IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.4709 of 2015
Reserved on:30.06.2015
Date of decision:08.07.2015

Sumit Agencies .....Petitioner

Versus

State of Punjab & others .....Respondents

CORAM : HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Aman Bansal, Advocate, for the petitioner.

Mr.Jagmohan Bansal, Addl.A.G., Punjab.

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G.S.Sandhawalia J.

1. Challenge in the present writ petition is to the action of the respondent No.3, the Excise & Taxation Officer, Mobile Wing, Ludhiana, whereby two cheques bearing Nos.053461 & 053462, amounting to ₹3 lacs each, were taken from the petitioner, without any liability and notice. Prayer is, accordingly, made for conducting an independent and impartial enquiry on the ground that there was no order against the petitioner and in the absence of the liability, the cheques could not be taken.

2. The pleaded case of the petitioner is that the petitioner-Firm is engaged in the business of supply of cigarette, biddi, pan masala etc. and duly registered under the Punjab Value Added Tax Act, 2005 (for short, the 'PVAT') and was not a defaulter. It has been alleged that respondent No.3, Navjeet Singh, the Excise & Taxation Officer, Mobile Wing, Ludhiana, who has been impleaded in his personal capacity, came to his premises on 16.02.2015 and threatened him and demanded exorbitant amounts with the

help of police. The cheques in question amounting to ₹3 lacs each were taken despite the fact that no notice had ever been issued and under the threat of coercion on account of completion of target of Revenue before 31.03.2015. The said respondent had also taken the signatures of the petitioner on blank papers and thereafter, encashed one cheque bearing No.053461 on 21.02.2015, as per the bank's statement. Thereafter, notice had been served upon the petitioner on 09.03.2015 to which a reply had been filed that the two cheques were forcibly taken and one of the cheque, amounting to ₹3 lacs had already been encashed and the payment of the second cheque had been stopped by the petitioner. Resultantly, the present writ petition has been filed for the necessary relief, mentioned above.

3. In the written statement, filed by the said respondent No.3 on behalf of respondents No.1 & 2, the defence taken was that there was prior permission of the Assistant Excise & Taxation Commissioner, Mobile Wing, Ludhiana and inspection was conducted along with other officers and supporting team. The Proprietor of the Firm, namely, Harish Kumar, had run away and the local police was called and he had returned with some person and thereafter, inspection was carried out in his presence and two cheques were taken as anticipatory tax liability because huge stock of goods were found, without any documents. The proceedings were in progress and many irregularities were found and true and correct account had not been maintained resulting in evasion of tax. Several discrepancies were pointed out and the plea taken was that the cheques were submitted voluntarily at the time of inspection. Thereafter, one of the cheque was encashed with full knowledge as the petitioner had desired to discharge his anticipated liability in parts. Notice had been issued to the petitioner for provisional assessment

of the income under the PVAT Act.

4. At the time of arguments on 30.06.2015, counsel for the State had placed on record the provisional assessment order, passed on 26.06.2015 by one Manmohan Singh, Excise & Taxation Officer, Mobile Wing, Ludhiana, whereby a sum of ₹11,20,281/- has been assessed as provisional assessment, without prejudice to the outcome of the present writ petition and the sum of ₹3 lacs, as per cheque No.053461 dated 16.02.2015 has been adjusted against the said amount and a demand for the balance amount of ₹8,20,281/- has been raised. The original record has also been produced for perusal of this Court to see that in which manner the authorities have exercised their jurisdiction. A perusal of the same would go on to show that the authorities have acted in an arbitrary and illegal manner.

5. Respondent No.3, firstly, has filed his reply on behalf of respondents No.1 & 2 also and not replied against the allegations of *mala fides* levelled against him and accordingly, it is presumed that the same are true and correct since there is no denial on his part. Counsel for the State could not demonstrate that in the absence of any demand or liability how the two cheques amounting to ₹3 lacs each had been taken and one of them had been encashed on 21.02.2015. As per the file, respondent No.3 had asked the petitioner/Proprietor-Harish Kumar to produce the necessary documents on 16.02.2015. The said respondent had, thereafter, conducted proceedings and notice of motion was issued by this Court on 17.03.2015. As per the zimni order dated 10.03.2015, recorded by respondent No.3, it has been noticed that one of the cheques has been encashed in favour of the Department. Thereafter, the said official had further conducted proceedings and he was informed on 08.04.2015 that the matter is pending in this Court

and proceedings continued on account of the fact that there was no stay.

6. On 09.06.2015, permission was taken by respondent No.3, firstly, for entrusting the proceedings to some other officer which was granted and one Manmohan Singh, Excise & Taxation Officer, Mobile Wing, Ludhiana was entrusted with the said file. Thereafter, permission was taken from respondent No.2 to frame provisional assessment on the same date, i.e., 09.06.2015. The said officer, thereafter, issued notice for 17.06.2015 and noticed that written reply has been received but none had appeared despite numerous opportunities given and the Proprietor was wilfully avoiding appearance. Accordingly, the judgment was reserved on 17.06.2015 and as noticed above, the provisional assessment was framed and accordingly, a demand of ₹11,20,281/- was raised by passing the impugned order on provisional assessment on 26.06.2015.

7. The said procedure smacks of arbitrariness and highhandedness of the authorities on the face of the record itself, which cannot be appreciated, in any manner. In the absence of any assessment, the action of respondent No.3 to take two cheques on 16.02.2015 amounting to ₹3 lacs each in favour of the respondent-Department, was not justified. The encashment five days later to the tune of ₹3 lacs, allegedly in discharge of the anticipated liability, as per the reply filed, cannot be appreciated, in any manner. The eagerness of the official-respondents to meet their targets at the end of the financial year, by following this method of recovery, cannot be approved.

8. Though there is no challenge to the provisional assessment framed thereafter, but in view of the above facts and circumstances, since it has been done during the pendency of the writ petition, we are of the

opinion that the same is liable to be quashed since the same was done by an officer who was entrusted with the proceedings inspite of the fact that he was also part of the inspection team which had visited the premises of the petitioner on 16.02.2015. Therefore, it is apparent, *prima facie* that such a huge liability has been made out against the petitioner without giving him proper opportunity to put-forth his case merely on account of the fact that the petitioner was prosecuting his remedy, in accordance with law. The said order, though not specifically challenged, has apparently been passed to spite the petitioner and is necessarily to be quashed. Accordingly, the provisional assessment order dated 26.06.2015 is hereby quashed.

9. Accordingly, the present writ petition is allowed by directing that the respondents shall refund a sum of ₹3,10,000/-, within a period of one week from the receipt of a certified copy of this order and a sum of ₹10,000/- shall be recovered from respondent No.3, by the State, for his arbitrary action. The cheque bearing No.053462 amounting to ₹3 lacs shall also be returned to the petitioner. However, to safeguard the interests of the Revenue, the petitioner shall maintain a sum of ₹3 lacs in his bank account from which the cheque was encashed, during the pendency of the assessment proceedings which have now been initiated under the Act. The said proceedings shall be decided by an officer of competent jurisdiction, who was not associated with the inspection conducted on 16.02.2015 and who would be appointed by respondent No.2. The said proceedings shall be finalized within a period of 2 months from the date of the receipt of the certified copy of this order. In case of any demand, it shall be open to the respondents to recover the same, in accordance with law and to the petitioner to agitate in appeal, if required. The original record of the case be

returned to Mr.Jagmohan Bansal, Addl.A.G., Punjab, under proper receipt, for onward transmission.

10. With the abovesaid directions, the present writ petition stands allowed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
JUDGE

08.07.2015
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