

CWP No. 11769 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11769 of 2015 (O&M)

Date of decision: February 15, 2017

M/s Ricela Health Foods Limited

.. Petitioner

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sandeep Goyal and Mr. Varun Chadha, Advocates
for the petitioner(s).

Ms. Radhika Suri, Additional Advocate General, Punjab with
Mr. Dilsher Singh Mann, Assistant Advocate General, Punjab.

...

Rajesh Bindal J.

This order will dispose of two petitions bearing CWP Nos. 11769 and 12029 of 2015, as common questions of law and facts are involved.

In CWP No. 11769 of 2015, challenge has been made to the order of assessment dated 6.5.2015 (Annexure P-17) for the assessment year 2009-10. In CWP No. 12029 of 2015, challenge has been made to the order of assessment dated 6.5.2015 (Annexure P-10) for the assessment year 2010-11.

Arguments in CWP No. 11769 of 2015

Learned counsel for the petitioner submitted that notice for the assessment year 2009-10 was issued by the Excise and Taxation Officer, Sangrur to the petitioner under Section 29(2) of the Punjab Value Added

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Tax Act, 2005 (for short, 'the VAT Act') for 9.3.2015. On 10.3.2015, the order was reserved, however, the petitioner was granted opportunity to give written submissions till 16.3.2015. The petitioner submitted written reply on 16.3.2015. On 20.3.2015, notice was issued to show cause as to why penal action be not taken under Section 56 of the VAT Act, which was issued for 26.3.2015. The notice was issued only under the VAT Act. No proceedings had taken place on 26.3.2015. As the assessment order had not been passed, the petitioner submitted his objections on 1.4.2015 and on the same day, vide separate letter filed reply to the penalty notice as well. There is no order sheet prepared for penalty proceedings. The petitioner had earlier filed CWP No. 9038 of 2015 on 5.5.2015 challenging the show cause notice. The petitioner was served with copy of the assessment order dated 5.5.2015 through e-mail on 6.5.2015. The order was not signed. Along with the assessment order, demand notice dated 6.5.2015 was received, which was also unsigned. He referred to the information (Annexure P-18) given regarding attendance of the Designated Officer in office, who framed the assessment. He was on leave from 11.00 AM to 5.00 PM on 6.5.2015. The order sheet prepared by him on that day states that the order is released today. The same be sent to the petitioner through e-mail along with demand notice. He further submitted that in any case, the transactions, on which the tax has been sought to be levied, were reported at the Information Collection Centres and the payments against these were received through banking channel.

Challenge to the order of assessment has been made by the petitioner on the ground of violation of the principles of natural justice, no penalty proceedings having been initiated under the Central Sales Tax Act,

1956 (for short, 'the Central Act'), despatch of order by e-mail without there being any enabling provision and allegation of *mala fide* has also been levelled against the officer concerned.

Referring to the discrepancies in the stand taken by the State in the official reply and the officer concerned, learned counsel for the petitioner referred to para No. 18 of the official reply, wherein it was stated that the order of assessment was sent to the petitioner via mail at 10.25 AM on 6.5.2015, whereas in para No. 5 of the reply filed by the officer concerned, as he has been impleaded as respondent in person, it is stated that the order was dictated on 5.5.2015 and it was sent through e-mail to the petitioner from Patiala, where he was on official duty on that day. He further submitted that no penalty could be levied for the reason that order was reserved on 10.3.2015 only with reference to the assessment and not for levy of penalty, for which separate proceedings were initiated, which were not concluded. If order had been dictated on 5.5.2015, why it was not despatched by him on the same day when he was present in office, but sent on 6.5.2015 when admittedly he was not in office. In fact, the Designated Officer went to Sangrur on 6.5.2015. As claimed by him, he attended office till 11.00 AM. On that day, at 10.25 AM, he merely sent a word format copy to the petitioner through e-mail and not PDF file signed by him or digitally signed copy. While referring to the order dated 6.5.2015 passed by the Designated Officer, learned counsel for the petitioner submitted that though the officer claimed that he passed order at Sangrur, however, he was not present at Sangrur on that day. Order notices that copy of assessment order has been sent to the petitioner on his registered e-mail ID and proof of e-mail sent is appended on the file, however, from the print out available on

the file of the proof of e-mail sent to the petitioner, it is evident that the same was taken on 12.5.2015. Hence, wrong facts have been mentioned.

