IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.645 OF 2022

Reena Agency ....Petitioner

V/s.

State of Maharashtra and Ors. ....Respondents

Mr. Rahul C. Thakar i/b. Mr. C.B. Thakar for petitioner.
Mr. Himanshu Takke, AGP for State.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 17th AUGUST 2022

P.C. :

1 Petitioner is impugning two orders, viz., (i) an assessment order dated 30th March 2019 under Section 9(2) of Central Sales Tax Act, 1956 for the period 2014-2015 and (ii) an order dated 26th August 2019 rejecting petitioner's rectification application under Section 24 of the Maharashtra Value Added Tax Act, 2002. The principal ground of challenge is that the orders have been passed without following principles of natural justice. Petitioner states that the orders be quashed and set aside and remanded for *denovo* consideration.

2 One Uday Desai, the sole proprietor of Reena Agency has filed this petition. Petitioner is in the business of dealing in cigarettes, biscuits, chocolates, cold drinks, ghee, milk and milk products and registered under MVAT Act and CST Act vide TIN 27370082922V/C.

3 Petitioner received a show cause notice dated 15th February 2019 calling upon petitioner to show cause as to why,

(i) 10% additional income should not be added to the total sales turnover of Rs.45,67,01,209/- and should not be taxed for want of registers, bills and LR?;

(ii) A tax free sale of Rs.137,23,19,397/- should be not taxed for want of proper ledger and invoices etc.?; and

(iii) A OMS sale of Rs.114,58,12,785/- should not be disallowed for want of supporting documents like bills, LR?

In the petition at hand, we are only concerned with the third item, i.e., OMS sale of Rs.114,58,12,785/- being disallowed.

4 In the show cause notice, respondents have relied upon an investigation report of Joint Commissioner of State Tax, Investigation – A, Mumbai. Respondents have also relied upon statement and reports of Railway Authorities. The relevant portion reads as under :

> *As per investigation report of Jt. Commissioner of State Tax, Investigation – A, Mumbai, Manifest are not matched with the manifest of Railway authorities and more than 50% manifests produced by the dealer were not found with railway record. Railway authorities not opened any cartoons nor inspected before loading in train. Dealer have not produced any evidence of road transport from Jaipur to Delhi. From the statement of Railway authorities and reports, this is clearly seen that nobody in railway authorities confirmed the dispatch of Cigarette.*
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> *(emphasis supplied)*

5 In the reply dated 13th March 2019 (incorrectly typed as 13th February 2019) to the show cause notice, petitioner called upon

respondent no.3, the Assessing Officer, to provide a copy of the investigation report as well as the details issued by the Railway Authorities relied upon by respondent no.3 in the show cause notice. These details were not provided to petitioner and the impugned assessment order dated 30th March 2019 came to be passed. In the said assessment order, there is again a reference to the detailed report and findings of the Sales Tax Investigation Department. The reasons for his conclusions in the impugned order given are very cryptic. In the order, it is not explained anywhere as to why the details sought by petitioner were not provided to petitioner. In the reasons, respondent no.3 has also relied upon cancellation of registration of two entities, viz., BVM International and Neotex Exim Pvt. Ltd. So far as these two entities are concerned, petitioner filed a rectification application dated 26th June 2019 under Section 24 (1) of the Maharashtra Value Added Tax Act, 2002 and brought to the notice of respondent no.3 that even if the registration of those two entities was cancelled, the C forms issued prior to the date of cancellation should certainly be considered and assessment order to be suitably rectified. Petitioner had also relied upon a judgment of the Delhi High Court. This rectification application also was summarily rejected by an order dated 26th August 2019 on the ground that there is no mistake apparent on record. In the said order, respondent no.3 has not dealt with the judgment of the Delhi High Court relied upon by petitioner and has once again relied upon investigation report, copies of which have never been provided to petitioner though requested.

6 Infact Section 24 (1) of the Maharashtra Value Added Tax Act, 2002 provides that an application for rectification shall not be rejected on the ground that there is no mistake apparent on record unless the person concerned has been given a reasonable opportunity of being heard. Such an opportunity of personal hearing has not been granted or else it would have been reflected in the rectification order. On this ground alone, the rectification order has to be set aside.

7 Since *ex-facie* respondent no.3 has not followed the principles of natural justice, we find no reason why we must adjourn the matter again to give an opportunity to respondent to file a reply. A justification of the action taken should have been reflected in the orders passed and it can never be supplemented by any affidavit.

8 In the circumstances, we have no hesitation in setting aside the two impugned orders dated 30th March 2019 and 26th August 2019, which we hereby do and remand the matter for *denovo* consideration to an officer other than Mr. Balasaheb B. Satpute, Deputy Commissioner of Sales Tax, who had passed the two impugned orders.

9 At this stage, Mr. Thakar states that the same officer had passed a separate order dated 30th March 2019 under Section 23 (2) of the Maharashtra Value Added Tax Act, 2002 in which there is also a reference and reliance placed on the same investigation report of the Sales Tax

Investigation team. Mr. Thakar states that this order was not challenged because there is a refund of Rs.18,69,54,181/- to be adjusted in CST liability. Mr. Thakkar states that even that order has to be quashed and set aside so that a fresh order can be passed under both the Central Sales Tax Act, 1956 and Maharashtra Value Added Tax Act, 2002.

