



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 12510/2017

M/s Napin Impex Pvt. Ltd. H1-864, Riico Ind. Area, Alwar-Bhiwadi- 301019 Through Its Authorised Re

----Petitioner

Versus

1. Commissioner, Commercial Taxes Department, Kar Bhawan, Ambedakar Circle, Janpath, Jaipur.
2. Assistant Commissioner Commercial Taxes Department, Circle-A, Bhiwadi

----Respondents

For Petitioner(s) : Mr. Surendra Kumar on behalf of
Mr. A.K.Babbar

For Respondent(s) : Mr. Umang Gupta
Ms. Upasana Singh
Ms. Kranti Gaur

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

01/05/2024

AVNEESH JHINGAN, J:-

1. This petition is filed seeking quashing of assessment order dated 24.01.2017 passed under the Rajasthan Value Added Tax Act, 2003 (for short the 'Act'), creating a demand of Rs.27,87,371/-.
2. The brief facts are that the petitioner was registered under the Act. The returns for assessment year of 2014-2015 was filed claiming for Input Tax Credit (for short "ITC").



3. Learned counsel for the petitioner submits that assessment order is a system generated order passed without application of mind. There is no reasoning given for disallowing the ITC claimed in the returns. It is further argued that provisions of Section 23 deals with the deemed assessment and its applicability is subject to Section 24. As per the order, there was no proceedings initiated under Section 24 of the Act.

4. Per contra the petitioner has a remedy of appeal. It is argued that the petitioner in spite of notices issued failed to respond and produce books of accounts to substantiate the ITC claimed. The contention is that the reasons for non-allowance of ITC are reflected in reply filed to writ petition.

5. Before proceeding further, it would be appropriate to deal with the objection of alternative remedy raised by the counsel for the respondents.

6. The Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, (1998) SCC 1** has carved out the exceptions for entertaining the writ petition in spite of there being alternative remedy. The relevant para is quoted hereunder:-

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not



to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

7. From perusal of the impugned order, it is evident that it is a computer generated computation. Neither the basic facts with regard to the issuance of notice and non-compliance is mentioned in the order nor the reasons for disallowance.

8. The Hon'ble Supreme Court in **M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others reported in 2010(9) SCC 496** has held that every judicial/quasi judicial order must be supported by reasons to be recorded in writing. The operative part of the decision of Supreme Court in Kranti Associates (supra) read as under:-

"a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.



d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as serving principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision



making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9. The Hon'ble Supreme Court in ***Mohinder Singh Gill and Ors. Vs. The Chief Election Commissioner, New Delhi and Ors. AIR 1978 SC 851*** has held that:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

In Gordhandas Bhanji A.I.T. 1952 S.C. 16 it was further observed:-

"Orders are not old wine becoming better as they grow older."

10. The present is a case of violation of principle of natural justice, creation of demand by non application of mind and falls within the exceptions carved out for exercising writ jurisdiction in spite of an alternative remedy.





11. On the one hand, the assessment order was passed under Section 23(1) of the Act as a deemed assessment and at the same time, demand was created by disallowing ITC.

12. The impugned order is quashed. The respondents shall be at liberty to proceed against the petitioner in accordance with law.

13. The writ petition is allowed.

(BHUWAN GOYAL),J

(AVNEESH JHINGAN),J

Anu /Chandan/51

Whether Reportable: Yes