



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Writ Contempt No. 732/2017

Alok Chitra Mandir, Churu Through Its Proprietor Smt. Shashirani Gupta W/o Late Shri Arjunlalji Gupta, Advocate, Churu.

-----Petitioner

Versus

Hemant Jain, Deputy Commissioner (Administration), Commercial Taxes, Bikaner.

-----Respondent



For Petitioner(s) : Mr. Vinay Kothari with
Mr. Mehul Kothari
For Respondent(s) : Mr. Sandeep Bhandawat with
Mr. Shreyansh Bhandawat

HON'BLE MS. JUSTICE REKHA BORANA

Order

Reportable

06/01 /2025

1. The present contempt petition has been preferred alleging disobedience of the judgment dated 04.04.2014 passed by this Court in S.B. Civil Writ Petition No.2813/1999 whereby while allowing the writ petition, the Deputy Commissioner (Commercial Taxes, Bikaner) was directed to examine the application of the petitioner under Rule 32 of the Rajasthan Entertainment & Advertisement Tax Rules, 1957 (hereinafter referred as the 'Rules of 1957') *de novo* and decide the same in accordance with law while adhering to the principles of natural justice. Vide the said order, the orders impugned (Annx.8 and 18 therein) were annulled and the matter was remitted back for deciding the application of the petitioner for rectification of mistake, submitted under Rule 32 of the Rules of 1957, afresh.

2. Brief facts of the case are that the petitioner opted for scheme for composition of entertainment tax w.e.f. 01.02.1995. An

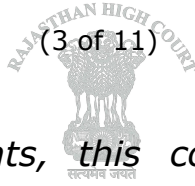


amendment w.e.f. 23.02.1995 was made in the said scheme whereby composition of entertainment tax @25% excess of previous year was reduced to @10% excess of previous year. On 05.04.1995, the petitioner received the order by Commissioner, Commercial Taxes wherein it was mentioned that composition from 01.02.1995 to 31.01.1996 would be governed by the old un-amended scheme.

3. The petitioner filed an application dated 09.01.1997 seeking rectification under Rule 32 of the Rules of 1957, to be governed by the amended scheme however, as per the petitioner, there was no order passed on the said rectification application and he was orally informed that it was rejected. Being aggrieved of the same, the petitioner approached the Rajasthan Taxation Tribunal by laying original application but the same was transferred to this Court as Rajasthan Taxation Tribunal Act, 1995 was repealed. The Division Bench upheld the validity of Section 9A of the Entertainment Tax Act, 1957 (hereinafter referred to as the 'Act of 1957') and ordered to list the matter before Single Judge to decide the other issues.

4. The Single Judge passed the judgment dated 04.04.2014, wherein it adjudged as follows:

"The power to claim refund is circumscribed on the strength of doctrine of unjust enrichment. From the facts pleaded by the rival parties and the materials placed on record, it is not at all clear as to whether the petitioner has collected the tax in terms of unamended scheme for composition of entertainment tax or as per the amended provision which came into force from 23rd of February 1995. The reply of the revenue in this behalf is also conspicuously silent and unspecific. During the



course of arguments, this contention has been canvassed with full emphasis but there is no cogent evidence available on record from either side to decide this factual aspect of the matter. If the petitioner has realized tax in terms of old unamended scheme, then obviously the doctrine of unjust enrichment would come into play and if the situation is otherwise, there may be some justification for the claim of refund of the petitioner. After thrashing out the matter in its entirety, in the backdrop of facts and circumstances of the instant case and the position of law emerged out from various authoritative pronouncements of the Hon'ble Apex Court, in my view, the matter requires re-examination by the competent authority in strict adherence of principles of natural justice so that the matter can be thrashed out in its entirety. Thus, viewed from any angle, the impugned orders (Annexs. 8 & 18) cannot be sustained and are hereby annulled and the matter is remitted back to Deputy Commissioner, Commercial Taxes, Bikaner for deciding application of the petitioner for rectification of mistake submitted under Rule 32 of the Rules of 1957 afresh.

