

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 14861 OF 2016(O&M)
Date of decision: 26.08.2016

M/s Hans Raj and Sons

.. Petitioner

vs.

The State of Punjab and another

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
 Hon'ble Mr. Justice Harinder Singh Sidhu**

Present:- Mr. Sandeep Goyal, Advocate
 for the petitioner.

 Mr. Jagmohan Bansal, Addl. A.G., Punjab

Rajesh Bindal, J.

The petitioner has approached this Court praying for quashing the provisional assessment order dated 30.05.2016 passed by the Excise and Taxation Officer-Cum-Designated Officer, Barnala(Annexure P-11) against the petitioner.

Learned counsel for the petitioner submitted that in terms of the provisions of Section 30 of the Punjab Value Added Tax Act, 2005 (in short 'the Act'), provisional assessment could be framed within a period of 6 months from the date of detection of evasion of tax. The submission is that the inspection of the premises of the petitioner was carried out on 12.10.2015. The notice pointing out the discrepancies in the books of accounts of the petitioner was issued on 27.11.2015. The provisional assessment could finally be framed within a period of six months therefrom even if that date is taken as the date on which the department, found out that there was evasion of tax by the petitioner.

On the other hand, learned State counsel submitted that no doubt notices were initially issued to the petitioner, however, the petitioner continued delaying the proceedings and final notice was issued on 18.04.2016. The order of assessment passed was within six months therefrom, hence, not beyond limitation.

We have learned counsel for the parties and perused the paper book.

The fact that the business premises of the petitioner was inspected on 12.10.2015, is not in dispute. Though the petitioner claimed that it received notice on 27.11.2015 (Annexure P-3) under Section 30 of the Act proposing to frame provisional assessment however in reply to the petition, the stand of the respondents is that firstly the petitioner was directed to appear on 15.10.2015. When the petitioner did not appear till 18.10.2015, fresh notice was issued for 26.10.2015 and the case was adjourned thereafter on a number of occasions, before notice was issued on 27.11.2015 for 07.12.2015. The provisional order of assessment was passed on 30.05.2016.

Section 30 of the Act reads as under:-

“30 Provisional Assessment - (1) Notwithstanding anything contained in section 29, where fraud or willful neglect has been committed with a view to evade or avoid the payment of tax or due tax has not been paid or a return has not been filed by or on behalf of a person, the designated officer may, for the reasons to be recorded in writing, make provisional assessment for any period to determine the tax liability so evaded,

avoided or unpaid:

Provided that tax liability of such a person shall be assessed finally after he files his return in the prescribed manner.

(2) The provisional assessment under sub-section (1) shall be made within a period of six months from the date of detection. The Commissioner may, however, for reasons to be recorded in writing, extend the period by another six months in a particular case referred to him by the designated officer.”

A perusal of the aforesaid provision shows that the Designated Officer has been empowered to make provisional assessment of a dealer, for the reasons to be recorded in writing, where, he inter-alia finds that there is an intention to evade tax. The provisional assessment is to be framed within a period of six months from the date of detection. The Commissioner may, for the reasons to be recorded in writing, extend the said period by another six months in a particular case, referred to him by the designated officer.

After the inspection of the business premises of the petitioner on 12.10.2015, show cause notice dated 27.11.2015 was issued to the petitioner for appearance on 7.12.2015. It has been mentioned that certain discrepancies have been found in the books of accounts of the petitioner, which were seized at the time of inspection and subsequently produced by the petitioner before 27.11.2015, after the inspection was carried out. The notice reads as under:-

“Regarding the aforesaid subject you are being informed
that your firm was inspected on 12.10.2015. The firm

submitted its trading account till 30.09.2015 in which the closing stock was of ₹1,01,29,529/-. The stock which was given by the firm and on the basis of rate, the stock which was found in the shop valuing ₹27,33,805/-. There is a difference of ₹73,95,724/-. During the inspection of purchases it has been found that the firm has made certain local purchases. To verify the same, your case has been fixed for 07.12.2015 in order to frame provisional assessment u/s 30 of the Punjab VAT Act, 2005 for the period from 01.04.2015 to 30.09.2015. You are hereby being directed to appear before the undersigned on 07.12.2015 with all the account books sale and purchase vouchers in Room No. 44, 2nd Floor, Mini Secretariat, Barnala at 11 A.M.

It is pertinent to mention here that in case of non appearance on the aforesaid date and time your case would be decided ex-parte and you would be subjected to penalty amounting to ₹10,000 u/s 60 of Punjab VAT Act, 2005.”

A perusal of the aforesaid notice shows that the alleged evasion of tax was referred to by the Designated Officer while issuing notice on 27.11.2015. In terms of the provisions of Section 30(2) of the Act, the provisional assessment could be framed within a period of six months from the date of detection. If the period is taken from the date of notice, six months period expired on 27.05.2016. However, the provisional order of

assessment was passed on 30.05.2016, beyond the period of six months. It is not the case of the department that any extension was either sought by the Designated Officer or granted by the Commissioner for framing the provisional assessment.

Considering the fact that the provisional assessment has been framed after a period of six months from the date, evasion was allegedly detected, the order deserves to be quashed.

Ordered accordingly.

However, quashing of the order in question will not affect the regular assessment proceedings of the petitioner, may be considering the same material.

The petition stands disposed of.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

26.08.2016
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Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No