(2011) 02 P&H CK 0449

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 9791 of 1991

M/s. Goodyear India Limited		APPELLANT
	Vs	
Commissioner (Appeals), Gurgaon and another		RESPONDENT

Date of Decision: Feb. 15, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Haryana Municipal Act, 1973 - Section 100, 100(2), 65, 67, 85
- Punjab Municipal Corporation Act, 1976 - Section 146

Citation: (2011) 3 RCR(Civil) 83

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Judgement

Mehinder Singh Sullar, J.

Tersenessly, the facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that Faridabad Complex Administration, Ballabgarh Zone, Ballabgarh (Haryana) (respondent No. 2) assessed the house tax of the property of the petitioner-M/s Goodyear India Limited (for brevity "petitioner-company"), in view of the provisions of The Haryana Municipal Act, 1973 (herein after referred to be as "the Act"), for the assessment year 1989-90 and issued impugned notice dated 22.06.1989 raising a demand of Rs. 1,30,000/- (Annexure P2)

2. Aggrieved by the demand notice (Annexure P2), the petitioner-company filed the appeal (Annexure P3), which was dismissed as time barred, by the Commissioner (Appeals), Gurgaon, vide impugned order dated 22.03.1991(Annexure P4).

3. The petitioner-company did not feel satisfied and preferred the instant writ petition, challenging the impugned notice (Annexure P-2) and order (Annexure P4), invoking the provisions of Article 226/227 of the Constitution of India, inter alia, on

the ground that although, the appeal filed by it from the date of issuance of notice was well within time but the same was wrongly dismissed, being time barred by the Appellate Authority. On the basis of aforesaid allegation, the petitioner-company sought the quashment of demand notice (Annexure P2) & the impugned order (Annexure P4), in the manner indicated herein above.

4. As nobody appeared on behalf of respondent No. 2, therefore, having heard the learned counsel for the petitioner, learned State counsel, having gone through the record, with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be partly accepted, in this context.

5. Section 100 of the Act regulates the provisions of limitation for filing the appeal, which postulates that no appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the publication of the notice prescribed by section 79 or section 80 or section 81, as the case may be, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made.

Proviso to the section further posits that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period. According to sub section (2) of Section 100 of the Act, no appeal shall be entertained unless the appellant has paid all other municipal taxes due from him to the committee up to the date of such appeal.

6. As is evident from the record that the contesting respondent No. 2 issued demand notice dated 22.06.1989 (Annexure P-2) and petitioner-company filed the appeal dated 03.07.1989 (Annexure P3), which was dismissed as time barred by the Appellate Authority vide impugned order (Annexure P4).

7. Above being the position, now the short and significant question, though important, arises for determination in this petition, is as to whether the limitation will start from the passing of the assessment order or from the date of demand notice (Annexure P-2).

8. This matter is not res Integra and is well settled. An identical question came to be considered by this Court in the case of Shreeyans Paper Mills Ltd v. State of Punjab, 1990(2) R.R.R. 347 : 1990 (2), PLR 615 wherein it was observed as under :-

After hearing the learned counsel for the parties, I am of the considered view that the appeal filed on 3rd May, 1984 against the assessment order dated 27th March, 1984 could not be held to be barred by time as contemplated u/s 85 of the Act reproduced above. The appeal is to prefer within one month after the publication of the notice prescribed by Section 66 or Section 68 or after the date of any final order u/s 69 as the case may be. It is the common case of the parties that the present

assessment order was passed in pursuance of the notice issued under Sections 65/67 of the Act. The assessment order will be deemed to have been passed u/s 66 read with Section 68 and that being so, the appeal could be preferred within one month after the publication of the notice prescribed thereunder. There is nothing to suggest that any such publication was made. The only action taken after this assessment order was the issuance of the demand notice dated 3rd April, 1984 received by the petitioner company on 5th April, 1984. That being so the appeal filed on 3rd May, 1984 was within limitation. Reference in this behalf be made to a Division Bench judgment of this Court Brij Mohan Mehra and others v. The State of Punjab and others. There the question was of limitation u/s 146 of the Punjab Municipal Corporation Act, and it was observed that "limitation for filing the appeal was to be considered from the date on which the demand notices were served upon the petitioners.

9. Thus, the ratio of law laid down in the aforesaid judgment is fully applicable to the facts of the present case and is the complete answer to the problem in hand.

10. Moreover, the impugned order is non-speaking, non-reasoned order and is the result of lack of application of mind in this regard. The Appellate Authority ought to have discussed the material on record and was legally required to record valid reasons for arriving at a right conclusion, in order to decide the real controversy between the parties in the right perspective. Such statutory authority, exercising the power under the Act, should act independently instead of functioning as a representative of the State/M.C. It is now well settled principle of law that every action of such authority must be informed by reasons. The order must be fair, clear, reasonable and in the interest of fair play. Every order must be confined and structured by rational and relevant material on record because the valuable rights of the parties are involved. The same are totally lacking in the impugned order (Annexure P4), which cannot legally be sustained in view of the law laid down by Division Bench of this Court in case of ANZ Grind-lays Bank Limited, Amritsar v. Municipal Corporation, Amritsar, 1999(2) R.C.R.(Civil) 429 : 1999 (1) PLR 254, wherein having interpreted the provisions of para materia section of the Act, it was ruled (para 6) as under :-

We have given serious thought to the respective submissions and agree with Shri Sarin that the order passed by the government deserves to be voided on the ground of principles of natural justice because it does not contain reasons. It cannot be disputed that while deciding the appeal filed by the petitioner u/s 146 of the Act of 1976, the government was discharging quasi-judicial functions and, therefore, it was duty bound to record cogent reasons for not accepting the request of the petitioner to hear and decide the appeal without insisting on prior deposit of the tax. In any case, the government should have given opportunity to the petitioner to deposit the tax if it felt that the appeal does not deserve to be entertained without prior deposit of the arrears of tax. In our view, the government''s failure to given an opportunity

to the petitioner to fulfill the requirement of the statute and also in view of the fact that the petitioner deposited the amount of arrears immediately after the rejection of its appeal, we find it just and proper to set aside the order Annexure P-9 with the direction that the appeal filed by the petitioner be decided afresh.

11. Thus, seen from any angle, to my mind, the impugned order cannot legally be maintained, in the obtaining circumstances of the case.

12. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side, during the course of subsequent hearing of the appeal, the instant writ petition is accepted. Consequently the impugned order (Annexure P4) is hereby set aside. The matter is remanded back to the Commissioner (Appeals), Gurgaon, for its fresh decision on merits, in the light of the aforesaid observations and in accordance with law.

13. The parties, through their counsel, are directed to appear before the Appellate Authority on 6.4.2011 for further proceedings.