IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 20316 of 2020 (O&M)
Date of Decision: 27.11.2020

Brig. J.S. Sarai (Retd.), Chandigarh

.... Petitioner

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. Sunish Bindlish, Advocate
for the respondents.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court]

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JASWANT SINGH, J.

1. Through instant petition, the petitioner, a retired Army Officer, is seeking quashing of communication dated 08.11.2019 **(Annexure P-14)** whereby respondent has rejected reward claim of the petitioner.

2. Counsel for the petitioner contended that petitioner supplied information to Respondent-Principal Commissioner, CGST, Ludhiana which resulted into multiple show cause notices to Punjab based cable operators and even recovery of substantial amount of tax. The Petitioner in terms of scheme of Grant of Rewards to Informers and Government Servants, 2015 lodged its claim for reward on account of information supplied to Respondent Authorities, however Authorities transferred his matter from one office to another office and he ultimately approached the Centralized Public Grievance Redress and Monitoring System (CPGRAMS)

seeking grant of reward. The respondent through impugned communication dated 08.11.2019 has communicated that Petitioner is ineligible to reward because no information was supplied by Petitioner. The counsel for the Petitioner would contend that Respondent has wrongly and in violation of Awards Scheme has rejected claim of the Petitioner.

3. The respondent through impugned communication has rejected claim of the Petitioner and in the impugned communication detailed findings are recorded. The relevant excerpts of impugned communication are:-

(a) It is apparent from applicant's first ever communication dated 16.12.2014 addressed to the Hon'ble Prime Minister of India that he had not provided any specific information to the department and the said letter was just a petition, whereby he has implored to the said authority to transfer the case of co-brother Sh. A.S. Dhaliwal, Superintendent, who was arrested by Vigilance Department of Punjab in an alleged bribery case, to CBI for fair and speedy justice to him. In the said letter, it has also been alleged that Sh. A.S. Dhaliwal was got trapped by Sh. Gurdeep Singh Jujhar, Director of M/s Fastway and had got him implicated in a false case of bribery booked by Punjab State Vigilance Department, as he (Sh. A.S. Dhaliwal) had been conducting Audit of the company of M/s Fastway group and detected heavy amount of recovery of service tax from M/s Fastway Citizen Cable Network (Pvt.) Ltd., Ludhiana. As such, he, inter-alia, requested to get the case investigated by some Central Government Agency/CBI in respect of heavy revenue loss caused to the nation by the above mentioned company due to recoveries getting time barred.

(b) Further, in his letter dated 13.01.2015 addressed to Hon'ble Prime Minister of India, he, inter-alia, stated:

(i) that he had gone through contents of letter F.No.

381/108/2013/6687 dated 29.08.2014 issued by Directorate General of Audit, Customs & Central Excise, CR Building, I.P Estate, New Delhi and in the above letter details of working model of cable business were given and the said letter also explains the charge ability of service tax on cable operator services at various stages;

(ii) *that he informed about the 10 companies of M/s Fastway engaged in the business of cable;*

(iii) *that the said companies have registered themselves with service tax department but had never filed their mandatory service tax returns.*

(iv) *that service tax department turned a blind eye towards the evasion.*

(v) *that after the receipt of letter dated 29.08.2014 from the Director General of Audit, New Delhi, the Service Tax authorities started some action and show cause notices were issued to the LCOs in some areas;*

(vi) *that the Joint Commissioner (Audit) of Central Excise & Service Tax of Ludhiana in the month of August, 2014 had requested his counterparts based at Chandigarh to take similar action against LCOs located in their respective jurisdictions. He had sent 2-3 reminders also during the period August, 2014 to October, 2014. No action was taken to collect Service Tax from LCOs by the senior officers based at Chandigarh;*

(vii) *that preventive wing of the Service Tax department at Ludhiana had seized incriminating documents from the companies of Cable Mafia of Punjab in the year 2012. They did not take any action to recover the Service Tax/Interest/Penalty from these companies.*