The conduct of the Designated Officer is in question. There was no urgency to pass order and send copy thereof to the petitioner on 6.5.2015 when he was not even in office, especially when there was stay in other case. No proceedings were pending for 6.5.2015. In fact, the whole object was to frustrate the writ petition already filed by the petitioner, which was scheduled for hearing on 7.5.2015. The intention was to raise demand so that the refund already due to the petitioner could be adjusted. There was an earlier order (Annexure P-10) passed by this court in CWP No. 2992 of 2015 directing the department to consider claim of the petitioner for refund within a period of two months.

During the course of assessment proceedings, the petitioner had been regularly raising the issue regarding supply of the material in possession of the Designated Officer so as to enable the petitioner to respond to the same, but till the assessment was framed, copies thereof were not supplied. The order has been passed in violation of the principles of natural justice. He further referred to Rule 86(1)(c) of the Punjab Value Added Tax Rules, 2005 (for short, 'the Rules'), which enables the authorities under the VAT Act to serve summons through e-mail. There is no enabling provision for service of order of assessment and the demand notice by e-mail. Under Section 29 of the VAT Act, notice for assessment was issued and it was finally framed. Rule 48 of the Rules provides that the Designated Officer, after considering objections and documentary evidence, if any filed by the person, shall pass order of assessment in writing, which shall clearly state reasons for assessment. Certified copy of the assessment order along

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with demand notice is to be supplied free of cost to the party. Certified copy cannot possibly be sent through e-mail. That is the reason, there is no enabling provision in the Rules in this regard. The order takes its shape only after it is written/typed and is duly signed by the officer concerned, however, in the case in hand, on inspection by the counsel for the petitioner, of the assessment file, on 25.5.2015 and 1.7.2015, signed copy of the assessment order was not on file. Meaning thereby what was served upon the petitioner through e-mail was nothing more than a waste paper as on file, even upto 1.7.2015, there was no signed order available. In the absence of a signed order, there was no possibility of preparing a certified copy thereof to be sent to the person concerned in compliance to Rule 48(3) of the Rules. In support of his plea, reliance was placed upon Kalra Glue Factory v. Sales Tax Tribunal and others, 66 STC 292 (SC); Mukand Singh and Sons v. Presiding Officer, Sales Tax Tribunal, Haryana and others, 107 STC 300 (P&H); Anupam Agencies v. State of Punjab and others, 95 STC 338 (P&H) and order dated 2.9.2015 passed by Hon'ble the Supreme Court in Civil Appeal No. 4228 of 2006—M/s Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II. The petitioner is not concerned with what the purchasing dealer had shown in his books of account when he had issued 'C' form to the petitioner of the amount of bills raised by it.

Arguments in CWP No. 12029 of 2015

For the assessment year 2010-11, notice was issued on 14.5.2013, to which the petitioner filed reply dated 5.6.2013 praying for supply of the documents, on which reliance was sought to be placed. Further notice dated 19.3.2015 was issued by the Designated Officer, to which

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detailed reply dated 13.4.2015 was filed raising preliminary objection regarding jurisdiction, as the case was not transferred to him. On 20.4.2015, a request was made to decide the preliminary objection first before taking up the assessment proceedings. On 22.4.2015, detailed reply was filed, however, again with a request to summon the parties in case any further verification is required with reference to issuance of 'C' form. The petitioner filed CWP No. 8895 of 2015 on 4.5.2015, which was listed on 6.5.2015 and this Court directed that the Designated Officer shall decide the preliminary objection raised by the petitioner regarding jurisdiction and final decision shall not be taken. The order sheet, as recorded by the Assistant Excise and Taxation Officer on 5.5.2015 while reserving the order, notices that the cheque submitted by the petitioner as diet money to summon the witnesses was being returned. Counsel for the petitioner had put a note before signing the order-sheet, *inter-alia*, stating that the writ petition has been filed in this court, hence, the case be adjourned.

