

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4083 of 2016 (O&M)
Date of decision: 28.7.2016

M/s Chancellor Club, Gurgaon

.. Petitioner

v.

The State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sandeep Goyal and Mr. M. K. Dutta, Advocates for
the petitioner.

...

Rajesh Bindal J.

1. This order will dispose of two petitions bearing CWP Nos. 4083 and 4084 of 2016, as the issues involved in both the petitions are identical.

2. The facts have been extracted from CWP No. 4083 of 2016.

3. Challenge in the petition is to the order dated 27.8.2015, passed by Excise and Taxation Commissioner, Haryana under the provisions of the Punjab Entertainment Duty Act, 1955 (for short, 'the Act').

4. Learned counsel for the petitioner submitted that assessment of the petitioner under the provisions of the Act for the assessment years 2003-

04 to 2008-09 was framed vide orders dated 20.5.2014. The orders were challenged in appeals. The Joint Excise and Taxation Commissioner (Appeals), vide common order dated 12.12.2014, accepted the appeals and set aside the orders of assessment opining them to be barred by limitation. Aggrieved against that order passed by Joint Excise & Taxation Commissioner (Appeals), the department preferred revisions before the Excise and Taxation Commissioner, who vide common order dated 27.8.2015 accepted the same and while setting aside the order passed by the first appellate authority remanded the matter back for fresh adjudication as the issues on merits had not been gone into.

5. While challenging the order passed by the Excise and Taxation Commissioner, even though the matter had been remitted back to the lower appellate authority for decision on merits, learned counsel for the petitioner sought to raise the issue of limitation for assessment, the ground on which its appeals were accepted by the first appellate authority and entertainment of revision by the revisional authority. Learned counsel for the petitioner submitted that assessment of the petitioner under the provisions of the Act for the assessment years 2003-04 to 2008-09 was framed by the Entertainment Tax Officer, Gurgaon vide orders dated 20.5.2014. Aggrieved against the orders, the petitioner preferred appeals before the Joint Excise & Taxation Commissioner, who vide common order dated 12.12.2014, accepted the appeals and set aside the orders of assessment opining the same to be beyond the period of limitation. Aggrieved against the order passed by the first appellate authority, the department preferred revision before the Excise & Taxation Commissioner, who while accepting the revision, remitted the matter back to the first appellate authority for

fresh consideration on merits.

6. Learned counsel for the petitioner further submitted that the revisional authority had gone wrong in opining that the orders of assessment passed by the Entertainment Tax Officer were within the period of limitation, if seen in the light of the provisions of the Act. He further submitted that the revision filed by the department before the revisional authority was belated and there was no application filed for condonation of delay. As per the provisions of the Act, even delay could not be condoned. Further, the submission is that the order passed by the Joint Excise & Taxation Commissioner was not revisable before the Excise & Taxation Commissioner. It is the suo-motu power and the department could not invoke the same.

7. After hearing learned counsel for the petitioner, we do not find any merit in the submissions made.

8. The relevant provisions of the Act and the Punjab Entertainment Duty Rules, 1956 (for short, 'the Rules') are reproduced hereunder:

“Sections 10-A and 12 of the Act

10A. Keeping of accounts, submission of returns etc. (1) A proprietor may be required to keep accounts, and submit returns, in the manner prescribed.

(2) If the prescribed authority is satisfied that the entertainemtns duty has not correctly been levied, collected and paid, he may, within a period of five years, from the date the entertainments duty had become due after giving the proprietor a reasonable opportunity of being heard proceed to levy the

amount of entertainments duty due and recover the same.

xx

xx

xx

12. Power of revision. The Commissioner or such other officer, as the Government may, by notification, appoint in this behalf may of his own motion [or on application made within a period of sixty days from the date of the order], call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in reference thereto as he may deem fit.

Provided that the Commissioner or the other officer may, before deciding such application direct applicant to deposit, in whole or in part, the amount of duty due, and the penalty, if any, imposed on him under this Act.

xx

xx

xx

Rule 17 of the Rules

17. Assessment. (1) When it appears to the Entertainment Tax Officer concerned that an assessment of payment for admission in case of free concessional, surreptitious or unauthorised entries should be made, he shall serve upon the proprietor a notice in Form PED 4.

