or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arise....

.....It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises,"

16. In CIT v. Daulat Ram Rawat Mull (1973) 87 ITR 349 it has been held that onus of proving what is apparent is not real is on the party who claims it to be so. There should be direct nexus between the conclusions of fact arrived at, or inferred, and the primary facts upon which the conclusion is based. When irrelevant consideration and extraneous materials form the substratum of an order, or the authority has proceeded in a wrong presumption which is erroneous in law, as in the present case, question of law arises and when the said contention is found to be correct, then the order is perverse. A factual decision is perverse when it is without any evidence or when the factual decision, in view of the fact on record, cannot be reasonably entertained. Finding based upon surmises, conjectures or suspicion or when they are not rationally possible have to be struck down. In CIT v. S.P. Jain (1973) 87 ITR 370 (SC) it has been observed that a factual conclusion is regarded as perverse when no person duly instructed or acting judicially could upon the record before him, have reached the conclusion arrived at by the tribunal/authority."

15. In light of the judgments of the Supreme Court and High Courts cited above, we are of the view that unless there is any perversity in finding of facts, no substantial question of law would arise. Furthermore, for the Tribunal's fact finding to be perverse, it would have be established that the finding of fact by the Tribunal directly or indirectly affects substantial rights of the assessee in the sense that it is such as could not have been reasonably arrived at on the material placed on record before the Tribunal. In the present factual matrix, it is crystal clear that the Tribunal has examined the facts in great detail, and only thereafter, held in favour of the assessee.

16. Therefore, we do not find any perversity in the impugned order and there exists no reason to admit this appeal as there is no substantial question of law involved. The appeal filed under Section 260A of the Act can only be sustained if there was perversity in the findings of the Tribunal which would have amounted to a substantial question of law. In the present case, we do not find anything perverse in the order passed by the Tribunal and accordingly, dismiss the appeal on the ground that no substantial question of law is present in the instant appeal.

(2024) 11 ILRA 102
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 12.11.2024

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANISH KUMAR, J.

Writ Tax No. 264 of 2024

M/s A.V. Pharma ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Anuj Kudesia, Anurag Tyagi

Counsel for the Respondents:
C.S.C.

Tax Law - U.P.G.S.T. Act, 2017 - Sections 44(1) & 73(10) - Quashing of assessment order - Financial year 2017-18 - Due date for filing annual return was 31st December of end of Financial Year i.e 31.12.2018 for financial year 2017-18, due date for filing annual return extended vide notification dated 03.02.2018 to 05.02.2020 and adopted by St. of U.P. vide notification dated 05.02.2020 - Based on this notification, period of three years mentioned in Section 73(10) would end on 05.02.2023 meaning thereby, order u/s 73 (9) for financial year 2017-18 could have been passed by 05.02.2023 but not after it - Opposite parties relied on notification dated 24.04.2023 to submit that they could have passed order up till 31.12.2023, they omit to consider para no. 2 of said notification which says that notification would be applicable retrospectively but only from 31.03.2023 means if time limit of three years prescribed in Section 73(10) r/w Section 44(1) expired prior to 31.03.2023, then notification extending time limit for passing order u/s 73(9) would not be applicable. (Para 7)

Thus, impugned orders are beyond time limit and beyond jurisdiction, accounts of petitioner which have been freezed shall be de-freezed. (Para 8)

Writ Petition allowed. (E-13)

(Delivered by Hon'ble Rajan Roy, J.
&
Hon'ble Manish Kumar, J.)

1. Supplementary affidavit on behalf of petitioner and short counter affidavit on behalf of State filed today are taken on record.

2. Heard Shri Anuj Kudesia, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State as also Shri Akhilesh Kumar, Deputy Commissioner, State G.S.T., Lucknow, who is present before this Court.

3. The present writ petition has been filed with the following reliefs:-

"i) to issue a writ, order or direction in the nature of Certiorari quashing the order on Form GST DRC-13 dated 05.10.2024 issued by Deputy Commissioner, State Tax, Sector 05, Lucknow contained as annexure no. 1 to this writ petition.

ii) to issue a writ, order or direction in the nature of certiorari quashing the assessment order and DRC-07 dated 02.12.2023 issued by Deputy Commissioner, State Tax, Sector-5, Lucknow contained as annexure no. 2 to this writ petition.

iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to direct the petitioner bank to de-freeze the two bank accounts operated petitioners i.e. account No. 7711564951 and Accout No. 9946014812 in Kotak Mahindra Bank. "

4. The contention of learned counsel for the petitioner is that the impugned orders are barred by sub Section 10 of Section 73 of the U.P.G.S.T. Act, 2017 (hereinafter referred to as, the Act, 2017) as they have been passed beyond the time limit prescribed therein as calculated from the due date of filing annual returns prescribed in Section 44 (1), which was extended to 05.02.2020 and the time limit of three years ended on 05.02.2023 but the impugned orders are dated 05.10.2024 and 02.12.2023, therefore, the impugned orders are without jurisdiction.