The upshot of the above discussion is that this writ petition is allowed, the matter is remitted back to Deputy Commissioner (Admn.) Commercial Taxes, Bikaner, for examining the application of the petitioner under Rule 32 of the Rules of 1957 de novo and deciding the same in accordance with law while adhering to principles of natural justice."

5. In pursuance to the judgment dated 04.04.2014, the Deputy Commissioner (Admn.) Commercial Taxes, Bikaner vide order dated 08.09.2016 (Annx. CP/3) affirmed the order dated 05.04.1995 and



rejected the application for rectification of mistake as submitted by the petitioner. The Deputy Commissioner held as under:

“छविग्रह द्वारा दिनांक 28-12-1994 को प्रशमन के लिये आवेदन किया गया था, इससे स्पष्ट है कि छविग्रह उस दिनांक की प्रशमन की शर्तों से पूर्णरूप से वाकिफ था व उसके अन्तर्गत सभी शर्तों की पालना के लिये उसकी पूर्ण सहमति थी। यह संयोग है कि दिनांक 23-02-1995 की नई अधिसूचना में प्रशमन की दर घटा दी गई, जो उसके लिये लाभप्रद थी, अतः वह उसका लाभ लेना चाहता है। चूँकि छविग्रह द्वारा दिनांक 28-12-1994 को ही प्रशमन हेतु आवेदन किया जा चुका था व प्रशमन हेतु जाँच की कार्यवाही प्रक्रियाधीन थी व कार्यवाही पूर्ण होने के बाद नियमानुसार दिनांक 05-04-1995 को प्रशमन आदेश छविग्रह द्वारा घोषित अवधि दिनांक 01-02-1995 से 31-01-1996 के लिये जारी किया गया था। लिहाजा यह स्पष्ट है कि जिस दिनांक को आवेदन किया गया था, प्रशमन आदेश उस दिनांक को चल रही अधिसूचना व उसकी शर्तों के तहत ही पारित किया जा सकता है। छविग्रह के प्रशमन आदेश का अगले वर्ष (1996-97) का नवीनीकरण उक्त अधिसूचना दिनांक 23-02-1995 की शर्तों के तहत 10% प्रशमन दर पर ही किया गया है।

व्यवसायी द्वारा प्रस्तुत जवाब व पत्रावली पर उपलब्ध तथ्यों का अध्ययन किया गया, स्पष्ट है कि दिनांक 05-04-1995 को पारित प्रशमन आदेश विधिक व न्यायसंगत है, व्यवसायी की ओर से प्रस्तुत जवाब मानने योग्य नहीं है, अतः अस्वीकार किया जाता है। आदेश पारित किया गया।”

6. Learned counsel for the petitioner submits that the order dated 08.09.2016 amounts to a clear willful disobedience of the judgment dated 04.04.2014 as vide the said judgment, the Deputy



Commissioner was directed only to adjudge the factual aspect of the matter as to whether the petitioner had realized tax in terms of the old scheme or not. Vide the said judgment, it was observed that if the petitioner had done so, the doctrine of unjust enrichment would come into play and if the petitioner had not done so, there would be justification for the refund of the claim to the petitioner. But, so far as the issue regarding the applicability of the amended scheme is concerned, the said issue was decided for all purposes and the Deputy Commissioner could not have again decided the same totally *dehors* and contrary to the findings of this Court.

7. Learned counsel further submitted that it was in unequivocal terms held by this Court that there was no justifiable reason to deprive the petitioner assessee from the benefit of the amended scheme which came into effect from 23.02.1995. The Court therein specifically observed that the case of the petitioner could not be governed by the old unamended scheme. Therefore, once the Court had held that the petitioner would be governed by the amended scheme, the Deputy Commissioner could not have again held to the contrary. It is only because no evidence was available on record to clarify the factual position whether the petitioner had collected tax in terms of the unamended scheme or as per the amended scheme, that the Court remanded the matter to the authority for decision afresh only on the said issue. The Deputy Commissioner therefore, could not have again decided the issue whether the petitioner would be governed by the amended scheme or not.

