collection centers and inspection of goods in transit.-(1) to (5) .....

(6)(i) If the Officer-in-charge of the check-post or information collection center or any other officer as mentioned in sub-section (2), has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), or the driver has not stopped the vehicle as required under sub-section (3) or that the person transporting the goods is attempting to evade payment of tax, he may, for reasons to be recorded in writing and after hearing the person concerned, order the detention of the goods along with the vehicle for such period, as may reasonably be necessary. Such goods shall be released on furnishing a security or executing a bond with sureties in the prescribed form and manner by the consignor or consignee, if registered under the Act to the satisfaction of the officer detaining the goods and in case the consignor or the consignee is not registered under the Act, then on furnishing a security in the form of cash or bank guarantee or crossed bank draft, which shall be thirty percent of the value of the goods, rounded up to the nearest hundred.

(ii) If the owner or the person-in-charge of the goods has not submitted the documents as mentioned in sub-section (2) and subsection (4) at the nearest check-post or information collection center, in the State of Punjab, as the case may be, on his entry into or exit from the State, such goods shall be detained along with the vehicle for a period not exceeding 72 hours and shall be released only after the matter is finally decided under clause (iii) of sub-section (7).

14-B(7)(ii). The officer authorised by the State Government shall, before conducting the enquiry, serve a notice on the consignor or the consignee of the goods detained under clause (i) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall,

by order, impose on the consignor or consignee of the goods, a penalty, which shall not be less than twenty per cent and not more than thirty per cent of the value of the goods and in case he finds otherwise, he shall order the release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings.

(iii) The officer referred to in clause (ii), before conducting the enquiry, shall serve a notice on the consignor or consignee of the goods detained under clause (ii) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry such officer finds that the documents as required under sub-sections (2) and (4), were not furnished at the information collection center or the check-post, as the case may be, with a view to attempt to avoid or evade the tax due or likely to be due under the Act, he shall by order for reasons to be recorded in writing, impose on the consignor or consignee of the goods, penalty equal to fifty per cent of the value of the goods involved. In case, he finds otherwise, he shall order release of the goods for sufficient reasons to be recorded in writing. He may, however, notwithstanding anything contained in clause (ii) of sub-section (6) order release of the goods and the vehicle on furnishing a security by the consignor or the consignee in the form of cash or bank guarantee or crossed bank draft for an amount equal to the amount of penalty imposable and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings;

(iii) The officer referred to in clause (ii), before conducting the enquiry, shall serve a notice on the consignor or consignee of the goods detained under clause (ii) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry such officer finds that the documents as required under sub-sections (2) and (4), were not furnished at the check-post or information collection center, as the case may be, he shall by order, impose on the consignor or consignee of the goods, a penalty which shall be fifty per cent of the value of the goods."

"20. Appeal.-(1) An appeal from every original order passed under this Act or the Rules made thereunder shall lie :

(a) if the order is made by an assessing authority or by an officer-in-charge of the check-post or barrier or any other officer not below the rank of Excise and Taxation Officer to the Deputy Excise and Taxation Commissioner :

(b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner ;

(c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner, to a Tribunal.

(2) to (4) .....

(5) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty

five per cent of the tax, penalty, if any, imposed and the interest accrued thereon."

10. A combined reading of the provisions reproduced above shows that the officer-in-charge of the check-post or information collection center or any other officer specified in sub-section (2) of Section 14B can order detention of the goods along with the vehicle if he has reason to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4) or the person transporting the goods has attempted to evade payment of tax. If the owner or the person-in-charge of the goods has not submitted the documents as mentioned in sub-sections (2) and (4) of Section 14B at the nearest check-post or information collection centre, on his entry into the State of Punjab, such goods are liable to be detained along with the vehicle and the same can be released only after the matter is finally decided under clause (iii) of sub-section (7). Section 14B(7) lays down the procedure to be followed by the officer detaining the goods. Under clause (iii) thereof, the officer concerned is required to hear the consignor or consignee of the goods and then pass a reasoned order imposing penalty equal to 50 per cent of the value of the goods if he is satisfied that the required documents were not furnished at the information collection centre or the check-post with a view to attempt to avoid or evade the tax. However, if he does not find any violation of the provisions of Section 14B, then the goods are to be released. A person aggrieved by an order of penalty can file an appeal u/s 20 within the prescribed period of limitation. Section 11(7) of the Act lays down that the dealer should pay the amount of any tax, penalty or interest payable under the Act by such date as may be specified in the notice issued by the Assessing Officer which shall not be less than 15 days and not more than 30 days from the date of service of such notice.

11. The above analysis of the relevant provisions shows that for imposing penalty u/s 14B(7)(iii), the competent authority is required to hear the consignor or the consignee and then pass a reasoned order. The person against whom penalty is imposed can avail of statutory remedy of appeal subject to payment of 25 per cent of the penalty imposed along with interest accrued thereon [section 20(1) and (5)]. In our opinion, the duty to communicate the penalty order must be read as implicit in Section 14B(7)(iii) because the remedy of appeal available to the aggrieved person can be effectively availed of only if he knows the cause or reasons for imposition of penalty and that is possible only when copy of the order is made available to him.