He further submitted that earlier the petitioner had filed CWP No. 2992 of 2015 in this Court, where expeditious issuance of refund was prayed for. This Court, vide order dated 20.2.2015, directed the authority to decide the claim of refund within a period of two months from the date of receipt of certified copy of the order. To avoid issuance of refund order, tax was sought to be levied. The assessment order was passed on 6.5.2015. The objection regarding jurisdiction was rejected and so the prayer for cross-examination. No penalty was imposed, though notice was issued. All 'C' and 'F' forms were rejected. The petitioner had made a claim of consignment sales only to the extent of ₹ 11,68,22,576/-, but rejection was to the tune of ₹ 35 crores. That shows total non-application of mind, rather, the exercise

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was to ensure that some how or the other, the petitioner is not issued any refund, which was due to it. Though at that stage, the Excise & Taxation Officer was in a hurry to pass the assessment order without affording fair opportunity of hearing, but on 22.1.2016 *suo-motu* rectification was made therein. Demand was substantially reduced. As the Excise and Taxation Officer had been apprised about filing and listing of the petition in this court, he ensured that the writ petition becomes infructuous, as copy of the order was sent through e-mail on 6.5.2015 at 10.25 AM. The writ petition bearing CWP No. 8895 of 2015 was dismissed as withdrawn.

Regarding transfer of the case, the submission is that the communication dated 11.12.2014 is a created document. It refers to letter No. 2967 of even date, which was pertaining to the year 2009-10, whereas assessment year involved in the present case was 2010-11. Regarding non-availability of the officer at Sangrur and sending of e-mail or order having not been signed or digitally signed, the contentions raised for the assessment year 2009-10 are reiterated. While referring to the conduct of the officer concerned in forging the record, the submission is that for the assessment year 2011-12, vide letter dated 8.5.2015, rejection of preliminary objection of jurisdiction was conveyed through e-mail with a scanned copy thereof. A fresh e-mail dated 13.5.2015 was received stating that there was typing error in the letter dated 8.5.2015. A fresh scanned copy was sent. In fact, that correction was made subsequently, otherwise there was no question of sending un-corrected scanned copy through e-mail. On 13.5.2015, when corrected copy was sent, that too at 6.33 PM, the concerned officer was on leave, which shows how much undue interest officer was taking in assessment of the petitioner by giving good-bye to the procedure established

by law. In fact, the properties of JPG file sent to the petitioner on 13.5.2015 by Excise & Taxation Officer shows his location at Patiala at the relevant time. The submission is that there being hurry in framing the assessment and the principles of natural justice having been violated, especially by not summoning the dealers, to whom the goods were sold or sent for consignment sales, prejudice has been caused to the petitioner, hence, order of assessment be set aside and the matter be remanded back.

On the other hand, with reference to CWP No. 11769 of 2015, learned counsel for the State submitted that in the notice issued to the petitioner for assessment, issues regarding claim of input tax credit, inter-state sales and branch transfers were highlighted. Notice was also issued initiating penalty proceedings. All details were given. Entire evidence was confronted. The process started way back in the year 2013. The petitioner filed number of replies. He even admitted initiation of penalty proceedings. During the course of assessment proceedings, realising that there would be demand raised against the petitioner, he deposited a cheque of ₹ 12 crores on 10.6.2013 to be adjusted against the liability, which may be created. Order-sheet starting from 14.5.2013 clearly shows that enough opportunities were afforded to the petitioner. The request made by him for providing the documents was never pressed later on, hence, abandoned. Regarding jurisdiction, she referred to the letter dated 11.12.2014 from the Assistant Excise and Taxation Officer. In fact, the notice issued on 9.1.2015 mentions about the letter transferring the proceedings to the present Excise and Taxation Officer. The petitioner had appeared on the date fixed when new officer had conducted the proceedings. Even at that stage, no request was made for providing documents. In the writ petition filed by the petitioner

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seeking decision of its claim for grant of refund, order was passed by this court on 20.2.2015 to decide the same within two months from the date of receipt of certified copy of the order. She further submitted that vide letter dated 27.2.2015, the petitioner was informed that all future notices will be sent through e-mail only. The order was reserved on 10.3.2015. Principles of natural justice were fully complied with and the petitioner had been participating in the assessment proceedings. Separate show cause notice for penalty was issued under the VAT Act mentioning all details. To this notice, the petitioner had filed objections. Assessment order was passed on 5.5.2015. All the contentions raised by the petitioner were considered. Regarding service, it was submitted that the order passed on 5.5.2015 was communicated to the petitioner on 6.5.2015 at 10.25 AM through e-mail. On 8.6.2015, the petitioner had appeared. He was informed that adjustment of the demand will be made against the cheque deposited by him. Summing up the contentions, she submitted that there is no jurisdictional error. If the petitioner is aggrieved, remedy of appeal can be availed of. The writ petition deserves to be dismissed. In support of the plea, reliance was placed upon Commissioner of Income-Tax and others v. Chhabil Dass Agarwal, (2013) 357 ITR 357 (SC); Sumit Passi v. Assistant Commissioner of Income-Tax, (2016) 386 ITR 46 (P&H) and Commissioner of Income-Tax v. T. O. Abraham and Co., (2011) 333 ITR 182 (Ker.).

