

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(Through Virtual Mode)**

OWP No. 566/2009

Pronounced on: 24.08.2023

M/s S. R. Vanaspati
(A Private Limited Company)
100-SICOP Industrial Estate, Kathua
Through its Managing Director
Sh. Sarju Mittal, aged : 42 years
S/o Sh. S.R.Mittal
R/o 89-Shakti Nagar, Jalandhar (Pb)
Presently: Ward No. 13, Kathua, J&K

...Petitioner(s)..

Through:- Mr. Rahul Pant, Sr. Advocate with
Ms. Arushi Shukla, Advocate.

V/s

- 1) State of Jammu and Kashmir
through Commissioner-cum-Secretary to Govt.
Department of Finance
Jammu and Kashmir Government,
Civil Secretariat, Jammu.
- 2) Commissioner,
Commissioner Taxes
Jammu and Kashmir Government
Excise and Taxation Complex
Rail Head, Jammu.
- 3) Additional Commissioner,
Commercial Taxes
Jammu and Kashmir Government
Excise and Taxation Complex
Rail Head, Jammu.
- 4) Assessing Authority,
Commercial Taxes/Sales Tax
Circle-Kathua.

...Respondent(s)..

Through:- Mr. K. D. S. Kotwal, Dy. A. G.

**CORAM: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

PER PUNEET GUPTA-J:

1. The petitioner is a Private Company Limited and is a Small Scale Industrial Unit for manufacturing of Vanaspati Ghee, Refined Oil

and Acid Oil etc. and registered with District Industries Centre, Kathua. The petitioner-Company was established in the year 1999 and claims to be filing returns as envisaged under Value Added Tax Act or the Central Sales Tax Act. The business premises of the petitioner was inspected on 4th May, 2000 by the Deputy Commissioner, Enforcement (Excise and Taxation) on being authorized by the respondent No.2. The Deputy Commissioner directed the assessing authority Sales Tax Circle, Kathua to take away the benefit of exemptions being availed of by the Company under SRO 246 of 1998 dated 20.08.1998. The order came to be passed by the then Deputy Commissioner Enforcement (E&T) on the ground that it was found in the premises purchases of Hydrogen Gas/Nickel Catalyst vis-à-vis the claim manufacturing of Vanaspati Ghee. The assessment came to be passed by the respondent No.4 Assessing Authority, Sales Tax Circle, Kathua on the basis of best judgment vide his order dated 17th May, 2001. The order was challenged before the appellate authority. The appellate authority vide order dated 23.02.2004 set aside the assessment order along with the order of imposition of interest and penalty and further remanded the case back to the Assessing Authority for de novo assessment and to conduct a detailed enquiry covering all aspects. On remand the re-assessment proceedings were initiated and the re-assessment proceedings were completed in terms of Section 7 (15) of J&K GST Act, 1962. The petitioner was held entitled to exemptions as per SRO 246 of 1998 dated 20.08.1998. The respondent No.4, the Assessing Authority, had passed the order after obtaining technical opinion for detailed analysis from General Manager, District Industries Centre, Kathua. This order of assessment was not challenged by the department before the appellate authority nor was the revisional power exercised by the respondent No.2 under Section 12 of the GST Act for about two years as per petition.

2. The further case of the petitioner is that J&K Value Added Tax Act,

2005 came into force w.e.f. 1st April, 2005 vide SRO 1992 dated 4th April, 2005. The petitioner submits that in terms of the Section 103 of the VAT Act no further proceedings or assessment could be reopened after coming into force of VAT Act, 2005 except the proceedings which were instituted or were continuing at the time of enforcement of VAT Act, 2005. As per the petitioner the proceedings/assessment had attained finality by the time the VAT came into operation. It is further submitted that the respondent No.2 invoked suo moto powers of revision under Section 12 of the GST Act, 1962 as a measure of harassment though not competent to do so for the aforesaid reason. The respondent No.2 issued notice dated 12th March, 2008 to the petitioner under Section 12 of the J&K GST Act, 1962 and reply was also given to the notice.

3. The order dated 24th April, 2009, impugned in the present petition, was passed after a period of more than one year of issuance of notice and the reply submitted by the petitioner to the said notice.
4. It may be mentioned herein that vide impugned order the respondent No.2-Commissioner, Commercial Taxes- set aside the order dated 29th March, 2006 of Assessing Authority and again directed the Assessing Authority to frame a fresh order strictly in accordance with the mandate given to him by the appellate authority. The order impugned has been challenged on grounds amongst other that the order has not passed in consonance with the principle of natural justice as the petitioner was not heard before passing of the impugned order by the respondent No.2, that the impugned order could not be passed as the revisional powers could not be invoked by the respondent No.2 after coming into operation of the VAT Act on 1st April, 2005 and further that the said respondent was inimical towards the petitioner. The Assessing Authority had on remand taken care of all the aspects mentioned in the remand order is also the plea of the petitioner.
5. The respondents have filed counter to the petition. Rejoinder has

also been filed by the petitioner in the present petition.

