are required to be respected by the Revenue Courts. There is sufficient material on record indicating that possession is of the petitioner and title of this has been decided in favour of Smt. Jinda from whom the petitioners have purchased this land. Mere pendency of suit, thus, would not be reason to interefere in the order of mutation. If any different finding is returned in the civil suit, the mutation can always be corrected on that basis.

(12) The orders passed by the Commissioner and the Financial Commissioner, thus, cannot be sustained. The same are set-aside. Needless to mention that these mutation entries would be open to be changed on the basis of any decision that may be rendered by the civil Court in the pending suit.

(13) The writ petition is disposed of in the above terms.

R.N.R.

Before M.M. Kumar & Augustine George Masih, JJ.

M/S NATIONAL AGRICULTURAL COOPERATIVE MARKETING FEDERATION OF INDIA LTD,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 21144 of 2008

2nd April, 2009

Constitution of India, 1950-Art. 226—Haryana General Sales Tax Act, 1973—S.44—Assessing Authority creating additional demand of tax—1st Appellate Authority accepting appeal & remanding matter to Assessing Authority—Society applying for refund of amount deposited—Commissioner granting approval to withhold refund—Order of Commissioner totally laconic as it failing to record any reason as to how recovery is likely to be affected—Not even a whisper of material forming basis of satisfaction by the Commissioner—Impugned order wholly unsustainable in the eyes of law—Petition allowed. Society held entitled to refund along with interest.

Held, that a perusal of the provisions of Section 44 of the Haryana General Sales Tax Act shows that during the pendency of appeal or any other proceedings pending under the Act, the Commissioner may order withholding of refund by recording opinion that the grant of refund is likely to adversely affect the recovery. A perusal of impugned order dated 28th April, 2006 passed by the Commissioner shows that it has recorded a finding granting approval to withhold refund of Rs. 4,32,21,206 by observing that recovery of the aforesaid amount would be adversely affected lateron if the refund is allowed. The Commissioner has failed to record any reason as to how the recovery is likely to be affected. The order is totally laconic as it does not give any reasons. There is not even a whisper of the material forming basis of aforesaid satisfaction by the Commissioner. The impugned order is wholly unsustainable in the eyes of law and is, thus, liable to be set aside.

(Paras 6 & 7)

Further held, that the order withholding refund of huge amount running into crores should not be mechanically passed and the authorities working under the Act are required to be sensitized that the entrepreneurs who have limited liquidity are likely to suffer in their business enterprise. If the business enterprise comes to a stand still it does not advance the interest of the revenue because the State would stop earning revenue when the business of an entrepreneur comes to a grinding half. The State authorities would be better advised if the aforesaid rationale is kept in view. While passing order withholding refund a balanced approach has to be adopted.

(Para 10)

Further held, that the argument referring to the stand taken by the 'Society' in its application filed for waiving payment of assessed amount by the assesing authority and hearing of the appeal without complying with the requirement of deposit of assessed amount has failed to impress us because the aforesaid reasons firstly does not constitute the basis of the impugned order dated 28th April, 2006. It is well settled that an order cannot be justified on the grounds other than the one given in the order itself. Moreover, the aforesaid claim

of financial stringency made by the 'Society' was not accepted either by the Appellate Authority or by the Tribunal. Even this Court has rejected their claim pleading financial stringency. Therefore, we find that the argument raised on behalf of the respondent-State is wholly untenable and we have no hesitation to reject the same.

(Para 11)

Avneesh Jhingan, Advocate *for the petitioner.*

Narinder Sura, AAG Haryana *for the respondent.*

M.M. KUMAR, J.

(1) The instant petition filed under Article 226 of the Constitution prays for quashing order dated 28th April, 2006 (P. 8) passed by Excise and Taxation Commissioner, Haryana—respondent No. 2 whereby he has accorded approval to withhold the refund of Rs. 4,32,21,206 due to the petitioner.

