(2019) 09 J&K CK 0043

Jammu & Kashmir High Court

Case No: Others Writ Petition (OWP) No. 2509, 2510, 2511, 2512, 2513 Of 2018, 2202, 2203, 2204, 2205, 2206, 2207 Of 2019

Dabur India Limited		APPELLANT
	Vs	
Union Of India And Another		RESPONDENT

Date of Decision: Sept. 12, 2019

Hon'ble Judges: Rajesh Bindal, J; Sindhu Sharma, J

Bench: Division Bench

Advocate: Badri Narayana, Karan Sachdev, J. A. Hamal, Jagpaul Singh

Final Decision: Allowed

Judgement

Sindhu Sharma, J

1. This order will dispose of bunch of writ petitions bearing OWP Nos. 2509 to 2513 of 2018 and 2202 to 2207 of 2019, as the common questions of

law and facts are involved.

2. Facts have been taken from OWP No. 2509/2018.

3. The petitioner, a Public Limited Company, has filed the present petition challenging order dated 07.08.2018, passed by the Assistant Commissioner,

CGST Division, Jammu whereby the claim of the petitioner for refund of the tax, in terms of Scheme of Budgetary Support (for short â€˜the

Schemeâ€™) has been partially rejected. Refund of ₹ 43,84,140/- was claimed, however, claim to the extent of ₹ 25,36,705/- was rejected, though

balance was allowed.

4. Learned counsel for the petitioner submitted that in terms of the Scheme under the Goods and Service Tax Regime, the petitioner applied for refund

of the amount of tax deposited. As per the scheme, the petitioner had done the needful, however, vide order impugned, in an arbitrary manner the

respondent No. 2 has partially rejected the claim of the petitioner without assigning any reason and also without affording any opportunity of hearing.

It was submitted that in case the respondent No. 2 had granted opportunity of hearing to the petitioner, it could have clarified the doubts and justified

its claim for refund of the amount in totality. But the intention of respondent No. 2, was somehow the other.

5. Learned counsel for the respondents submitted that there is alternative remedy of appeal available to the petitioner against the order impugned in

the writ petition. The petitioner has not availed of the same. He submitted that the order in original has been passed by respondent No. 2, against

which petitioner can avail remedy of appeal, as per the provisions of Central Goods and Service Tax, Act 2017 (for short â€˜CGST Actâ€™). The

petitioner has unnecessarily approached this Court.

6. In response to the argument raised regarding grant of opportunity of hearing to the petitioner, learned counsel for the respondents submitted that due

procedure as provided under the Scheme has been followed. The same does not provide for any opportunity of hearing. He further submitted that

claim of the petitioner has rightly been rejected partially. The order impugned has been passed strictly as per the Scheme. Refund of whatever amount

the petitioner was entitled to, the same was awarded. The matters are not to be sent back to the authority for grant of opportunity of hearing, if the

result even after affording that opportunity remains the same. It is such a case. If examined on merits as per the Scheme correct amount of refund

has been determined in terms of the entitlement of the petitioner who has five units in the State of Jammu and Kashmir. Four out of those are

manufacturing and one is the trading unit. Even in the petition no case has been made out on the basis of which part of the order, which is adverse to

the petitioner, can be set aside.

7. As regards plea of alternative remedy raised by the learned counsel for the respondents, learned counsel for the petitioner submitted that the order

passed by respondent No. 2 is not under the provisions of CGST Act, rather it is in terms of the Scheme as notified on 05.10.2017, by the Ministry of

Commerce and Industry (Department of Industrial Policy and Promotion). The Scheme has not been notified by the Finance Department. It is

complete code in itself, which does not provide any remedy of appeal. He even referred to the Circular No. 1068/1/2019-CX dated 10.01.2019, issued

by the Government of India, Ministry of Finance, Department of Revenue, which clarified that there is no provision of appeal under the Scheme.

Hence, the preliminary objections raised by the learned counsel for the respondents is not tenable.

8. It was further argued by learned counsel for the petitioner that what is sought to be contended by the respondents on merits is not even part of the

order. In fact, these complications are there only for a short period, as after 2019, the issue stands resolved. All the four manufacturing units of the

petitioner are entitled to budgetary support as per the Scheme, independently. The relief is being denied only for the reason that under the GST

Regime, there is only one registration.

9. Heard learned counsel for the parties and perused the record.

10. As claimed by the petitioner, it is a Public Limited Company which has four manufacturing and one trading unit in the State of J&K. It was

claimed that prior to the introduction of GST Regime, the petitioner was duly registered under the Central Excise Rules, 2002 and availing exemption

for each of its units independently in terms of exemption Notification No. 1/2010-CE dated 06.02.2010. As a replacement to the exemptions being

enjoyed by the eligible units prior to the introduction of GST Regime, the Department of Commerce, Government of India came out with a Scheme as

notified on 05.10.2017. It provides for budgetary support to the existing eligible manufacturing units operating in some of the States including the State

of J&K. It was for grant of benefit for the residual period, for which the unit was eligible. All the exemption notifications ceased to be operative w.e.f.

