
(1996) 04 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4314 of 1996

Mahavir Trading Co.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 39(5)

Citation : (2003) 133 STC 296

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

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; R.N. Raina, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition for issue of a writ to quash the orders annexures P4 and P5 and to stay the recovery of tax from the petitioner.

2. It appears from the record that assessment for the year 1983-84 in respect of the petitioner-firm was finalised by the Assessing Authority on December 27, 1984. Subsequently, a notice was issued to the petitioner as to why best judgment assessment be not made and penalty be not imposed upon it for suppression of facts. After holding further proceedings, the Assessing Authority added Rs. 13,09,204 to the already declared turnover under the Central Sales Tax Act, 1956 and imposed penalty vide order dated March 25, 1988. The petitioner filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) and at the same time, applied for exemption from payment of the amount of tax and penalty. The Appellate Authority directed the payment of additional liability in ten equal instalments as a condition to the hearing of the appeal. Aggrieved by this decision, the petitioner filed an appeal before the Sales Tax Tribunal, Haryana. The Tribunal passed order dated September 20, 1988 whereby it directed the Appellate Authority to hear the appeal without prior deposit of the additional amount. However, at the same time the Tribunal

imposed a condition of furnishing surety bond. The petitioner complied with the aforesaid condition. Thereafter, the appeal was heard by the Joint Excise and Taxation Commissioner (Appeals), who dismissed the same vide order annexure P3 dated April 30, 1992. Aggrieved by the order of the Appellate Authority, the petitioner preferred appeal before the Tribunal and once again applied for entertaining the appeal without prior deposit of the additional amount. This time, the Tribunal passed order dated January 6, 1993 and directed the payment of 50 per cent of the additional demand as a condition to the hearing of the appeal. The petitioner did not comply with this direction and, therefore, its appeal came to be dismissed by the Tribunal vide order annexure P5 dated May 22, 1995.

3. Although the impugned orders have been challenged by the petitioner on various grounds, during the course of hearing learned counsel for the petitioner confined his submission to the issue of entertaining of the appeal without payment of 50 per cent of the additional demand as ordered by the Tribunal on January 6, 1993. He submitted that the Tribunal has not examined the prayer made by the petitioner in the light of the proviso to Section 39(5) of the Haryana General Sales Tax Act, 1973 and this has caused grave injustice to the petitioner inasmuch as the appeal has been dismissed only on the ground of non-deposit of 50 per cent of the additional demand. Shri Jhingan placed reliance on the order dated December 1, 1994 passed in CWP No. 7872 of 1994 (Super Steel v. Excise & Taxation Officer-cum-Assessing Authority) and submitted that in the light of the observations made in the order dated December 1, 1994, the Tribunal should be directed to reconsider the prayer made by the petitioner for hearing of the appeal without requiring the petitioner to deposit 50 per cent of the additional amount. In order to explain the delay in the filing of the writ petition, learned counsel invited our attention to the affidavit of Shri J.D. Batheja, Advocate, Faridabad, wherein the said Advocate has stated that the copy of the order passed by the Tribunal was communicated to him and although he had sent the copy of the order to the petitioner-firm by registered post at village Hassanpur it was received back undelivered with the report of the postal authorities that no business was being conducted there. The deponent has also stated that neither the order communicating the direction to make payment nor the order of dismissal of the appeal could be communicated to the firm or its partner. Shri R.N. Raina, Deputy Advocate-General, Haryana, argued that the Tribunal is vested with discretion to entertain the appeal without the deposit of the amount of tax, penalty, interest and exercise of such discretion should not be interfered with by this Court.

4. We have given our thoughtful consideration to the rival contentions and have gone through the impugned orders. In view of the fact that the Tribunal had itself directed the hearing of the appeal by the Joint Excise and Taxation Commissioner (Appeals) without requiring the petitioner to deposit the amount of additional liability, prima facie there appears some substance in the contention of the learned counsel that while passing order annexure P4 the Tribunal has not applied its mind to the relevant factors and has mechanically declined the

request of the petitioner for hearing of the appeal without deposit of the additional demand. In the decision of this Court dated December 1, 1994 a similar issue has been examined and it has been held that the Tribunal must record reasons for rejecting the application filed by the appellant for hearing of the appeal without insisting on the deposit of the amount of tax, etc. This Court will not enter into the merits of the grievance made by the appellant, but, when law itself contemplates the consideration of the factors like the inability of the applicant-appellant to pay tax, etc., the Tribunal is under a duty to examine the record and then decide whether the prayer of the appellant should be granted or not. This necessarily implies recording of reasons by the Tribunal while arriving at a particular decision. If the Tribunal does not record reasons and communicate the same to the affected party, the order passed by it is liable to be quashed only on the ground of violation of principles of natural justice.

5. What has been done in the present case is that the Tribunal has not at all examined the plea raised by the petitioner for grant of exemption for hearing of the appeal without requiring the deposit of the amount of additional demand. Instead, it had simply directed that the appeal be entertained subject to payment of 50 per cent of the additional demand within a period of one month and thereafter dismissed the appeal on the ground that the appellant has failed to comply with the order dated January 6, 1993. Not a word has been said in the impugned order of the Tribunal as to how it has come to the conclusion that the plea raised by the petitioner regarding its inability to pay the amount does not deserve to be accepted. We are firmly of the opinion that the impugned order of the Tribunal deserves to be quashed only on the ground that it is not a speaking order and is, therefore, contrary to the principles of natural justice.

6. For the reasons mentioned above, the writ petition is allowed. Orders annexures P4 and P5 are quashed. The Sales Tax Tribunal, Haryana is directed to reconsider the application filed by the petitioner under proviso to Section 39(5) of the Haryana General Sales Tax Act, 1973 and pass a fresh order giving reasons for accepting/not accepting the request of the petitioner for entertaining the appeal without deposit of additional demand. Parties are left to bear their own costs.