(2) Brief facts of the case are that the petitioner is a Co-operative Society (for short 'Society'). It has turnover of Rs. 638137.68 lacs for the year 2006-07 and a turnover of Rs. 470665.00 lacs for the year 2007-08. A perusal of details of turnover of ten years is given in the annual report, which is annexure P. 9. The assessment for the year 2002-2003 in respect of the 'society' was finalised on 27th February, 2004 and the Assessing Authority created an additional demand of Rs. 1,49,69,527 under the Haryana General Sales Tax Act, 1973 (for brevity, 'the Act') and Rs. 2,82,51,680 under the Central Sales Act, 1956 (for brevity, 'the CST Act'). The demand was created by rejecting the RD Sales (sales made to registered dealers) and certain additions were also made to gross turnover. The First Appellate Authority accepted the appeal on 28th July, 2005 by quashing the assessment order and remanded the matter to the Assessing Authority with the directions to dispose of the same within three months. On 29th November, 2005, the 'Society' applied for refund of the amount deposited. They also appeared on various dates in remand proceedings and furnished various declaration forms and documents etc. as and when asked for by the department.

However, the proceedings are still going on. They issued a reminder on 8th February, 2006 for refund. On 13th December, 2006, the 'Society' was informed by the Excise and Taxation Officer that its refund has been withheld but no order was supplied. A copy of the order was, however, supplied to the petitioner on 27th October, 2008.

(3) In response to the notice of motion, the respondents have filed the reply. The prayer for refund has been opposed on the ground that the petitioner in their application for exemption from payment of assessed amount, filed alongwith the appeal had pleaded financial stringency. It has been asserted that the applicant was facing financial problem and that cash in hand was hardly sufficient to meet the day-to day business of the petitioner. On that basis, the petitioner had requested for entertaining the appeal without deposit of the assessed amount. The application was rejected on 18th March, 2004 by the appellate authority which was challenged before the Haryana Sales Tax Tribunal (for brevity, 'the Tribunal'). The Tribunal *vide* its order dated 12th May, 2004 allowed the petitioner to pay the amount by depositing eight equal monthly instalments. The first instalment was to be paid on or before 30th June, 2004. The order of the 'Tribunal' was further challenged by the 'Society' before this Court in CWP Nos. 8887 of 2004 and 8888 of 2004. The financial position of the petitioner was pleaded to be extremely precarious. The writ petitions were dismissed on 9th September, 2004. Even the instalments were not paid by the petitioner as per schedule.

(4) It is pertinent to notice that the impugned order dated 28th April, 2006 (P. 8) does not record any such reasons which have now been pleaded in the written statement. It would be profitable to read the impugned order, which is as under :

> " Whereas refund amounting to Rs. 4,32,21,206 (Rupees four crores thirty two lacs twenty one thousand two hundred and six only) is due to M/s National Agricultural Co-operative Marketing Federation of India Ltd. Ambala.
>
> And whereas the proceedings under the Haryana General Sales Tax Act, 1973 are still pending against the dealer.

And whereas it has been certified that recovery of this amount will be adversely affected lateron, if the refund is allowed.

Now, therefore, I, H.S. Rana I.A.S., Excise and Taxation Commissioner, Haryana Chandigarh in exercise of the powers conferred u/s 44 of Haryana General Sales Tax Act, 1973 do hereby accord approval to withholding of refund of Rs. 4,32,21,206 (rupees four crores thirty two lacs twenty one thousand two hundred and six only) due to M/s National Agricultural Co-operative Marketing Federation of India Ltd. Ambala."

(5) We have heard the learned counsel for the parties and have perused the record with their able assistance. The primary question which needs determination is whether the impugned order dated 28th April, 2006 (P. 8) is in accordance with the requirements of law. In order to determine the aforesaid issue it would be necessary to refer to the provisions of Section 44 of the Act, which reads thus :

"**44. Power to withhold refund.**—(1) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act are pending, and the assessing authority or a person appointed to assist the Commissioner under sub-section (1) of section 3, as the case may be, is of the opinion that the grant of the refund is likely to be adversely affect the recovery, he may withhold the refund and refer the case to the Commissioner for order. The orders passed by the Commissioner shall be final.

(2) The period during which the refund remains so withheld shall be excluded for the purpose of calculation of interest under section 43."

(6) A perusal of the aforesaid provision shows that during the pendency of appeal or any other proceedings pending under the Act, the Commissioner may order withholding of refund by recording opinion that the grant of refund is likely to adversely affect the recovery.

