

(2005) 01 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6476 of 2003

State of Haryana

APPELLANT

Vs

Samtel India Ltd. and Another

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Haryana General Sales Tax Rules, 1975 — Rule 23A, 28A, 28A(5)

Citation : (2005) 140 PLR 238

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

Bench : Division Bench

Advocate : Jaswant Singh, D.A.G, for the Appellant; M.L. Sarin, assisted by Vikas Suri, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In this petition, the State of Haryana has questioned the legality of order dated 2.12.2002 (Annexure P.10) passed by Commissioner and Secretary to Government Haryana, Industries Department (respondent No. 2) whereby he declared that respondent No. 1-M/s Samtel India Ltd., Faridabad shall be entitled to sales tax exemption on coloured T.V. Monitors in addition to Black & White T.V. sets and Monochrome Monitors.

2. Respondent No. 1 which is registered as a dealer under the Haryana General Sales Tax Act, 1973 (for short, "the Act") and the Central Sales Tax Act, 1956, set up an industrial unit at Faridabad some time in 1994 for manufacturing monochrome monitors and Black and White TV. On an application submitted by respondent No. 1 in form ST-70, the Higher Level Screening Committee (for short, "the HLSC") directed issuance of eligibility certificate under Rule 23-A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") so as to enable it to claim tax exemption on Black & White T.V. sets and Monochrome Monitors. Thereafter, Additional Director of Industries, Haryana issued certificate dated 15.5.1996 (Annexure P3) entitling respondent No. 1 to claim tax

exemption to the tune of Rs.276.95 lacs on Black and White TV in a period of 7 years. Vide letter dated 30.5.1996 (Annexure P.4) issued by the Director of Industries, Haryana, the description of the products mentioned in column No. 4 of the eligibility certificate, i.e., B/W TV was substituted with B&W TV sets, monochrome monitors". After 2 years and about 6 months, respondent No. 1 submitted an application to the HLSC seeking addition of coloured monitor in the eligibility certificate so as to avail tax exemption on the manufacturing of coloured T.V. monitors. The same was considered in the meeting of the HLSC held on 11.10.1999 and rejected on the ground that there is no provision in the Rules for allowing the addition of item in the eligibility certificate. This was conveyed to respondent No. 1 by the Director of Industries vide his letter dated 9.11.1999 (Annexure P5). The appeal filed by respondent No. 1 was dismissed in default by respondent No. 2 vide his order dated 28.7.2000 (Annexure P6). That order was set aside by a Division Bench of this Court in C.W.P. No. 1388 of 2002 decided on 3.10.2002 and a direction was issued to respondent No. 2 to decide the appeal on merits.

3. In compliance of the direction given by the Court, Respondent No. 2 heard the representative of respondent No. 1 and passed order dated 2.12.2002 (Annexure P.10) vide which he declared that the benefit of exemption will be available to respondent No. 1 on colour T.V. monitor within the amount and period stipulated in the eligibility certificate. For the sake of reference, the relevant extract of that order is reproduced be-low:-

"In this particular case the appellant switched over from monochrome Monitor (Black & White monitors) to coloured T.V. Monitors. The question now arise whether the sales tax benefit is extendable to an improved item subsequently produced without major changes in fixed capital investment and technology. I find that the rules are silent on the issue. In such circumstances one has to look at the intention the legislature, expressed implied. It is my considered opinion that the entire scheme of the Act/Rules is devised to give benefits of exemption/deferment of payment of sales tax in order to promote industrial activity for over all economic development and, therefore, one should take a liberal interpretation and, therefore, the answer to the above question should be in the affirmative. Keeping this in view, I accept the appeal and order that the benefit will be available to the appellant on the item coloured TV Monitor also within the amount and period stipulated in the eligibility certificate."

4. The petitioner has challenged the impugned order on several grounds including the one that it does not satisfy the requirement of a speaking order which forms integral part of the concept of the rules of natural justice. According to the petitioner, there is no provision in the Rules for grant of eligibility certificate for additional product and yet respondent No. 2 arbitrarily accepted the application of respondent No. 1 for grant of tax exemption on coloured T.V. Monitors in addition to Black & White T.V. and Monochrome Monitors.