With reference to assessment year 2010-11, learned State counsel did not dispute the fact that there was no further communication regarding transfer of jurisdiction of the assessment for the year in question after the letter dated 11.12.2014, which pertained to the year 2009-10. She submitted that prior to 5.5.2015, there was no request by the petitioner for

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summoning of record and it was only after the order was reserved. She accused the petitioner for placing on record forged documents regarding show cause notice for levy of penalty. She further submitted that there was no interim order passed on 5.5.2015, hence, no illegality in passing of assessment order. Any omission or procedural lapse can be condoned by this Court. The assessment order cannot be nullified on this ground.

In response, learned counsel for the petitioner submitted that the request for cross-examination was made much prior to the framing of assessment on 21.4.2015. Even cheque for diet money was deposited on 21.4.2015. There is no dispatch number in the order transferring jurisdiction for the assessment year in question. The letter referred therein pertains to the year 2009-10. If the jurisdiction was being transferred for the year in question, either there could be a common communication or a separate communication with independent dispatch number. In fact, the contents of the letter are also wrong in the sense that the matter was never put up before the Excise and Taxation Officer for dealing with the objections raised by the petitioner. It was overact on the part of the department.

He further submitted that assessment order for the year 2011-12 was set aside by the Appellate Authority while finding the same to be without jurisdiction as there was no valid order of transfer of jurisdiction.

With reference to the assessment year 2009-10, it was submitted that the notice for penalty was issued only under the VAT Act. While issuing notice under the Central Act, there was no reference for initiation of penalty proceedings. The petitioner filed reply to the issues raised by the department. As there was no notice for penalty under the

Central Act, the petitioner had no opportunity to respond to the same. Prayer for supply of documents made by the petitioner in the very beginning and was reiterated thereafter. It is not to be repeated on every date of hearing specially once the officer was apprised of the same and was conscious of the fact.

Heard learned counsel for the parties and perused the relevant referred records.

In our opinion, the assessment orders deserve to be set aside merely on the ground of violation of principles of natural justice. The matter was not dealt with properly. It was quite in haste towards the end. The assessment proceedings may have started earlier but the assessment was put on fast track after this Court directed the authorities to decide the claim of the petitioner for refund of the tax for the previous years. The officer communicated order through e-mail, when the order on file was not even signed by him. As per Rule 48 of the Rules, certified copy of the order and demand notice is required to be served. When the original order was not signed by the officer, there was no question of preparation of a certified copy thereof. Order communicated was neither scanned copy of a signed order nor digitally signed. Certified copy cannot possibly be sent through e-mail, especially when the Rules do not permit the same. He was not even in office on the day on which copy of the order was served. The prayer made by the petitioner for summoning of the parties with whom the petitioner transacted and produced 'C' and 'F' forms, was not dealt with. The case set up by the petitioner was that all the transactions were duly recorded at the Information Collection Centres and the payments had been received through banking channels.

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This Court in CWP No. 2992 of 2015, vide order dated 20.2.2015, directed the authorities to consider the claim of the petitioner for grant of refund within a period of two months. Though assessment proceedings for the year 2009-10 started earlier, however, were pending with the authorities. Immediately after order for consideration of refund claim of the petitioner was received, the proceedings were fast tracked. On 10.3.2015, order was reserved. The strange fact is that after order was reserved, the petitioner was granted opportunity to file written submissions till 16.3.2015. If written submissions were still to be considered, the assessment proceedings could be kept pending and prayer of the petitioner for summoning of witnesses could be considered. The written submissions were filed within the time permitted. Thereafter on 20.3.2015 penalty notice was issued for 26.3.2015 under the VAT Act. The petitioner filed objections. In the office file, there is no order-sheet available showing conduct of penalty proceedings. As the intention of the officer was not very fair, the petitioner filed CWP No. 9038 of 2015, which was listed in this Court on 7.5.2015. Having come to know about the filing of Civil Writ Petition No. 8895 of 2015 for the assessment year 2010-11 on 4.5.2015, which was listed in Court on 6.5.2015, orders of assessment were dispatched through e-mail on 6.5.2015 before the case was taken up for hearing. He was not in office at that time. Though in the leave record of Upinderjit Singh Sodhi, ETO, Sangrur, the Designated Officer produced as Annexure P-18, shows that on 6.5.2015 from 11.00 am to 5.00 pm, he was on casual leave for an urgent work, however, in his affidavit filed, he stated that the order was sent by him through e-mail from Patiala, where he was on official duty. It shows the haste.

