

CASE NO.:
Appeal (civil) 3419 of 2006

PETITIONER:
State of Punjab & Ors.

RESPONDENT:
M/s. Amritsar Beverages Ltd. & Ors.

DATE OF JUDGMENT: 08/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Civil) No. 10371-10374 of 2004]

S.B. SINHA, J :

Leave granted.

Situational change how far could give rise to a new interpretation of a statutory provision is the question involved in this appeal which arises out of the judgment and order dated 21.10.2003 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No. 14659 of 2003.

The Respondent is a dealer within the meaning of the Punjab General Sales Tax Act, 1948 (for short "the Act"). A raid was conducted in his premises and a larger number of books and documents were seized by the officers of the Sales Tax Department of the State of Punjab. The documents were in the form of the cash book ledger or other registers. They were contained in a hard disk. Seizure of documents indisputably was done in exercise of the powers of the authorities under Section 14 of the Act, Sub-section (3) whereof reads, thus:

"14. Production and Inspection of Books,
Documents and Accounts:

- (1) ***
- (2) ***
- (3) If any officer referred to in sub-section (1) has reasonable ground for believing that any dealer is trying to evade liability for tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any book, account, register or document, he may seize such book, account, register or document, as may be necessary. The officer seizing the book, account, register or document shall forthwith grant a receipt for the same and shall
 - (a) In the case of book, account, register or document which was being used at the time of seizing, within a period of ten days from the date of seizure, and
 - (b) in any other case, within a period of sixty days from the date of seizure, return it to the dealer or the person from whose custody it was seized after examination or after having such copies or extracts taken therefrom as may be

considered necessary, provided the dealer or the aforesaid person gives a receipt in writing for the book, account, register or document returned to him. The officer may, before returning the book, account, register or document, affix his signatures and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officers have been affixed on each book, account, register or document\005"

The officers of the Sales Tax Department asked the Respondents to appear on several occasions so as to enable them to verify the contents thereof. Cooperation from the Respondents was not forthcoming as a result whereof the documents were not returned within the period stipulated thereunder.

A writ petition was filed by the Respondents herein praying for issuance of a writ of or in the nature of mandamus directing the Respondents to return the seized books, accounts, documents, computer disk in terms of the said provision. Applying the principle of literal interpretation and following an earlier precedent, the High Court not only issued mandamus as had been prayed for but also imposed costs of Rs. 2,500/- in each case. It was directed that the costs would be paid by the officers responsible for withholding the books, accounts, etc. personally from their pockets and the same shall not be a burden on the State exchequer.

Contention of Mr. Sarup Singh, Addl. Advocate General, appearing on behalf of the State of Punjab, is that Section 14 of the Act is directory in nature and not mandatory.

Mr. Vikas Mahajan, learned counsel appearing on behalf of the Respondents, on the other hand, supported the judgment of the High Court.

Before advertng to the rival contentions, we may at the outset notice that pursuant to or in furtherance of the directions of the High Court, the Appellants have returned the hard disk upon keeping a copy thereof. The Respondents in their counter-affidavit stated:

"That it may be mentioned here that dealer was always willing to cooperate with the department and the only reason for not complying with the notices of assessment or proceedings taken were that in absence of return of book it was not feasible or practical to give any statement or verify the entries in the seized documents.

Although the seized documents have been returned the answering respondent have no objection even if now in presence of their representative the departmental authorities want to obtain any copy of the returned documents. But this copy must be counter signed by the representative as well as the respondents."

The Act was enacted in the year 1948. Information Technology at that time far from being developed was unknown. Constitution of India is a living organ. It had been interpreted differently having regard to different societal situations. [See Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and Another, (2004) 9 SCC 512,

Union of India v. Naveen Jindal and Another, (2004) 2 SCC 510, John Vallamattom and Another v. Union of India, (2003) 6 SCC 1, and Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1] Same principle is applicable in respect of some statutes.

Creative interpretation had been resorted to by the Court so as to achieve a balance between the age old and rigid laws on the one hand and the advanced technology, on the other. The Judiciary always responds to the need of the changing scenario in regard to development of technologies. It uses its own interpretative principles to achieve a balance when Parliament has not responded to the need to amend the statute having regard to the developments in the field of science.

Internet and other information technologies brought with them the issues which were not foreseen by law as for example, problems in determining statutory liabilities. It also did not foresee the difficulties which may be faced by the officers who may not have any scientific expertise or did not have the sufficient insight to tackle with the new situation. Various new developments leading to various different kinds of crimes unforeseen by our legislature come to immediate focus. Information Technology Act, 2000 although was amended to include various kinds of cyber crimes and the punishments therefor, does not deal with all problems which are faced by the officers enforcing the said Act.