that on examination of the contents of the said letter dated 13.01.2015, it is apparent that in the said letter applicant did not provide any specific information which could be helpful to the department *in detection or recovery of the taxes from M/s Fastway Group of Companies. Rather, from his above mentioned letter dated 13.01.2015, it is evident that he was very much aware of the issuance of modus operandi by the DG, Audit, New Delhi under their letter dated 29.08.2014. In the said letter dated 13.01.2015, applicant had specifically mentioned that the Service Tax authorities after the receipt of letter dated 29.08.2014 from the Director General of Audit, New Delhi, started some action and show cause notices were also issued to the LCOs in some areas. By the said letter he had showed his displeasure only over the slow progress made by the department against cable mafia. Further, he had also specifically mentioned that the Joint Commissioner (Audit) of Central Excise & Service Tax of Ludhiana in the month of August, 2014 had requested his counterparts based at Chandigarh to take similar action against LCOs located in their respective jurisdictions and also sent 2-3 reminders during the period August, 2014 to October, 2014, but no action was taken to collect Service Tax from LCOs by the senior officers based at Chandigarh. As such, it is obvious that the department was seized of the matter before the issue was raked up by him and action was under progress. Besides this, he had also specifically mentioned that the preventive wing of the Service Tax department at Ludhiana had seized incriminating documents from the companies of Cable Mafia of Punjab in the year 2012, but they did not take any action to recover the Service Tax/Interest/Penalty from these companies. This also shows that the department had already initiated preventive action against the M/s Fastway Group of Companies much before his raking up the issue before the Hon'ble Prime Minister or any other authority.*

that, thus, the arguments/complaints made by *him vide above referred letter are only to show his displeasure towards slow action taken against the LCOS and Cable Companies of Punjab, which cannot be treated as information when the facts of evasion of service tax was already in the knowledge of department and audit & preventive action was already in progress.*

(viii) that vide letters dated 16/12/2014 and 13/01/2015, he did not provide any information which led to detection or recovery of taxes and as such the same cannot be termed as information to the department making him to qualify for the grant of reward or interim reward. As all the things were in the knowledge of department as mentioned above and the department was already seized of the matter and action was in progress against companies of M/s Fastway either by Audit or by Preventive wing, therefore he and his co-brother Sh. A.S. Dhaliwal, Superintendent (Retd.) do not qualify as informers in these cases for entitlement of reward.

(ix) that moreover, in this case the information appears to have been shared with him by his co-brother Sh. A.S. Dhaliwal, Superintendent (Retd.), Which he obtained in the course of his normal duties as a Government Servant in his official capacity during the course of audit and which he was not supposed to share with anyone.

(x) that, since, he had confirmed issuance of modus operandi by DG (Audit), New Delhi, as mentioned in para 6(ii)(a) supra, he does not qualify for any reward in the subject case.

4. Having heard arguments of the counsel for the Petitioner and scrutinized communication made between Petitioner and Respondent, we find that present petitioner is devoid of merits and deserves to be dismissed. The Petitioner has raised pure questions of facts which are disputed and cannot be adjudicated while exercising writ jurisdiction. As per Petitioner,

the Respondent initiated investigation and recovered Service Tax on the basis of information supplied by him whereas Respondent has recorded findings that no information was supplied by Petitioner and he has written letter to Hon'ble Prime Minister Office which cannot be called as information and department was already aware of evasion of tax and proceedings were going on. The Petitioner's brother who was posted in Department shared information with Petitioner which was against the rules. Thus, the stand of department is totally contrary to the claim of the Petitioner.

5. We find that question of reward to informer has been considered by various High Courts including Hon'ble Supreme Court in ***D.G., Revenue Intelligence & Invest versus Amrit Lal Mehra 2007 (220) ELT 9 (SC)***. Supreme Court in Para 7 held:

> ***" 7.*** *However, considering the fact that it has been held by this Court in the cases of Union of India & Ors. v. C. Krishna Reddy reported in 2003 (10) SCALE 1050 as well as in Union of India v. R. Padmanabhan reported in (2003) 7 SCC 270 and in the* ***Reward Scheme*** *that there is no vested right in the person to claim a reward and that the payment can, at the highest, be and ex gratia payment, there is absolutely no justification to grant interest on such ex gratia payment. We, therefore, set aside the portion of the High Court Order where the interest is directed to be paid as well as the portion awarding costs. "*

6. The similar question has been considered by Bombay High Court in ***Atul D. Pandya Versus Union of India 2018 (360) E.L.T. 810 (Bom.).*** In Para No. 41 to 46, Court has held:

> ***" 41.*** *In the case at hand there is a dispute as to whether the department indeed relied on the information or the details*

provided by the petitioner. It specifically denies that it has so relied on the same. It says that it has its own sources to obtain information and its own intelligence generated led to investigations being carried out much prior to the petitioner coming on the scene. The petitioner came on the scene on January 2015 and the department claims to have obtained the information in April 2014 and in relation to certain transactions by the courier mode. Thus, the petitioner has occasion of obtaining these details of the information collected and generated by the department from his own sources and encashing upon the same. The petitioner is accused of having relied on this very piece of information available with the department but without its details and he commenced correspondence in January 2015. He commenced correspondence about those cases which were already under the scanner of the department. The department had an in-house investigation mechanism and which it resorted to. It did not rely on the information made available by the petitioner. The petitioner's e-mails did not give the details as were necessary and that is why the respondents have raised a dispute on the petitioner's right or entitlement to reward.