Admittedly, officer was not in his office and is trying to suggest that he was carrying official files with him, while he was away to Patiala. The Designated Officer passed order of assessment on 5.5.2015 and sent copy thereof through e-mail on 6.5.2016. The assessment order is dated 5.5.2015 and demand notice is dated 6.5.2015. Order-sheet of 6.5.2015 shows that order was released on that day. The haste in which the Designated Officer acted is for the reason that CWP No. 9038 of 2015 filed by the petitioner challenging assessment proceedings, was to be listed on 7.5.2015. The petitioner made a request for summoning the dealers to whom the goods were sold or sent for consignment sales as the transactions were reported at the Information Collection Centres and the payments had been received through banking channels. The request was not considered. The officer very well knew that this Court had entertained earlier CWP No. 8895 of 2015 for the assessment year 2010-11 and stay had been granted. There is no satisfactory answer with reference to Rule 86 of the Rules, which enables authorities to serve summons through e-mails, but not assessment order and demand notice. The definite stand of the petitioner, which was not controverted, was that signed copy of the assessment order was not available even on the assessment file, as the counsel for the petitioner had inspected the file on 25.5.2015 and 1.7.2015. Meaning thereby what was served upon the petitioner through e-mail was a copy of the typed assessment order, which was not signed even for more than a month by the officer. Once order itself was not signed, there was no question of preparation of certified copy to be supplied to the dealer concerned. All what is established is that there was undue haste by the Designated Officer in concluding the assessment proceedings and in that

process he lost sight of the fact that principles of natural justice are also to be observed. No notice for levy of penalty was issued under the Central Act, still the penalty was levied for the assessment year 2009-10.

Additional facts which are relevant for the assessment year 2010-11 are that the petitioner had even deposited the diet money for summoning the witnesses, still the prayer was not considered. The manner in which the order of transfer of jurisdiction was passed and conveyed also raises doubt as the letter does not contain any dispatch number, rather it refers to letter no. 2967 dated 11.12.2014, which was pertaining to transfer of jurisdiction for the assessment year 2009-10. Further in CWP No. 8895 of 2015 filed by the petitioner on 4.5.2015, which was listed on 6.5.2015, this Court directed that the Designated Officer shall decide the preliminary objection regarding jurisdiction and not take a final decision. However, that writ petition was frustrated as having come to know about the listing of the writ petition, the Assessing Authority precipitated his action and served the copy of the order by e-mail to the petitioner before the case was taken up for hearing. A perusal of copy of the order-sheet at Annexure P-11, shows that though the order is dated 5.5.2015, but it was signed by the officer on 15.5.2015. Haste in passing the order is evident from the fact that though the claim for consignment sales was only to the extent of ₹ 11,68,22,576/-, however, the rejection was for ₹ 35 crores. That shows that the officer was quite in a hurry to somehow pass order without even examining the records. Having noticed the blunder committed by him, he *suo-moto* passed rectification order on 22.1.2016.

It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly with an open mind. Justice is

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rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Reference can be made to Oryx Fisheries Private Limited vs Union of India and others 2010 (13) SCC 427.

In view of our aforesaid discussions, we are of the view that the orders of assessments having been passed in haste without observing the principles of natural justice, deserve to be set aside. Ordered accordingly. The petitioner though its counsel is directed to appear before the Designated Officer on March 3, 2017, for framing of assessments for the years in question afresh.

Before parting with the order, this Court is constrained to observe that the maintenance of records, especially the order-sheets showing conduct of assessment proceedings is not proper. The quasi judicial authorities are required to follow a system while conducting the proceedings, which inspires confidence. They are exercising vast powers and dealing with rights of the parties viz-a-viz State.

The writ petitions stand disposed of.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

February 15, 2017
mk/vs

Whether speaking/non-speaking:	Yes/No
Whether reportable:	Yes/No