

IN THE COURT OF HIMACHAL PRADESH TAX TRIBUNAL, DHARAMSHALA, CAMP  
AT SHIMLA

Application No. 3/2017  
Date of institution: 14.12.2017  
Date of Order: 31-03-2022

**In the matter of:**

M/s Sandeep Jewellers,  
Lower Bazar, Shimla HP.

..... Applicant.

**Vesus**

1. Addl. Excise and Taxation Commissioner  
-cum- Appellate Authority (SZ), Himachal Pradesh, Shimla.
  2. Excise and Taxation Officer-cum-  
Assessing Authority, Shimla
- ..... Respondents.

**Parties represented by:-**

1. Shri R.N. Sharma, Advocate for the Applicant.
2. Shri Rakesh Rana, Deputy Director (Law) for the Respondents.

**ORDER**

The Appellant has filed an application for rectification of the order dated 17.11.2017 passed in Appeal No. 52/2017 on the grounds that subsequent to the judgment in the appeal, the Hon'ble High Court of HP, on 20<sup>th</sup> March, 2018 decided STR No.8 of 2009 in the matter of M/s John Raymond Bright v. the Additional Excise and Taxation Commissioner holding that:

*"We find it to be no longer res integra for the same stood decide by the co-ordinate Bench of this Court in judgment dated 24<sup>th</sup> April, 2007 passed in CWP No.178 of 2002, titled as Manali Resorts v. State of*

*Himachal Pradesh and others, wherein the Bench, after holding that a member of a raiding party cannot be an adjudicator, quashed the order and remanded the matter back for adjudication afresh by another competent officer."*

The Hon'ble HP High Court in its above judgment relied upon its earlier judgment in *M/s Manali Resorts v. State of Himachal Pradesh* dated 24<sup>th</sup> April, 2007 wherein it had held:

*"Learned counsel has drawn our attention to judgment of the Punjab and Haryana High Court in *Vipan Kumar Jain and others v. Union of India and others* (2001) 17 PHT 588 (P&H) in which a Division Bench of that Court has held that the officer taking search or a member of the raiding party becomes a witness to the proceedings of such search and cannot be authorized to make regular assessment. We are in agreement with the principles of law laid down in the judgment."*

These judgments enunciate the foundational principles of justice, and it is essential that justice should not only be done but must appear to be done, in this case a 'reporting officer', 'the officer taking the search' or a 'member of the raiding party' becomes an interested person in the outcome of the case, it is the rule of law that *Justice can never be done if a person acts as a judge in his own cause or is himself interested in the outcome.* Accordingly, these judgments are not distinguishable. It is writ large on the face of the proceedings and duly admitted facts that the Ld. ETO Shimla who headed the detection team of officials was himself a party to investigations and evidently and indisputably become a reporting, investigating and searching officer in respect of the vehicle No.HP-63-A 2229 and he becomes a mere witness to the said events. Justice has,

therefore, been denied to the Applicant because the Ld. ETO has himself indisputably acted as a judge in his own cause and was himself interested in the outcome of the proceedings in quasi-judicial determinations. Under these rules of law, the Ld. ETO could not have taken up the impugned assessment and penalty proceedings and completed the same, and therefore, the impugned order dated 17.8.2015 is not in accordance with law, and requires to be set aside .The appellate order dated 17,11,2017 and as passed in appeal No.52/2017 now impugned which sustained that order are clearly contrary to law and require to be rectified. In **Jain Tube & Co. v. State of U.P. (1991) 80 STC 40 (All.) (DB)** that *“Every authority exercising judicial and quasi judicial powers is under the supervisory jurisdiction of this Court (High Court) under Article 227 of the Constitution of India. The interpretation given by this Court of a notification, rule or law is binding on all authorities subordinate to it.”* Further, in **Seth Ganpat Ram Cotton Ginning & Processing Factory v. State of Punjab (1973) 311 TC 250 ((P&H))** it has been held that *“A reading of the order passed by the Assessing Authority shows that it sat in judgment delivered by a learned Judge of this Court. This conduct on the part of the Assessing Authority tantamount to gross violation of judicial discipline and amounts to contempt of court.”* Based on these principles of law the order of the Ld. ETO dated 17.8.2015 being *de hors* these judicial pronouncements, and non-consideration, non-adherence to these constitute legal mistake apparent from the record as held by the Hon’ble Apex Court in (2008) 14 SCC 171 (2JJ):

*“33. The core issue, therefore, is whether non-consideration of a decision of a jurisdictional court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a “mistake*

*apparent from the record”/ In our opinion, both the tribunal and the High Court were right in holding that such a mistake can be said to be a “mistake apparent from the record” which could be rectified under section 254 (2).*

*“38. Rectification of an order stems from the fundamental principle that justice is above all. It is exercised to remove the error and to disturb the finality.*

*39. In Nagaraj v. State of Karnataka 1993 Supp. (4) SCC 595, Sahai J. stated (SCC p.618 para 18)*

*“18. Justice is a virtue which transcends all barriers, Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to any one. The rule of stare decisis is adhered for consistency but it is not as inflexible in administrative law as in public law. Even the law bends before justice...”*

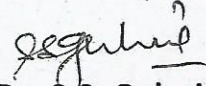
*esg*  
Accordingly, the Ld. Counsel submitted that the said order dated 17.11.2017 may be rectified in the interests of justice and the order of the Ld. ETO dated 17.8.2015 may kindly be quashed and set aside and matter be remanded to another Assessing Authority i.e. Assessing Authority, Sanjauli Circle for adjudication afresh.

1. I have heard the arguments, perused the entire relevant record and considered the law declared by the Hon'ble Supreme Court and the Hon'ble High Court. The order dated 17.8.2015 passed by the Ld. Assessing Authority, Shimla district is accordingly set aside in the interests of justice and fair play. The matter is accordingly remanded to the Ld. Assessing Authority, Sanjauli Circle for decision afresh after hearing the Applicant and thereafter passing the order in

accordance with law. It is also directed that the Applicant shall appear before the Ld. Assessing Authority, Sanjauli Circle within 15 days and make his submissions, and the said authority shall pass necessary consequential order in this behalf within one month thereafter.

2. The orders reserved in this case on 11.2.2022 are hereby released. Parties be informed accordingly, and the file, after completion, be consigned to record room.

Announced:  
31<sup>st</sup> March, 2022

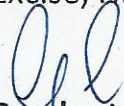
  
(Dr. S.S. Guleria)  
Chairman,  
H.P. Tax Tribunal  
Camp at Shimla.

Endst No.HPTT/CS/2022-12-15

Dated: 01-04-2022

Copy to:

1. The Commissioner of State Taxes and Excise, HP Shimla-171009.
2. The Assessing Authority, Sanjauli Circle, Shimla District, SDA Complex, Shimla for necessary action.
3. M/s Sandeep Jewellers, Lower Bazar, Shimla HP.
4. Shri R.N. Sharma, Advocate, House No. A-157, Sector-III, New Shimla.
- ✓ 5. Legal Cell office of the Commissioner of State Taxes and Excise, HP
6. Assessing Authority, Sanjauli Circle Shimla

  
Reader to the  
Chairman,  
H.P. Tax Tribunal  
Camp at Shimla.