42. *We do not think that such matters should be probed in our writ jurisdiction for that would convert this jurisdiction into one conferred with all the powers to enquire into, investigate and try such claims and probe the specific materials which are obtained by the department. The secrecy and confidentiality maintained would then have to be compromised in proceedings before us. These details would have to be revealed to the parties like the petitioner and based on the petitioner's assertions, liberty to controvert them either by examining the maker or the author of these statements or the documents would have to be provided or an opportunity to the petitioner to step into the box and assert his own claim by producing his own documents would have to be afforded followed by other witnesses. Equal* *opportunities would have to be afforded to the Revenue. We are clear in our mind that none of the judgments which have been rendered by this Court earlier have taken note of such types of cases or disputes and thereafter issued a direction to reward the petitioner.*

43. *In the case before the Division Bench whose judgment is relied upon heavily by Mr. Desai, it was clear that the petitioner was treated as a genuine informant and he provided information to the Revenue which enabled the Revenue to collect huge amount for the treasury of the Government, he took such risk and compromised his own safety which ultimately led to the petitioner being considered for reward. That information provided culminated in issuance of a show cause notice by the 5th respondent to the importers and led to an order made on 31st March, 2011. The goods were confiscated and penalty was imposed on the importer. The petitioner therein was paid advance reward of Rs. 5 lakhs after the seizure of the goods as per the reward policy. The balance amount which was due and payable was not paid to him despite several representations.*

44. *Then an affidavit was filed in reply to such a claim and in paragraph 4 of the order of the Division Bench that affidavit was dealt with. That affidavit admitted that sum of Rs. 5 lakhs was paid as an advance reward to the petitioner. Thus, consistent with the scheme and strictly on its terms this amount was released but the reward committee found that it was not in favour of releasing the further sum. However the matter was left open because Directorate of Vigilance was conducting enquiry. Once that investigation was over, the meeting of the reward committee was convened for considering the final reward to the informer or otherwise. Once this balance amount was not released and the claim was rejected only on the principle that this is not an absolute right that the Division Bench held and relying on the decision of the Supreme Court in the case of Union of India v. C. Krishna Reddy - 2004 (163) E.L.T. 4 that the petitioner* *had provided a specific information pertaining to five containers which were lying in the Port and based on the information seizure was effected. The show cause notice also in unequivocal terms mentions about the specific information raised by the officers of the Central Intelligence Unit. The seizure was effected, the advance reward was released in the sum of Rs. 5 lakhs and that is how this Court did not uphold the stand of the Revenue that the petitioner was disentitled to the reward or the balance amount. There was no dispute of the nature brought before us. In our case even the initial entitlement or an advance reward is disputed and that was not granted. The petitioner relies upon his e-mails but conveniently omits to give details of how the proceedings ended. The petitioner claims that it was his information which led to the investigations but the department says otherwise. From inception therefore there is a clear factual dispute and which is distinct from the nature considered by the Division Bench.*

45. *In the circumstances, the Division Bench judgment relied upon heavily by the petitioner is of no assistance.*

46. *As a result of the above discussion and there being a clear dispute of fact and the petitioner's entitlement being not consistent with the policy or guidelines as noted by the Revenue, in writ jurisdiction we are not inclined to consider it. As a consequence, this writ petition fails and it is dismissed. No costs.*

7. The similar view has been expressed by Bombay High Court in ***Kishor Gordhnsing Raghuwanshi Versus Secy., Ministry of Peteoleum & Natural Gas 2017 (354) E.L.T. 57 (Bom.)*** and Gujarat High Court in ***D.D. Gandhi Versus Union OF India 2011 (273) E.L.T. 491 (Guj.).***

8. Respectfully following the above enunciation of law by different Courts, we hold that as pure disputed questions of fact are involved, it would not be appropriate to interfere and set aside impugned

order. The **petition** is bereft of merits and deserves to be dismissed and accordingly **dismissed**.

(JASWANT SINGH)
JUDGE

November 27, 2020 **(RAJESH BHARDWAJ)**
'dk kamra' **JUDGE**

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*