(7) A perusal of impugned order dated 28th April, 2006 (P. 8) shows that it has recorded a finding granting approval to withhold refund of Rs. 4,32,21,206 by observing that recovery of the aforesaid amount would be adversely affected lateron if the refund is allowed. The Commissioner has failed to record any reason as to how the recovery is likely to be affected. The order is totally laconic as it does not give any reasons. There is not even a whisper of the material forming basis of aforesaid satisfaction by the Commissioner. The impugned order is wholly unsustainable in the eyes of law and is, thus, liable to be set aside.

(8) We are further of the view that the 'Society' made categorical averments in para 12 of the petition by asserting that their total turn over for the year 2006-07 was Rs. 638137.68 lacs. The turnover for the year 2007-08 is also asserted to be Rs. 470665.00 lacs in the annual report (P. 9). The total turnover for the last ten years has been given, which is also reproduced in the following table :—

TURNOVER DURING THE LAST 10 YEARS

Year	Total Turnover
1998-1999	0
1999-2000	0
2000-2001	0
2001-2002	0
2002-2003	231182.53
2003-2004	141213.75
2004-2005	0
2005-2006	318617.34
2006-2007	638137.68
2007-2008	470665.00

(9) The aforesaid averments made by the 'Society' has not been controverted and the only defence put forward is that the 'Society' had

expressed inability to make payment of assessed amount in their application filed alongwith the appeal before the remand order was passed.

(10) In similar circumstances this Court has quashed order withholding refund in the case of **Sadhu Overseas** *versus* **State of Haryana, (1)** and **Ratti Woolen Mills** *versus* **State of Punjab, (2).** It may be pertinent to point out that the order withholding refund of huge amount running into crores should not be mechanically passed and the authorities working under the Act are required to be sensitized that the enterpreneures who have limited liquidity are likely to suffer in their business enterprise. If the business enterprise comes to a stand still it does not advance the interest of the revenue because the State would stop earning revenue when the business of an enterpreneur comes to a grinding halt. The State authorities would be better advised if the aforesaid rationale is kept in view. While passing order withholding refund a balanced approach has to be adopted.

(11) The argument of the learned State counsel referring to the stand taken by the 'Society' in its application filed for waiving payment of assessed amount by the assessing authority and hearing of the appeal without complying with the requirement of deposit of assessed amount has failed to impress us because the aforesaid reasons firstly does not constitute the basis of the impugned order dated 28th April, 2006 (P. 8). It is well settled that an order cannot be justified on the ground other than the one given in the order itself. In that regard reliance may be placed on the judgement of the Hon'ble Supreme Court in the case of **Mohinder Singh Gill** *versus* **Union of India (3).** Moreover the aforesaid claim of financial stringency made by the 'Society' was not accepted either by the Appellate Authority or by the Tribunal as has already been noticed in the preceding paras. Even this Court has rejected their claim pleading financial stringency. Therefore, we find that the argument raised on behalf of the respondent-State is wholly untenable and we have no hesitation to reject the same.

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(1) (2007) 30 PHT 582
(2) (2007) 29 PHT 556
(3) (1978) 1 S.C.C. 405

(12) For the reasons aforementioned this petition succeeds. The impugned order dated 28th April, 2006 (P. 8) is set aside. The respondents are directed to refund a sum of Rs. 4,32,21,206 in respect of assessment year 2002-2003 alongwith interest to the assessee-Society. The assessee 'Society' is further held entitled to statutory interest on delayed payment of refund in respect of assessment year 2002-2003. The interest shall be calculated at the statutory rate of 12 per cent per annum in respect of delay for the first month of delay and at the rate of 18 per cent per annum in respect of delay caused for the subsequent months. However, the 'Society' shall co-operate in finalisation of the assessment proceedings which are pending before the Assessing Authority after the remand by the Appellate Authority.

R.N.R.

Before Augustine George Masih, J.

BANK OF INDIA,—*Petitioner*

versus

THE PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL AND OTHERS,—*Respondents*

C.W.P. No. 391 of 1988

27th January, 2009

Constitution of India, 1950—Art. 226—A bank employee acting in an unfair manner for personal gains—Non-supply of list of witnesses and documents to workman either at stage when charge sheet was issued nor before initiation of enquiry proceedings—Workman also failing to make demand for supply of list of witnesses/documents—Workman admitting all acts alleged to have been committed by him—No prejudice caused to workman due to non-supply of list of witnesses/documents nor for non-grant of time to prepare cross-examination of witnesses—Petition allowed, award of Labour Court ordering reinstatement of workman with full back wages quashed.