5. In the written statement filed on behalf of respondent No. 1, an attempt has

been made to justify the direction given by respondent No. 2 on the premise that the State Government did not challenge similar orders passed in the cases of Polar Industries Limited and M/s Bharti Telecom Limited! Respondent No. 1 has also pleaded discrimination by asserting that the State Government cannot adopt different yard-sticks in the matter of questioning the orders passed by the Appellate Authority under Rule 28A(5)(g) of the Rules. On merits, respondent No. 1 has pleaded that addition of coloured monitor in the eligibility certificate will not adversely affect the interest of the State because the quantum of tax would remain unchanged.

6. The petitioner has filed replication and respondent No. 1 has filed rejoinder reiterating their stands. Thereafter, Shri U.S. Dahiya, Deputy Excise and Taxation Commissioner, Faridabad filed additional affidavit dated 4.10.2004 stating therein that the order passed in the case of M/s. Bharti Telecom Limited was challenged in C.W.P. No. 11884 of 2003, but the same was dismissed by the High Court on 31.7.2003 on the ground of laches and SLP filed against the High Court's order was dismissed by the Supreme Court.

7. We have heard Shri Jaswant Singh, learned Senior Deputy Advocate General and Shri M.L. Sarin, Senior Advocate for respondent No. 1 and perused the record. In our opinion, it is not necessary to delve deep into the various issues raised by the parties because we are convinced that the impugned order is liable to be set aside only on the ground that it is totally bereft of reasons and does not fulfill the requirement of a speaking order which respondent No. 2 was duty-bound to pass while deciding the appeal filed by respondent No. 1 against the decision of the HLSC.

8. There can be no denying that while exercising the power of the Appellate Authority under Rule 28-A(5)(g) of the Rules, respondent No. 2 was acting as a quasi-judicial authority and in that capacity, he was bound to act in consonance with the various facets of the rules of natural justice, one of which is that every quasi-judicial authority must pass a reasoned order. The requirement of recording of reasons by quasi-judicial authorities and communication thereof to the affected person has been treated as an integral part of the concept of fair procedure which even the administrative authorities are required to follow while adjudicating upon the rights of the individuals. 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 Court have the power to issue writ of certiorari to quash the orders passed by a quasi-judicial authority/Tribunal. Likewise, in appeal the Supreme Court can nullify such order/decision. The power of judicial review can be effectively exercised by the Superior Court only if the order under challenge contains reasons and we cannot countenance a situation in which the administrative authorities vested with the power of judicial review vested in 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 thereof by every quasi-judicial authority- *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, ; *Bharat Raja Vs. The Union of India (UOI) and Others*, ; *Travancore Rayon Ltd. Vs. Union of India (UOI)*, ; *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, ; *Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others*, , *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, ; *S.N. Mukherjee Vs. Union of India*, , *Shanti Prasad Agarwalla and others Vs. Union of India and others*, ; *Krishna Swami Vs. Union of India and another*, ; and *M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others*, .

9. In *Testeels Ltd. v, N.M. Desai, Conciliation Officer and Anr.* AIR 1970 Guj 1, a Full Bench of the Gujarat High Court made an extremely lucid enunciation of law on the subject and we can do no better than to extract some of the observations made in that decision. The same are as under:-

"The necessity of giving reasons flows as a necessary corollary from the rule of law which constitutes one of the basic principles of the Indian Constitutional set-up. The administrative authorities having a duty to act judicially cannot therefore, decide on considerations of policy or expediency. They must decide the matter solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations by applying pre-existing legal norms to factual situations. Now the necessity of giving reasons is an important safeguard to ensure observance of the duty to act judicially. It introduces clarity, checks the introduction of extraneous or irrelevant considerations and excludes or, at any rate, minimises arbitrariness in the decision making process.

Another reason which compels making of such an order is based on the power of judicial review which is possessed by the High Court under Article 226 and the Supreme Court under Article 32 of the Constitution. These courts have the power under the said provisions to quash by certiorari a quasi-judicial order made by an Administrative Officer and this power of review can be effectively exercised only if the order is a speaking order. In the absence of any reasons in support of the order, the said courts cannot examine the correctness of the order under review. The High Court and the Supreme Court would be powerless to interfere so as to

keep the administrative officer within the limits of the law. The result would be that the power of judicial review would be stultified and no redress being available to the citizen, there would be insidious encouragement to arbitrariness and caprice. If this requirement is insisted upon, then they will be subject to judicial scrutiny and correction."