10 In view thereof, we quash and set aside even the order dated 30th March 2019 that has been passed under the Maharashtra Value Added Tax Act, 2002. Fresh order can be passed after giving copies of the investigation report and other documents which have been relied upon in the show cause notice dated 15th February 2019.

11 All documents relied upon shall be provided to petitioner within two weeks of this order being uploaded.

Within two weeks thereafter, petitioner shall file further reply/submissions.

Within twelve weeks thereafter, the assessment order shall be passed under both the Central Sales Tax Act, 1956 as well as Maharashtra Value Added Tax Act, 2002.

Before passing any order, personal hearing shall be given and atleast 7 working days advance notice should be given.

If after personal hearing, petitioner wishes to make any written submission, the same shall be filed within three days from the date of personal hearing.

Any order passed shall be a reasoned order dealing with every submission made by petitioner.

12 We clarify that we have not made any observation on the merits of the matter.

13 As noted earlier, (a) despite request made by petitioner, reports/documents relied upon have not been provided and (b) before passing the order on the rectification application, no personal hearing has been granted though the law mandates personal hearing to be given. This shows a complete failure to the observance of rule of law on the part of respondent no.3. A huge demand has been raised by respondents against petitioner without following the rule of law. In a recent judgment in ***Assistant Commissioner (ST) & Ors. V/s. M/s. Satyam Shivam Papers Pvt. Ltd. and Anr.***[1], the Hon'ble Supreme Court, in the matter of Goods and Services tax, imposed cost upon the authority by enhancing the cost equivalent to the tax and penalty levied. The relevant portion of the judgment reads as under :

> *The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.*
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> *Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions*

1. Special Leave to Appeal (C) No.21132 of 2021 dated 12th January 2022

of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

Having said so; having found no question of law being involved; and having found this petition itself being rather mis- conceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court.

The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today. This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.

Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation. This petition stands dismissed, subject to the requirements foregoing.

Compliance to be reported by the petitioners.

14 Though we do not intend to impose such high cost, since the attitude of respondent no.3 smacks of deliberate failure to the observance of rule of law, in our view, the said officer should be saddled with costs to be paid by him personally. The Allahabad High Court in the judgment pronounced in the matter of ***S.R. Cold Storage V/s. Union of India and Ors.***[2]

2. Writ Tax No.723 of 2022 dated 11th August 2022

has lamented about the abysmal state of affairs reflecting the absence of any effective system of accountability of the erring officers, the harassment of the assessees and breach of principles of natural justice by the Officers. Paragraph 57 of *S.R. Cold Storage* (Supra) reads as under :

> *57. In a recent judgment dated 03.08.2022 in Writ Tax No.997 of 2022 (Nabco Products Private Limited vs. Union of India and 2 others), this Court considered the prevailing state of affairs in assessment matters and in Paragraphs 6 and 7 obsrved that prevailing state of affairs clearly reflects that in the absence of any effective system of accountability of the erring officers, the harassment of the assessees and breach of principles of natural justice by the Officers is resulting in uncontrolled situation. The practice of frequently violating principles of natural justice, non consideration of replies of assessees under one pretext or the other or rejecting it with one or two lines orders without recording reasons for rejection, is gradually increasing which needs to be taken care of immediately by the respondents at the highest level, otherwise prevailing situation of arbitrary approach and breach of principles of natural justice may not only adversely affect the assessees who pay revenue to the Government, but also may develop a perception amongst people/assessees that it is difficult to get justice from the authorities in statutory proceedings.*

The Apex Court in the case of ***Lucknow Development Authority V/s. M.K. Gupta***[3] in paragraphs 10 and 11 has considered the abuse of power by public authorities and held as under :

> *"10. .... The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome13 on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. <u>An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities</u>. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In Rookes v. Barnard14 it was observed by Lord Devlin, '<u>the servants of the government are also the servants of the people and the use of their power must</u>*

3. 1994 SCC (1) 243

always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance.

Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. ....

11. .... In a modem society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with

> *law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."*
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> *(Emphasis supplied)*

15 Therefore, the said officer Mr. Balasaheb B. Satpute shall pay a sum of Rs.25,000/- as costs to PM Cares Fund. The account details are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

This amount to be paid within two weeks of this order being uploaded and the said officer shall also file a compliance affidavit annexing thereto proof of payment alongwith photocopy of his bank passbook to confirm debit.

16 A copy of this order shall also be forwarded by the AGP to the Commissioner of Sales Tax, who can decide whether any departmental action has to be taken against the said officer Mr. Balasaheb B. Satpute.

A copy of this order be also forwarded by the Registry to the Central Board of Indirect Taxes and Customs (CBIC), Department of Revenue, Ministry of Finance, for information and necessary action.

17 Petition disposed accordingly.

(A.S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**