

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.12693 of 2015
Date of decision:21.1.2016**

M/s Chhabra Traders

.....Petitioner

The State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not? **YES**

3. Whether the judgment should be reported in the Digest?

Present: Mr. Ankit Dhiman, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl.A.G.Punjab.

Raj Rahul Garg,J.

1. Challenge in this petition is to the order dated 26.5.2015, Annexure P.1 passed ex parte by the Excise and Taxation-cum-Designated Officer for the assessment year 2010-11 as the petitioner was unable to represent its case on medical ground on the date of passing the assessment order.

2. A few facts relevant for the decision of the controversy

involved as narrated in the petition may be noticed. The petitioner firm is a registered dealer under the provisions of the Punjab Value Added Tax Act, 2005 (in short, “the PVAT Act”). It is engaged in the business of trading of iron and steel hardware goods at Village Sohana, District Mohali. In the year 2005, the State of Punjab had enacted the PVAT Act to provide for levy and collection of value added tax and turnover tax on the sales or purchases of goods. The petitioner filed its returns for the year 2010-11 on quarterly basis in Form VAT 15. Based on the aforesaid returns, annual statement in Form VAT 20 was also filed. Vide order dated 26.5.2015, Annexure P.1, assessment had been framed ex parte creating a demand of ₹ 24,35,706/- and ₹ 20,782/- under the PVAT Act and Central Sales Tax Act, 1956 (in short, “the CST Act”) respectively. According to the petitioner, its proprietor could not appear before respondent No.2 as he was not medically fit on the due date. Medical certificate has also been attached as Annexure P.2 with the petition. Hence the instant writ petition by the petitioner.

3. Reply by way of affidavit of Excise and Taxation Officer, Mohali on behalf of the respondents has been filed wherein it has been inter alia stated that the petitioner has filed the present petition without availing the alternative remedy of appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala. Further, the petitioner did not appear before the authorities on the date of the passing of the impugned order. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that the petitioner could not appear before the authorities on the due date on medical ground. Therefore, as sufficient opportunity of hearing was not given to the petitioner to represent its case, the impugned order is violative of the principles of natural justice. On the other hand, learned State counsel did not dispute the ex parte order dated 26.5.2015. He, however, submitted that the petitioner has an efficacious remedy of appeal against the impugned order.

6. After hearing learned counsel for the parties, perusing the impugned order and overall facts and circumstances of the case, we find that the petitioner was unable to appear before the respondent authorities on the date of the passing of the assessment order on medical ground. Therefore, sufficient opportunity to represent its case was not afforded to the petitioner before passing the impugned order. Thus, there was violation of the principles of natural justice.

7. The Hon'ble Apex Court in **Canara Bank v. V.K. Awasthy AIR 2005 SC 2090** while dealing with the doctrine of principles of natural justice had noticed as under:-

“8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually

associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate".

In the celebrated case of *Cooper v. Wandsworth Board of Works*, (1963) 143 ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat". Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

7. Further, this Court in *Larsen and Toubro Limited v. The State of Haryana and others*, 2012(2) 166 PLR 345, considering the question of entertaining writ petition where alternate statutory remedy was available, had in para 6 observed thus :-

"6.The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies:-

- i) where the writ petition seeks enforcement of any of the fundamental rights;
- ii) where there is failure of principles of natural justice; or
- iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged...."

8. No other point was raised.

9. In view of the above, the impugned order dated 26.5.2015,

Annexure P.1 passed in violation of the principles of natural justice as per

the law laid down by the Apex Court in *V.K.Awasthy's* case (supra) is set aside and the matter is restored to the Assessing Officer to examine the petitioner's claim for Input Tax Credit afresh in accordance with law after giving opportunity to it to produce all the relevant documents. The petition stands disposed of. The parties are directed to appear before the Assessing Officer on 8.3.2016.

(Raj Rahul Garg)
Judge

January 21, 2016

(Ajay Kumar Mittal)
Judge

'gs'