IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13356 of 2015
DATE OF DECISION:October 16,2015

M/s Asma Export India

....Petitioner

versus

The State of Punjab and another

…..…Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON’BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Avneesh Jhingan, Advocate for the petitioner.
Mr.Piyush Kant Jain, Addl.A.G., Punjab.

RAMENDRA JAIN,J.

The petitioner by way of this Civil Writ Petition has challenged the exparte assessment order dated 12.6.2015 (Annexure P.2) on the ground that it was passed in violation of principles of natural justice without affording it an opportunity.

The petitioner, a proprietorship concern, is registered under the Punjab Value Added Tax Act, 2005 (for short, `2005 Act’) as also under Central Sales Tax Act, 1956 (for short, `1956 Act’). It is manufacturing and trading in plywood, particle board, flush doors, table tops, veneer etc. with liability to pay the tax with effect from 20.10.2004. It had filed all the four quarterly returns for the year 2012-13. Its business premises was inspected by the respondents on 22.5.2012. One production register, bundle of papers related to production and some loose papers were impounded for verification. On 23.5.2012, a notice was served upon the petitioner for the verification of documents. In pursuance thereof, its proprietor appeared and requested the concerned Officer to return the impounded documents so as to enable him to explain the same. Besides above, another inspection was conducted at the premises of the petitioner by Chandigarh Mobile Wing of the respondents on 28.8.2012. However, the officer concerned refused, either to return the impounded documents or to supply the copies thereof. Rather the petitioner was directed to file its reply and to produce the entire records. The case was adjourned number of times. The respondents did not take any action till April 2015 and then started pressuring the petitioner to deposit certain amount with regard to inspection case. The petitioner filed a request letter on 6.4.2015 referring to section 46 of 2005 Act for return of the impounded documents, but of no avail. In pursuance of notice, the proprietor of the concern along with his accountant appeared in the office of the respondent no.2 on 28.5.2015, but he was not found available in the office, even after waiting for him for a sufficiently long time. On contact through mobile, he was found to be at Chandigarh. Thereafter, without issuing any notice or fixing any date of hearing, a best judgment assessment order dated 12.6.2015 was sent to the petitioner, raising a demand of

Rs.1,93,55,530/- under 2005 Act which included a penalty of Rs.1,09,35,329/-, besides interest amount of Rs.29,52,538/-. Another demand of Rs.3,16,529/- was created under 1956 Act. The aforesaid order dated 12.6.2015 is the subject matter of challenge in the present writ petition.

Learned counsel for the petitioner argued that section 46(3) of 2005 Act makes it obligatory on the officer not to retain the current account books for more than 30 days and old account books for more than 60 days. Hence, the respondents after the expiry of the aforesaid period were bound to return the impounded documents or to supply the photocopies thereof to the petitioner. Despite the above mandate, respondent No.2 neither returned the documents nor provided the copies thereof and thus, acted beyond the statute exceeding his jurisdiction. The impugned order dated 12.6.2015 passed by the respondents without affording an opportunity to the petitioner to explain was in violation of the principles of natural justice. Even otherwise, the same has been passed without application of mind and recording wrong facts. The proprietor of the petitioner was never confronted with any document and thus, finding in this respect is wrong. On 28.5.2015, the proprietor of the petitioner appeared, but the Officer of the respondents himself was not available. The demand has also been created under the 1956 Act by stating that no declaration form was produced during the proceedings, though `C' forms were produced by retaining their photocopies. The petitioner was unable to explain the documents without having the copies of the impounded documents..

On the other hand, learned State counsel has no serious objection in accepting the writ petition and remanding the case by quashing the impugned exparte order dated 12.6.2015.

There is force in the submissions of learned counsel for the petitioner, because the impugned order dated 12.6.2015 was passed exparte without supplying the copies of the impounded documents to the petitioner to enable it to submit its effective reply, explaining the entries in the same, despite the fact that it was obligatory upon the respondents under Section 46 of 2005 Act. The concerned Officer could not have legally kept the impounded documents beyond the maximum period of 60 days. In the instant case, the premises of the petitioner was inspected on 22.5.2012, on which date, the documents were impounded. The petitioner was asked to submit its reply and to explain impounded documents which was not possible for it, without seeing them. The concerned Officer of the respondents ought to have supplied the copies of the impounded documents, before asking the petitioner to submit its reply and to explain the same.

In view of the above factual position, the impugned order (Annexure P.2) has been passed by the concerned Officer without affording proper opportunity to the petitioner in violation of the principles of natural justice.

Accordingly, the order dated 12.6.2015 (Annexure P.2) is quashed. The matter is remitted back to the assessing authority to pass a fresh order in accordance with law.

Since the petitioner has a right to take the copies of the impounded documents, as period of 60 days has already expired, therefore, the concerned Officer of the respondents is directed to supply the copies of the impounded documents to the petitioner to enable it to file its effective reply and then to pass a fresh order, in accordance with law after affording proper opportunity to the petitioner to explain its case.

(RAMENDRA JAIN)
JUDGE

October 16,2015
Kd

(AJAY KUMAR MITTAL)
JUDGE