01.07.2017. The scheme is limited to the tax which accrues to the Central Government under CGST Act of 2017 and integrated Goods and Service

Tax Act, 2017. It provided for procedure for claiming the benefit.

11. The petitioner, in terms of the aforesaid Scheme, applied for grant of refund to the tune of ₹ 43,84,140/-. However, vide impugned order passed by

the respondent No.2, refund only to the extent of ₹ 18,47,435/-was sanctioned, whereas claim of balance amount of ₹ 25,36,705/- was rejected.

12. Though both the learned counsels for the parties have raised some arguments even on the merits of the controversy. However, one of the

foremost argument raised by learned counsel for the petitioner was that after the claim for refund was filed, till such time it was decided, the petitioner

was never afforded any opportunity of hearing to put his claim before the authority and to justify the same. The petitioner had been condemned

unheard. To this, stand taken by learned counsel for the respondents was that due procedure as mentioned in the Scheme was followed. The Scheme

does not envisage any opportunity of hearing. Para 7 of the Scheme provides that the competent authority after examination of the application filed,

shall sanction reimbursement of the budgetary support and the order shall be conveyed to the applicant electronically.

13. It cannot be disputed that the principles of natural justice are required to be followed unless specifically barred. Rules of natural justices are not

always part of the statute or the rules framed there under. Many a times they are to be read into it, considering the nature of duties to be performed.

Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. In the case in hand, the scheme

does not bar application of the principles of natural justice. It provides that whenever application is filed, on examination thereof the competent

authority shall sanction the reimbursement. Of course, there is no need to grant any opportunity of hearing, if the claim made in the application is to be

accepted. However, opportunity of hearing would become necessary in case any part of the claim is sought to be rejected. In that eventuality, the

applicant concerned has to be afforded an opportunity of hearing, so that he is able to clarify the doubts in the mind of the competent authority. Such a

process if followed will shorten the litigation. It needs to be appreciated that all taxation issues are complicated. Many times the issues can be resolved

with discussion. While filling the application for reimbursement of tax all the facts may not come forth, hence, in our opinion the order impugned,

passed by the respondent No. 2 deserves to be set aside, only on the ground of violation of principle of natural justice. Reference can be made to

judgments of Honâ€™ble the Supreme Court in Canara Bank and others. vs. Debasis Das and others, (2003) 4 SCC 557 ,Competition Commission of

India vs. Steel Authority of India Limited and another, (2010) 10 SCC 744 and S. P. Malhotra vs. Punjab National Bank and others, (2013) 7 SCC

251.

14. As far as the argument raised by the learned counsel for the respondents regarding the remedy of appeal against the order impugned is concerned,

suffice to state that the argument is contrary to the Circular No. 1068/1/2019-CX dated 10.01.2019 issued by Government of India, Ministry of

Finance, Department of Revenue, which clearly provides that there is no remedy of appeal under the Scheme. This Court is not examining this issue,

as such, at this stage as the aforesaid circular is not binding to the Court. Further, if there is violation of principles of natural justice, the writ can

always be entertained considering the facts and circumstances of the case. The alternative remedy in such cases is not an absolute bar.

15. As far as the contention raised by learned counsel for the petitioner that even if the opportunity of hearing is afforded to the petitioner, the

consequences will remain the same, in our opinion, this Court would not like to examine the factual aspects of the case with all the calculations to find

out as to what extent the petitioner would be entitled to reimbursement. There is a complete procedure provided in detail with percentage to determine

the amount to which an applicant may be entitled to the reimbursement. Let that matter be examined by the authority first after affording an

opportunity of hearing to the petitioner.

16. No doubt the claim of the petitioner is that there is no remedy available against the order impugned and in support thereof it has even referred to

the Circular No. 1068/1/2019-CX dated 10.01.2019, issued by the Government of India, Ministry of Finance, Department of Revenue However, in our

view, considering the fact that there are complicated issues of calculation to be resolved for which the authorities dealing with the taxation are experts,

it would be appropriate if the competent authority and Government considers to provide a remedy of appeal against the order passed by the designated

authority, so that the factual issues can be resolved by the subject experts and only legal issues are raised before the Courts.

17. The argument raised by the learned counsel for the respondents that it will be difficult for the respondents to grant opportunity of hearing in all the

cases keeping in view their number is also to be noticed and rejected. In case rights of the parties are to be determined, opportunity of hearing is must.

No one can be condemned unheard.

18. For the reasons mentioned above, the writ petitions are allowed. Order impugned passed by the respondent No. 2 is set aside, as far as it relates to

rejection of the amount of reimbursement claimed by the petitioner with a direction to respondent No. 2 to adjudicate the claim of the petitioner after

affording opportunity of hearing to the petitioner.