

(2003) 07 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2952 of 2003

Vardhman Special Steels

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 138 STC 69

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

Bench : Division Bench

Advocate : Puneet Bali, for the Appellant; Salil Sagar, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—In this petition, the petitioner has prayed for quashing of annexure P-18 dated November 25, 2002, vide which Excise and Taxation Commissioner, Punjab, rejected his prayer for refund/adjustment of the excess amount paid under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act") and the Rules framed thereunder.

2. One of the grounds on which the petitioner has challenged the impugned order is that it does not satisfy the test of a speaking order inasmuch as it does not contain reasons on which the concerned authority declined the prayer for refund/adjustment of the tax already paid.

3. In the written statement filed on behalf of respondent Nos. 4 and 5 it has not been controverted that the impugned order does not contain reasons for rejecting the petitioner's prayer for refund/adjustment of the tax already paid.

4. We have heard learned counsel for the parties and perused the record. It is settled law 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. Some of the judicial precedents, which can appropriately be cited to support the above mentioned proposition, are :

1. Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, ;
 2. Bharat Raja Vs. The Union of India (UOI) and Others, ;
 3. Travancore Rayon Ltd. Vs. Union of India (UOI), ;
 4. Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, ;
 5. Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another, ;
 6. Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ;
 7. The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, ;
 8. S.N. Mukherjee Vs. Union of India, ;
 9. Shanti Prasad Agarwalla and others Vs. Union of India and others, ;
 10. Krishna Swami Vs. Union of India and another, and
 11. M.L. Jaggi Vs. Mahanagar Telephones Nigam Ltd. and others, .
5. In S.N. Mukherjee Vs. Union of India, a Constitution Bench of the Supreme

Court discussed the development of law on this subject in India, Australia, Canada, England and United States of America and after making reference to a large number of judicial precedents, their Lordships culled out the following propositions :

"The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court and the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority, (ii) introduce clarity in the decisions ; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and Tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the stand point of policy and expediency.

Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances or arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is grater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under

challenge."

6. In *Testeels Ltd. Vs. N.M. Desai and Another*, , a Full Bench of the Gujarat High Court has 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 :

"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."

7. If the facts of the present case are examined in the light of the propositions of law laid down in the aforementioned decisions, we do not find any difficulty in holding that the rejection of the petitioner's prayer for refund/adjustment of tax is vitiated by arbitrariness and violation of the rules of natural justice. A reading of the impugned order leaves no manner of doubt that the Excise and Taxation Commissioner has not given any reason whatsoever for declining the petitioner's prayer for refund/adjustment of the excess tax already paid. In other words, the impugned order is arbitrary and cryptic to the core.

8. In the premises aforesaid, the writ petition is allowed. Order annexure P-18 is quashed and Excise and Taxation Commissioner, Punjab, is directed to pass a fresh order on the petitioner's application for refund/adjustment of the excess tax, if any paid, under the Act.

9. The petitioner is directed to appear before Excise and Taxation Commissioner, Punjab, on August 25, 2003 through its representative or Advocate. Within next

two months, the concerned authority shall decide the petitioner's prayer for refund/adjustment of tax by passing a speaking order.

10. Copy of the order be given dasti on payment of fee prescribed for urgent applications.