(a) Calling upon him to produce his books of accounts or other documents which such officer wishes to examine together with any objection which the proprietor may wish to prefer and any evidence which he may wish to produce in support thereof.

(b) Stating the period or periods in respect of which assessment is proposed.

(c) Fixing a date, ordinarily not less than ten days after the date of service of the notice for producing such accounts and document and consideration of the objections, which the proprietor may prefer.

Provided that such notice shall not relate for a period prior to 5 years from the date of issue of notice.

(2) Where the Entertainment Tax Officer is satisfied that proprietor has duly paid in full the amount of entertainments duty due from him on the entries under assessment, he shall discharge the notice in Form PED 4 served upon the proprietor and shall send an intimation to that effect to him.

(3) Where after considering any objections made by the proprietor and any evidence produced in support thereof, the Entertainment Tax Officer determines the liability of the proprietor for a sum higher than the amount of entertainments duty admitted by the proprietor, he shall record an order stating briefly reasons upon which his decision is based.

“(3A) Where the Entertainment Tax Officer has determined the liability of the proprietor for a sum higher than the amount of entertainments duty admitted by the proprietor, he shall serve upon the proprietor a notice in form PED 4A calling upon him as to why a penalty of the amount to be specified therein, be not imposed and shall pass an order after considering the reply, if any submitted by such proprietor.”

(4) Every Entertainment Tax Officer shall maintain a register in Form PED 5 in which he shall enter the details of each case started under sub rule (1) above.”

9. As far as the issue regarding the assessment being barred is concerned, in our opinion, the contention is totally misconceived. A bare perusal of the language of Section 10A of the Act shows that the prescribed authority has been given power to proceed to levy entertainment duty within a period of five years from the date the duty became payable. In similar line is the language of Rule 17 of the Rules, which provides that notice issued for assessment shall not relate to a period prior to five years from the date of issuance of notice. It is not the case of the petitioner that notice for assessment issued by the Entertainment Tax Officer to the petitioner was beyond a period of five years, for a period for which the assessment was sought to be framed, as even for the first assessment year, namely, 2003-04, notice was issued on 29.1.2009, well within 5 years. The language of the Act and the Rules, as referred to above, does not suggest that assessment proceedings have to be concluded within five years for the period involved, hence, the contention, being misconceived, is rejected.

10. The second issue raised is regarding the maintainability of the revision filed by the department before the Excise & Taxation Commissioner. A perusal of Section 12 of the Act shows that power of revision could be invoked by the Excise & Taxation Commissioner *suo-motu* or on an application made within a period of 60 days from the date of order passed by any authority subordinate to him. It does not debar a revision filed by the department being party to the litigation. The proviso of Section 12 of the Act, which was sought to be relied upon by learned

counsel for the petitioner, to state that revisional jurisdiction could only be invoked by a party, as there is a condition of pre-deposit, is merely to be noticed and rejected, as proviso to a Section will not control the contents of the main Section. Further, the contention that Excise & Taxation Commissioner is not the competent authority is also totally misconceived as language of the Section provides that the Commissioner can revise an order passed by any authority subordinate to him. It was not disputed at the time of hearing that Joint Excise & Taxation Commissioner in the department of Excise & Taxation is an authority subordinate to the Excise & Taxation Commissioner.

11. As far as the limitation regarding filing of revision by the department before the Excise and Taxation Commissioner is concerned, the Section provides that jurisdiction could be invoked within a period of 60 days from the date of order. The revision was preferred by the department on 3.6.2015. The opening form attached with the revision filed by the department before the Excise & Taxation Commissioner shows that it is dated 3.6.2015 and the date on which the order was communicated to the authority, who filed the revision, was 16.4.2015. The issue was raised by the petitioner before the Excise & Taxation Commissioner as well and was considered and rejected, noticing the fact that as per the memorandum of revision, copy of the impugned order was received by the department on 16.4.2015 and counting therefrom, the revision had been filed within 60 days. No material was referred to by learned counsel for the petitioner either before the revisional authority or before this court to controvert the facts so recorded by the revisional authority, hence, it cannot be opined that the revision preferred by the department before the Excise & Taxation

Commissioner was beyond limitation.

12. For the reasons mentioned above, we do not find any merit in the present petitions. The same are, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

28.7.2016
mk

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No