We may notice some recent amendments in this behalf. Section 464 of the Indian Penal Code deals with the inclusion of the digital signatures. Sections 29, 167, 172, 192 and 463 of the Indian Penal Code have been amended to include electronics documents within the definition of 'documents'. Section 63 of the Evidence Act has been amended to include admissibility of computer outputs in the media, paper, optical or magnetic form. Section 73A prescribes procedures for verification of digital signatures. Sections 85A and 85B of the Evidence Act raise a presumption as regards electronic contracts, electronic records, digital signature certificates and electronic messages.

Section 14 of the Act although has been amended, the problem, in our opinion, should be dealt with keeping in view of the fact that the procedural laws should be construed to be ongoing statutes similar to the Constitution and, thus, creative interpretation according to the circumstances is permitted. The Court in view of development of science has to meet and contend with challenges as an intermediary between the litigant and the court.

In *SIL, Import, USA v. Exim Aides Silk Exporters, Bangalore*, [(1999) 4 SCC 567], notice in terms of Section 138 of the Negotiable Instruments Act was construed to include notice by fax.

In *State of Maharashtra v. Dr. Praful B. Desai* [(2003) 4 SCC 601], this Court opined that recording of evidence through video conferencing is permissible in terms of Section 273 of the Code of Criminal Procedure; stating:

"This Court has approved the principle of updating construction, as enunciated by Francis Bennion, in a number of decisions. These principles were quoted with approval in the case of *CIT v. Podar Cement (P) Ltd.* They were also cited with approval in the case of *State v. S.J. Choudhary*. In this case it was held that the Evidence Act was an ongoing Act and the word "handwriting" in Section 45 of that Act was construed to include "typewriting". These principles were also applied in the case of *SIL Import, USA v. Exim Aides Silk Exporters* 9. In this case the words "notice in

writing", in Section 138 of the Negotiable Instruments Act, were construed to include a notice by fax. On the same principle courts have interpreted, over a period of time, various terms and phrases. To take only a few examples: "stage carriage" has been interpreted to include "electric tramcar"; "steam tricycle" to include "locomotive"; "telegraph" to include "telephone"; "banker's books" to include "microfilm"; "to take note" to include "use of tape recorder"; "documents" to include "computer databases".

The officers of the Sales Tax Department of the State of Punjab must have felt immense difficulties in giving effect to the provisions of Section 14 of the Act. It no doubt mandates the authorities to return to the dealer all documents after examination or after having such copies or extracts taken therefrom as may be considered necessary within a period of 60 days of seizure but in the instant case even for the said purpose, not only a copy was required to be made from the hard disk, the same was required to be verified. The Respondents were asked by the authorities of the department that they should come and verify the contents but they did not do so. Active cooperation of the Respondents was necessary having regard to the proviso appended to Sub-section (3) of Section 14 of the Act inasmuch as in terms thereof the officer was entitled not only to affix his signature and his official seal at one or more places thereupon but also the dealer was required to give a receipt therefor.

In case of a hard disk, literal compliance of the said provision was impossible. Recourse to scientific method, therefore, was necessary.

It may be true that even in absence of cooperation from the Respondents nothing prevented the authorities of the Sales Tax Department to make out copies of the said hard disk or obtain a hard copy and fix their signatures or official seal in physical form thereupon and furnish a copy thereof to the Respondents. However, the High Court failed to notice that as problem arose for the first time, the officers of the Sales Tax Department might not have been able to formulate or lay down their own procedure as indicated hereinbefore or otherwise.

For the reasons aforementioned, although we are of the opinion that fulfillment of the conditions laid down in the proviso contained in Clause (b) of Sub-section (3) of Section 14 of the Act are imperative in character, the authorities may take recourse to the aforementioned procedure in respect of seizure of a hard disk.

We, in the facts and circumstances of the case, think that it is necessary to explain the legal position so that the complications arising out of seizure of hard disk may be avoided in future. The hard disk, however, has already been returned. We have noticed hereinbefore the offer made by the Respondents and, thus, the authorities may now ask the representative of the Respondents \026 Company to make themselves available and obtain his signatures on the receipt or otherwise of the hard copies; in terms of their undertaking in the counter-affidavit.

We, however, set aside that portion of the impugned judgment whereby and whereunder personal costs have been imposed upon the officers. The appeal is allowed to the aforementioned extent and with the aforementioned observations and directions. The parties shall pay and bear their own costs.