6. The respondents have justified the impugned order passed by the respondent No.2 on the grounds mentioned in the counter. The Assessing Authority did not take into consideration the observations in the remand order after the matter was remanded back by the appellate authority and, therefore, the order impugned came to be passed by the respondent No.2 is also the submission made by the respondents. The VAT Act, 2005 did not debar the respondent No.2 to pass the order impugned inspite of the fact that the VAT Act had come into operation by the time the respondent No.2 took cognizance of the matter. The revisional powers could be exercised by the respondent No.2 and there can be no denial of the same is the plea of the respondents.
7. The learned counsels have of course argued in terms of their respective pleadings.
8. The record has also been produced by the respondents.
9. One of the grounds agitated by Mr. Rahul Pant, learned senior counsel for the petitioner in the petition is that the petitioner was not heard by the respondent No.2 before passing of impugned order though the proceedings were initiated by him about a year back prior to issuance of notice by the said respondent. The respondent was required to give personal hearing to the petitioner before passing the impugned order. The respondent No.2 could not have initiated the proceedings against the petitioner after the Assessing Authority had on remand passed the re-assessment order on the grounds as mentioned in the earlier paras.
10. Mr. K. D. S. Kotwal, learned Deputy Advocate General has argued that the order has been passed by the respondent No.2 after complying with all the formalities and the petitioner was given opportunity to file the reply to the notice and the opportunity was seized by the petitioner by filing the reply to the notice issued by the

respondent No.2. The plea of natural justice having being violated by the respondent No.2 before passing the impugned order is without any substance is the plea of the respondents.

11. The respondent No.2 is a quasi judicial authority and there can be no denial of the same. Such an authority is bound to follow the rule of natural justice by granting appropriate opportunity to place his version before it as any order passed by the authority can have very adverse consequences for the party against whom the order may be passed. The authority cannot by-pass the right of the party to make submission in the matter. The court is convinced that the record produced by the respondents does not make out adequately that the petitioner was given a fair chance to place the contentions that may have been raised by the petitioner to counter the notice issued by the respondent No.2 though it is also a fact that the petitioner had filed a reply to the notice. The proceedings remained pending with the respondent for a period of about one year cannot be disputed. What prevented the respondent No.2 to hear the version of the petitioner is best known to the said respondent. The Assessing Authority after remand of the case from the appellate authority had issued an order which favoured the petitioner and therefore it became more of a reason that the petitioner should have been heard mandatorily by the respondent No.2 after he had invoked the revisional power under Section 12 of the J&K GST Act, 1962 though at the cost of repetition this revisional power could be invoked by the respondent is also questioned by the petitioner herein.
12. In 1970AIR SC 1520 titled “Sirpur Paper Mills Ltd. V. Commissioner of wealth Tax” the Hon’ble Apex Court held while dealing with powers of Commissioner under Wealth Tax Act underlined the requirement to decide the matter while keeping in view the principles of natural justice as the power of the Commissioner is quasi-judicial under Section 25 of the Act.
13. The court being satisfied that the impugned order has been passed by

the respondent in violation of the principle of natural justice, the petitioner having not been heard the petition is required to be allowed on that score alone.

14. The petitioner has challenged the order of the respondent No.2, impugned in the present petition, on various other grounds, as stated above, which also relate to the competency of the said respondent to invoke the revisional powers under the GST Act and the period within which it could be exercised qua the proceedings which came to be initiated against the petitioner. The Court is of the view that as these grounds are required to be decided qua the other facts that have emerged in the proceedings it is in the fitness of things that the petitioner should take all these pleas which he has taken in the present petition and also urged before the court to take the same before the respondent No.2 who had passed the impugned order.
15. The petition is allowed and the order impugned is set aside. The respondent No.2 or any other authority which may be in presently in place of respondent no.2 shall hear the matter afresh taking into consideration all the pleas that may be taken by the petitioner and pass the order in accordance with law. The order shall be passed by the respondent uninfluenced by the earlier order passed by respondent No.2 and which is impugned in the present petition. The record be returned to learned Dy. A.G.

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

SRINAGAR:
24.08.2023
Pawan Chopra

Whether the Judgment is speaking : Yes/No
Whether the Judgment is reportable: Yes/No