12. In this context, it is appropriate to observe that every quasi-judicial authority is duty-bound to record reasons for its decision and communicate the same to the affected person. The requirement of recording of reasons and communication thereof has been read as an integral part of the concept of fair procedure. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The

administrative authorities charged with the duty to act judicially cannot decide the matters on considerations of policy or expediency. The requirement of recording of reasons by such authorities is an important safeguard to ensure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and minimises arbitrariness in the decision making process. Another reason which makes it imperative for the quasi-judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision but also by filing writ petition under Article 226 of the Constitution. Such decisions can also be challenged by way of appeal under Article 136 of the Constitution of India. The High Courts have the power to issue writ of certiorari to quash the orders passed by a quasi judicial authority/Tribunal. Likewise, in appeal the apex Court can nullify such order/decision. This power of judicial review can be effectively exercised by the Superior Courts only if the order under challenge contains reasons. If such order is cryptic and devoid of reasons, the Courts cannot effectively exercise the power of judicial review and we cannot countenance a situation in which the administrative authorities vested with the power to decide the rights of the parties may stultify the powers of the Court simply by not recording reasons in support of their decisions or by refraining from communicating such reasons to the affected person. This is the reason why the Courts have insisted on rigorous compliance of the requirement of recording of reasons and communication thereof by every quasi-judicial authority. We, therefore, hold that the officer who imposes penalty u/s 14B(7)(iii) of the Act is under legal obligation to supply copy of the penalty order to the affected person.

13. In M/s. Oswal Agro Mills Ltd.'s case (CWP No. 19651 of 2002 decided on May 30, 2002-Punjab and Haryana High Court) and Latest Collection's case (CWP No. 5647 of 2002 decided on May 30, 2002-Punjab and Haryana High Court) this Court adversely commented upon the action of the assessing officer in taking coercive measures against the assessee without supplying the copy of order of assessment/penalty. Some of the observations made in the second case read as under :

"This is a typical instance indicative of the manner in which the Excise and Taxation Department in the State of Punjab is functioning. A demand for a substantial amount of more than Rs. 14 lacs was raised without even communicating the order of assessment to the assessee. Summons for appearance and payment were issued. Obviously, there was a veiled threat of arrest. Why was the order of assessment not supplied ? The only explanation trotted out by the respondents is that they were busy on election duty. The averment is wholly vague. No details regarding the period and place where they had been assigned duty during the elections has been given. It is not understood how the respondents were able to issue the notices for recovery on January 28, 2002 while withholding the order of assessment.

We cannot compliment the respondents on their conduct. The petitioner was

forced to rush to this Court only on account of neglect of duty by the respondents."

14. The facts of the case in hand clearly demonstrate the highhandedness with which respondent No. 2 dealt with the case of the petitioner. The vehicle of the petitioner was detained on July 15, 2002. The proprietor of the petitioner furnished the bank guarantee of July 25, 2002, but instead of releasing the goods, respondent No. 2 imposed penalty of Rs. 37,01,302. Thereafter, without even supplying copy of the penalty order and issuing notice in terms of Section 11(7), he manipulated encashment of the bank guarantee by sending special messenger from Ludhiana to Bhatinda, who obtained bank drafts on that very day, i.e., July 26, 2002 and got them encashed on July 29, 2002 at Ludhiana. The speed with which respondent No. 2 executed his plan to encash the bank guarantee rendered the petitioner's attempt to seek intervention of this Court futile. This further shows that respondent No. 2 had acted with a pre-determination to prevent the petitioner from effectively availing the remedy of appeal u/s 20(1) by depositing 25 per cent of the penalty and seeking stay against the remaining amount. We would have said more on this issue, but refrain from doing so because the officer concerned has not been impleaded as a party respondent by name. But, at the same time, we are constrained to remark that the manner in which the officer concerned conducted himself leaves much, to be desired.

15. The objection of alternative remedy raised by respondent Nos. 1 and 2 deserves to be rejected because during the course of hearing, we were informed that the petitioner has already availed the remedy of appeal and the same is pending. Therefore, keeping in view the provisions contained in sub-section (5) of Section 20 of the Act, we deem it proper to accept the petitioner's prayer for release of the amount representing 75 per cent of the bank guarantee furnished by it for release of goods.

16. In the result, the writ petition is allowed. Respondent Nos. 1 and 2 are directed to refund an amount equivalent to 75 per cent of the bank guarantee furnished by the petitioner on July 25, 2002. The needful shall be done within a period of one month from the date of receipt of a copy of this order, else the petitioner shall get interest at the rate of 9 per cent per annum w.e.f. July 29, 2002, i.e., the date on which the demand drafts were encashed. The petitioner shall get costs of Rs. 5000. The State Government shall be free to recover the amount of costs from the officer, who held the post of Assistant Excise and Taxation Commissioner, Ludhiana-III, at the relevant time.