

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-17957-2022 (O&M)
Date of decision:15.09.2022

Om Sons Marketing Pvt. Ltd.

... Petitioner

Vs.

State of Punjab & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE DEEPAK MANCHANDA.**

Present:- Mr. Chetan Jain, Advocate for the petitioner.

Mr. Gurpreet Singh, Additional Advocate General, Punjab.

...

TEJINDER SINGH DHINDSA, J.

An order of demand of tax and penalty dated 11.01.2021 (Annexure P-5) was passed by the Assistant Commissioner, State Tax, Bathinda demanding Rs.81,460/- i.e. Rs.40,730/- as Integrated Goods and Service Tax (IGST) and Rs.40,730/- as penalty under Section 129 (1)(a) of the Punjab Goods and Service Tax Act (hereinafter to be referred to as 'the Act'). The statutory remedy of appeal under Section 107 of the Act was availed of and which stands declined vide order dated 29.06.2022 (Annexure P-7) passed by the Deputy Commissioner, State Tax (Appeal), Ferozepur and Faridkot Division at Bathinda.

It is towards assailing the aforementioned two orders at Annexures P-5 and P-7 that the present writ petition has been filed.

The writ petition had come up for preliminary hearing before this Court on 17.08.2022 and the following order was passed:

“A bare perusal of the impugned order dated 29.06.2022 (Annexure P-7) passed by the Appellate Authority reveals that the same is completely bereft of any reasoning and is rather perfunctory.

Since an advance copy of the petition has been served upon the respondents, Ms. Sudeepti Sharma, learned Additional Advocate General, Punjab, would concede that the contentions and submissions raised by the petitioner in the appeal, have not even been noticed much less dealt with. She seeks time to have instructions in the matter.

List on 29.08.2022.”

Repeated adjournments have thereafter been sought at the hands of the State. Even during the course of hearing today, Mr. Gurpreet Singh, learned Additional Advocate General, Punjab is not in a position to advance submissions in support of the impugned order passed by the Appellate Authority at Annexure P-7. Neither has any response been filed.

Having heard counsel for the parties and having perused the pleadings on record, we are of the view that the legality of the order dated 11.01.2021 (Annexure P-5) passed by the Assistant Commissioner, State Tax, Bathinda raising demand of tax/penalty need not be gone into at this stage. Such view is being taken for the reason that the facts of the case make out a case for remand to the Appellate Authority for reconsideration.

Pleadings on record clearly bring forth that against the order dated 11.01.2021 (Annexure P-5), petitioner had availed of his statutory remedy of appeal under Section 107 of the Act. Copy of the appeal dated 31.05.2021 stands appended and placed on record at Annexure P-6 along with the petition.

Perusal of the appeal would show that number of grounds and

submissions had been raised. It would not be necessary for this Court to delineate the same in detail in the instant order. Suffice it to notice that apart from other grounds/submissions, following grounds as contained in para 38 was taken:

*“38. That the Impugned Notice records that there was a discrepancy being the Goods are wrongly classified as tax free animal feed supplement with HSN 2309 whereas the goods are actually residue/waste of distillery covered under HSN 2303 and taxable @ 5%. It is factually incorrect. The facts are that no discrepancy was noticed either even in the Physical Verification Report/PVR issued by ld. STO on 23.12.2020 or in the Detention Order issued by ld. ACMW on 28.01.2021. The Appellant reiterates that PV was issued on 23.12.2020 and Detention Order on 28.01.2021 even after the goods were already released on 18.12.2020, **the fact of release of goods on 18.12.2020 is also on record at Para 4.1 of the Impugned Order.** So, otherwise also, when goods were already released the question of physical verification and detention pursuant to the physical verification does not arise at all.”*

It has been stressed in the appeal as regards the goods being wrongly classified as tax free animal feed supplement with HSN 2309 whereas the goods being residue/waste of distillery covered under HSN 2303 are taxable @ 5%. It had also been asserted in the appeal that no discrepancy has been noticed in the physical verification report issued by the STO on 23.12.2020 or in the detention order issued by the ACMW on 28.01.2021. It had also been asserted in the appeal that physical verification issued on 23.12.2020 and detention order on 28.01.2021, have been after the goods already stood released on 18.12.2020 and the fact of release of goods being on record as per para 4.1 of the order dated 11.01.2021 which was

subject matter of appeal. On the strength of such averments, it had been contended in the appeal that in a situation when the goods were already released, the question of physical verification and detention pursuant to physical verification does not arise.

The appeal has been dealt with by the Appellate Authority in the impugned order dated 29.06.2022 at Annexure P-7 and has been rejected in the following terms:

“I have carefully perused the submissions of the appellant and the replies of the department there-of, and also have heard their oral submissions, and after due application of mind, have reached the conclusion that the submissions of the appellant have no merit, while the replies of the department are lawful, sound and correct. In view of the above, I do not find any merit in the appeal and dismiss the same. The penalty order dated 11.01.2021 of the State Tax Officer, Mobile Wing, Bathinda is upheld.”

The order passed by the Appellate Authority clearly is cryptic, non-speaking and rather perfunctory.

The question as regards reasons to be assigned by the Appellate Authority came up for consideration before the Apex Court in **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney & others, 2009 (5) SLR 512** and it was observed as under:-

“8. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

*9. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of **S.N.Mukherjee vs. Union of India** reported in (1990) 4 SCC 594, is that people must*

have confidence in the judicial or quasi-judicial authorities.

10. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

*No doubt, in **S.N. Mukherjee's case (supra)**, it has been observed (vide para 36) that:*

"..The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

11. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority."

Perusal of the impugned order dated 29.06.2022 at Annexure P-7 passed by the Appellate Authority would clearly show that the submissions/grounds raised by the petitioner in the statutory appeal have not even been adverted to, much less dealt with. The impugned order passed by the Appellate Authority, as such, cannot sustain.

For the reasons recorded above, the present writ petition is partly allowed and the order dated 29.06.2022 at Annexure P-7 is set aside. The matter is remanded back for consideration afresh at the hands of the Appellate Authority and after taking into account all the submissions and contentions raised by the petitioner in the appeal at Annexure P-6.

Let a final order upon reconsideration be passed within a period of two months from the date of receipt of a certified copy of this order and after affording an opportunity of personal hearing to an authorized representative of the petitioner/company.

Writ petition is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

15.09.2022
harjeet

(i) Whether speaking/reasoned?	Yes/No
(ii) Whether reportable?	Yes/No