10. If the impugned order is examined in the light of the above noted proposition of law, we do not have any hesitation to nullify the same on the ground of violation of the rules of natural justice. A reading of Annexure P.5 dated 9.11.1999 makes it clear that the HLSC had rejected the application of respondent No. 1 by observing that there is no provision in the Rules for allowing addition of item in the eligibility certificate. While deciding the appeal filed by respondent No. 1, respondent No. 2 neither referred to the relevant Rules nor assigned any reason for holding that respondent No. 1 was entitled to seek modification of the eligibility certificate by way of addition of coloured T.V. monitor. He did not even record a finding that the reason assigned by the HLSC for not accepting the prayer of respondent No. 1 was legally untenable. Instead, he used stock sentences like "one has to look at the intention of the Legislature and that the entire scheme of the Act and the Rules is devised to give benefit of exemption/deferment in the payment of sales tax to promote industrial activity for over-all economic development and, therefore, one should take a liberal interpretation" and allowed the appeal. In our considered view, such rhetorics are not sufficient to relieve respondent No.2 of the duty to pass a reasoned order by taking into consideration the relevant facts and statutory provisions and then decide whether respondent No. 1 was entitled to claim tax exemption on coloured T.V. Monitors. In addition to Black & White T.V. and Monochrome Monitors. The order passed by him should have reflected application of mind to the relevant considerations. Unfortunately, respondent No.2 ignored these basics and decided the appeal of respondent No. 1 as if he was discharging purely administrative function.

11. Shri M.L. Sarin made strenuous efforts to persuade us not to interfere with the impugned order by arguing that the case of respondent No. 1 is similar to that of Polar Industries in whose favour similar order was passed by the competent authority and was not challenged by the government. Shri Sarin also pointed out that similar order passed in the case of M/s Bharti Telecom Ltd., was challenged by the State in C.W.P. No. 11884 of 2003 which was dismissed by this Court on the ground of delay and thereafter the matter was not pursued. Shri Sarin invited our attention to pages 1 to 17 of the compilation made available by Shri Vikas Suri, counsel assisting him to show that the claim of respondent No. 1 for grant of revised eligibility certificate is similar to at least two other industries to whom the benefit was granted by respondent No. 2.

12. We have considered the submissions of the learned counsel but have not felt persuaded to sustain the impugned order on the premise that in similar cases, the State had not challenged the orders passed by respondent No. 2. In our

opinion, respondent No. 2 was duty-bound to apply its mind to the issue raised in the appeal filed by respondent No. 1 and decide the same keeping in view the relevant provisions of Rule 28-A of the Rules and the material placed before it. Its failure to advert to the core issue relating to amendment of the eligibility certificate issued to respondent No. 1 in the backdrop of the fact that the HLSC had turned down the prayer made in that behalf on the ground that there is no provision in the Rules for addition of items in the eligibility certificate and the fact that in other cases, respondent No. 2 is said to have granted relief to the applicants has resulted in manifest injustice. Therefore, it is appropriate to annul the impugned order with a direction for fresh adjudication of the appeal filed by respondent No. 1.

13. In the result, the writ petition is allowed. Order Annexure P.10 is quashed with the direction that the appeal filed by respondent No. 1 against the decision of the Higher Level Screening Committee be decided afresh while doing so, the competent authority shall take into consideration the points raised by respondent No. 1 in the memo of appeal and its assertion that similar benefit has already been granted to Polar Industries and M/s Bharti Telecom Ltd.

14. Learned counsel for the parties say that an appeal against the order passed by the Higher Level Screening Committee now lies before the Haryana Tax Tribunal. Therefore, we direct that the appeal of respondent No. 1 shall now be decided by the Tribunal. The representatives of the department and respondent No. 1 shall appear before the Tribunal on 7.2.2005. It is hoped that the Tribunal will decide the appeal of respondent No.1 afresh as early as possible, but latest within a period of 2 months counted from 7.2.2005. The entitlement of respondent No. 1 to avail tax exemption on coloured monitor will be subject to the decision of its appeal by the Tribunal.

15. Copy of the order be given ,dasti on payment of the fee prescribed for urgent application.