8. Counsel further submitted that a bare perusal of the order dated 08.09.2016 makes it clear that no finding whatsoever on the issue whether the petitioner has realized tax in terms of the old



unamended scheme has been recorded by the authority for which specific purpose, the matter was remanded to him. The authority has rather, in total defiance of the judgment dated 04.04.2014, ruled again that the order dated 05.04.1995 was valid and the petitioner was not entitled for the benefit in terms of the amended provision.

9. While relying upon the Hon'ble Apex Court judgment in the cases of **Baranagore Jute Factory Plc. Mazdoor Sangh (BMS) and Ors. Vs. Baranagore Jute Factory Plc. and Ors.; (2017) 5 SCC 506** and **Balwantbhai Somabhai Bhandari Vs. Hiralal Somabhai Contractor (Deceased) Rep. By L.Rs. and Ors.; AIR 2023 SC 439**, counsel submitted that in the present matter while passing appropriate orders of punishment for willful disobedience of the orders of this Court, the Court may also pass appropriate directions for remitting or rectifying the order passed in violation of the judgment dated 04.04.2014. Counsel submitted that as is the settled position of law, this Court can take restitutive measures at any stage of proceedings and hence, appropriate directions be passed for rectification of the order impugned dated 08.09.2016.

10. Per contra learned counsel for the respondent submitted that the authority has not committed any willful disobedience of the judgment dated 04.04.2014 as vide the said judgment he was directed to decide the matter *de novo* which implies the decision afresh. Counsel submitted that the direction to decide afresh adhering to the principles of natural justice has been complied with in true sense as the petitioner had very well been heard prior to the order being passed.



11. So far as the matter not been decided within the time frame as directed is concerned, counsel submitted that the order/judgment dated 04.04.2014 was served on the authority by the petitioner in the year 2016 only. Therefore, there was no delay and even if it is found to be so, the same was not intentional but was totally bonafide.

12. While relying upon the ratio laid down by the Hon'ble Apex Court in the cases of **Ram Kishan Vs. Tarun Bajaj & Ors.; (2014) 16 SCC 204** and **Jhareswar Prasad Paul & Ors. Vs. Tarak Nath Ganguly & Ors.; (2002) 5 SCC 352**, counsel submitted that even if it is assumed that the order dated 08.09.2016 is not in consonance with law, the same cannot be urged in contempt proceedings. He submitted that the Court while exercising contempt jurisdiction, has to consider only the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. Counsel further submitted that the Court exercising the contempt jurisdiction does not function as an Original or Appellate Court for determination of the disputes between the parties. The Court should be confined to the question whether there has been any deliberate disobedience of the orders of the Court and whether the conduct of the party who is alleged to have committed such disobedience, is contumacious.

13. Heard learned counsel for the parties and perused the material available on record.

14. While deciding the issue whether the petitioner would be governed by the amended scheme or not, this Court vide judgment dated 04.04.2014 observed as under:-



*"In the background of the amendment in the Scheme for composition of entertainment tax, admittedly, the petitioner has opted for the same w.e.f. 01.02.1995 and the amendment was brought in within a span of 22 days, **there appears to be no justifiable reason to deprive the petitioner assessee from benefit of the amended scheme which came into effect w.e.f. 23rd of February 1995. On the face of it, the contention of the revenue that the petitioner has opted for the scheme from 01.02.1995, his case would be governed by the old unamended scheme is per-se not satisfying the test of interpretation of a taxing statute. If this interpretation of the Revenue is to be accepted, the same is bound to occur dichotomy inasmuch as the incumbent opted for composition scheme after 23rd of February 1995 would be governed by the said Scheme whereas the petitioner or other incumbents who had opted under the old scheme would continue to be governed by the old unamended scheme. This sort of variance in composition of entertainment tax appears to be quite unreasonable and the same is also not satisfying the intent of the amendment in the scheme and the true purport of Section 6(3)(a) of the Act of 1987. Therefore, the contention of revenue in this behalf cannot be accepted**"*.