5. After hearing the parties, what comes out is that for justifying the time limit within which the impugned orders have been passed under Section 73 (9) and (10) of the Act, 2017 for the financial year 2017-18 reliance is being placed upon a notification dated 24.04.2023 by which the time limit of three years mentioned in sub Section 10 of Section 73 was extended for the financial year 2017-18 upto 31.12.2023, however, what is being omitted from consideration by the opposite party is that this notification dated 24.04.2023 has been given retrospective effect only from 31.03.2023 and not prior to it, now, in this context we may refer to Section 73 (10) of the Act, 2017, which reads as under:-

"(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

6. We may also refer to Section 44(1) of the Act, 2017, which reads as under:-

"44. Annual return -(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner."

7. Ordinarily the due date for filing annual return is 31st December of the end of the Financial Year, which in the case of financial year 2017-18 would be 31.12.2018, however, this due date for filing annual return, as already observed earlier, was extended vide notification of the Central Board of Direct Taxes and Customs dated, 03.02.2018 to 05.02.2020 and this notification was adopted by the State of U.P. vide notification dated 05.02.2020. Based on this notification, the period of three years mentioned in sub Section 10 of Section 73 would end on 05.02.2023 meaning thereby, an order under sub Section 9 of Section 73 for the financial year 2017-18 could have been passed by 05.02.2023 but not after it. Now the opposite parties are relying on the notification dated 24.04.2023 to submit that in fact they could have passed the order under sub Section 9 of Section 73 uptill 31.12.2023 however in doing so, they omit to consider para no. 2 of the said notification which says that the notification dated 24.04.2023 would be applicable retrospectively but only from 31.03.2023 meaning thereby, if the time limit of three years prescribed in sub Section 10 of Section 73 read with sub Section 1 of Section 44 expired prior to 31.03.2023 then the notification dated 24.04.2023 extending the time limit for passing of an order under sub Section 9 of Section 73 would not be applicable, apparently so.

8. Apparently the impugned orders are beyond the time limit prescribed under sub

Section 10 of Section 73 as applicable for the financial year 2017-18 and therefore the impugned orders are beyond jurisdiction being barred by the time provided in the said provision, therefore, we **allow** the writ petition and quash the impugned orders dated 05.10.2024 and 02.12.2023 issued by the Deputy Commissioner, State Tax, Sector 05, Lucknow.

9. Consequences shall follow, accordingly. The accounts of the petitioner which have been freezed shall be de-freezed.

(2024) 11 ILRA 105
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.11.2024

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ Tax No. 1689 of 2024

M/s Monotech Systems Limited ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Abhinav Mehrotra, Satya Vrata Mehrotra, Utkarsh Malviya

Counsel for the Respondents:
C.S.C.

Tax Law - Goods and Services Tax Act, 2017 - Section 129 - Detention, seizure and release of goods and conveyances in transit - Against order of Additional Commissioner - Technical breaches - Impugned order arises out of proceedings after interception of vehicle carrying offending goods - Revenue authorities upon finding that E-Way Bill was not filled, asked assessee/petitioner to show cause and after physical inspection of goods no discrepancy found. (Para 2)

Contention by assessee that goods in vehicle were fully reconciled with E-Way Bill - Non filling of part of E-Way Bill would not ipso facto attract proceedings u/s 129, GST Act. (Para 4)

When substantial compliance of provisions was disclosed and physical inspection of goods tallies with goods declared in E-Way Bill and no intent of tax evasion was made out, proceedings under aforesaid section became vitiated - Thus, impugned order quashed. (Para 7)

Writ Petition allowed. (E-13)

List of Cases cited:

VSL Alloys (India) Pvt. Ltd. Vs St. of U.P. & anr.(Writ Tax No.- 637 of 2018)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Heard Sri Abhinav Mehrotra, learned counsel for the petitioner and Sri Ravi Shankar Pandey, learned Additional Chief Standing Counsel for the State respondents.

2. The impugned order arises out of proceedings which were instituted after interception of the vehicle carrying the offending goods. The revenue authorities upon finding that the E-Way Bill was not filled asked the assessee to show cause. After physical inspection of the goods no discrepancy was found.

3. The goods tallied with the description in the E-Way Bill.

4. The assessee on show cause resisted the proceedings by filing a response. According to the assessee there was no intent to evade the tax. The goods in the