15. A bare perusal of the above observations makes it clear that the Court, in specific terms, held that the petitioner could not have been deprived of the benefit of the amended scheme which came into effect from 23.02.1995 and further, the contention of the department that the petitioner would be governed by the old unamended scheme could not be accepted.

16. However, a bare perusal of the order impugned dated 08.09.2016 makes it clear that the Deputy Commissioner, in total





contravention to the finding as recorded by the Court in judgment dated 04.04.2014, again held that the petitioner would not be entitled to the benefit of the amended scheme and therefore, affirmed the order dated 05.04.1995. In the specific opinion of this Court, the said approach of the Deputy Commissioner clearly amounts to the defiance of the judgment dated 04.04.2014. It is not that the judgment dated 04.04.2014 was not placed before the authority or that he was not aware of the findings as recorded in the said judgment. Despite the specific findings having been recorded and the order impugned dated 05.04.1995 having been annulled and set aside, the Deputy Commissioner proceeded on to affirm the same order dated 05.04.1995 which is on the face of it, contemptuous.

17. Vide the judgment dated 04.04.2014, the Deputy Commissioner was only directed to decide whether the petitioner assessee would be entitled to any refund of the amount of compensation of Entertainment Tax already paid by it in excess. The Deputy Commissioner was directed to examine the application of the petitioner for rectification of the mistake in terms of Rule 32 of the Rules of 1957. The same was to be done keeping into consideration the fact whether the petitioner had realized tax in terms of the old un-amended scheme or not, that is, whether the doctrine of unjust enrichment would come into play because of which the petitioner would not be entitled for refund of the compensation amount as paid in excess.

18. However, a perusal of the order dated 08.09.2016 makes it clear that no such consideration has been made by the authority. True it is that in contempt jurisdiction the Court is not required to



consider as to what the judgment or order should have contained but then definitely, it has to consider the directions issued in the judgment/order. Evidently, in the judgment dated 04.04.2014, there was a specific finding recorded by the Court that the petitioner shall be entitled to the benefit of the amended scheme and once the said finding had been recorded by the Court, the Authority i.e., the respondent-contemnor could not have again adjudicated the same issue and recorded a finding totally contrary to the finding as recorded by the Court. The respondent-contemnor could not have affirmed the order dated 05.04.1995 which had already been annulled by this Court.

19. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. As held by the Hon'ble Apex Court in **Jharieswar Prasad Paul's** case (supra), the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. Therein the Court observed as under:

"13.

It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience in contumacious."



20. Touching on the touchstone of the above ratio as laid down by the Hon'ble Apex Court, this Court is of the clear opinion that the order dated 08.09.2016 is in defiance of the judgment dated 04.04.2014 passed by this Court. However, keeping into consideration that the disobedience might not be willful but because of lack of understanding/misunderstanding, stopping short of recording a finding of willful disobedience qua the respondent-contemnor, taking a liberal view, this Court deems it appropriate to grant a chance to the respondent-contemnor to rectify the order and to purge the contempt. As held by the Hon'ble Apex Court in **Baranagore Jute Factory Plc. Mazdoor Singh's** case (supra), a Court in contempt jurisdiction, may take restitutive measures and may pass appropriate directions for remedifying or rectifying the things done in violation of the orders of the Court.

21. Keeping in view the above ratio, the respondent-contemnor is hereby directed to recall its contemptuous order dated 08.09.2016 and pass a fresh order strictly in compliance of the judgment dated 04.04.2014. The respondent-contemnor shall be under an obligation to pass a fresh order within a period of four weeks from now.

22. If the respondent-contemnor is not holding the post of Deputy Commissioner (Adm.), Commercial Taxes, Bikaner as of date, he shall be under an obligation to assist the present incumbent in complying with the present order.

23. Let the matter be listed on 10.02.2025.

(REKHA BORANA),J

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