IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

1. COCP No.3012 of 2015

M/s Munshi Ram Walaiti Ram

....Petitioner

Versus

D.P. Reddy, IAS & Another

....Respondents

And

2. COCP No.3013 of 2015

M/s Munshi Ram Walaiti Ram

....Petitioner

Versus

D.P. Reddy, IAS & Another

....Respondents

Date of Decision: 22.03.2017

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. M.S. Sindhu, Advocate for the petitioner.
Mr. Anant Kataria, DAG, Punjab assisted
by Sh. Sharanjit
Singh, A.E.T.C, Shambu for the respondents.

JASWANT SINGH,J

This order shall dispose of aforesaid two contempt petitions since common questions of law and facts are involved in the same. For the same of convenience, the facts are being extracted from COCP No.3012 of 2015.

Petitioner-assessee by way of filing the instant contempt petitions under Article 215 of the Constitution read with Sections 11 & 12 of the Contempt of Courts Act, 1971 has alleged willful disobedience by the respondents of the order dated 07.08.2015 (P.1) passed by this Court; with further prayer to restrain the respondents from enforcing the demand on the basis of assessment order dated 14.11.2014 (P.2) served upon him on 29.9.2015.

Learned counsel for the petitioner contends that the assessment order dated 11.11.2014 (P.2), which was served on the petitioner on 29.9.2015 is not only *void ab initio* being in violation of the interim stay dated 17.11.2014 granted by a Division Bench of this Court in CWP No.23466 of 2014; but also runs contrary to the observation of the Division Bench as contained in para 59,60 & 81 of the judgment dated 07.8.2015.

On the other hand, learned State counsel assisted by Sh. Sharanjit Singh, A.E.T.C, Shambu submits that the action of the respondent is perfectly legal and justified as there is no disobedience of the order passed by this Court much less to say willful. Moreover, even if this Court is of the opinion that the facts and circumstances require any fresh adjudication at the hands of the respondents, in the light of the judgment dated 07.8.2015, then they will have no objections to undertake that exercise as per law.

Heard learned counsel for the parties and perused the paper book with their able assistance.

Petitioner is a taxable person registered under the Punjab Valued Aided Tax Act, 2005 (for short "2005 Act") as well as Central Sales Tax Act, 1956 (for short "1956 Act") at Nabha bearing Tax Identification No.03691053433. The dispute is regarding the assessment year 2006-2007 and the counting period is 01.4.2006 to 31.3.2007. The petitioner was the authorized dealer of kerosene and furnace oil at the relevant time and was engaged in the sale and purchase of kerosene and furnace oil from M/s Bharat Petroleum Corporation Ltd, Mathura.

It transpires that all four quarterly returns were filed by the petitioner within the stipulated period but the respondent on the basis of judgment of Hon'ble Supreme Court dated 11.12.2008 in case of M/s A&G Projects and Technology Ltd, State of Karnatka issued a notice dated 07.9.2009 under Section 29 of 2005 Act and continued the proceedings till 06.12.2009 and the matter remained dormant till 05.6.2014, when another notice was issued and proceedings continued till 25.7.2014. Thereafter, a fresh notice was issued on 13.10.2014 for the reasons best known to the respondents and the judgment was reserved by the Designated Officer on 13.11.2014, which was ultimately released on 14.11.2014, the concluding para of which reads as under:

> "*12. By doing so intentionally as discussed in the foregoing paragraphs, mens rea is also established against the Taxable Person and rendered himself liable for penal action by way of penalty and interest for which notice had already been issued. In view of above facts, the assessment of the Taxable Person is framed as under by rejecting the claim of the Taxable person as sales in transit, levying tax being intra state sales, penalty and interest under Section 56,60 and 32 of the PVAT Act, 2005:*

Gross Turnover:	Rs.5,76,17,032-74	OUTPUT TAX
Less sales @ 4%	Rs.5,76,17,032-74	Rs.23,04,681.00
Balance	Nil	
Total Outpur tax determined		Rs.23,04,681.00
CALCULATION OF ITC:		
Gross purchases	Rs.5,70,81,005.60	
Less Inter State purchases	Rs.4,54,78,612.00	
Balance purchases eligible For ITC	Rs.1,16,02,393.60	INPUT TAX CREDIT
Less purchases admissible	Rs.1,16,02,393.60	Rs.4,64,096.00

For ITC @ 4%	
Add Tax Paid	Rs.21,450.00
Total ITC available including tax paid	Rs.4,85,546.00
Less Output Tax as determined above	Rs.23,04,681.00
Balance due and payable	Rs.18,19,135.00
Penalty under section 56 of the Act ibid	Rs.36,38,270.00
Interest under section 32 for 98 months @ 1.5 %	Rs.26,74,128.00
Penalty under section 60	Rs.10,000.00
Total demand	Rs.81,41,533.00

Issue TDN and challan for Rs.81,41,533/- (Rs. Eighty One Lacs Forty One thousands Five Hundred and Thirty Three only).

To be communicated Sd/- (SHARANJIT SINGH)

Dated: 14.11.2014 Excise and Taxation Officer-cum-

Designated Officer, Nabha Distt Patiala"

In pursuance of the order dated 14.11.2014, a Tax Demand Notice dated 14.11.2014 under Form VAT-56 was also prepared by the Designated Officer. In the order dated 14.11.2014, the Designated Officer has specifically recorded the order "to be communicated" but admittedly and undisputedly it was never communicated before 29.9.2015 and that was precisely the stand of the respondents in reply to para 3 of the writ petition as well and which reads as under:

> "*That the judgment in this case was reserved on 13.11.2014 in the presence of Sh. Jiwan Kumar Bansal, partner, Manager and counsel of the Firm, which was released on 14.11.2014 after carefully considering the relevant records & written submission furnished by the petitioner from time to time along with the provisions of CST Act, 1956, <u>which has not been communicated to the petitioner due to the orders passed by this Hon'ble Court in the present petition</u>.*"

A perusal of paper book reveals that the petitioner filed

CWP No.23446 of 2014 challenging the vires of Section 6 of the Punjab Value Aided Tax (Second Amendment) Act, 2013 (for short "2013 Amendment") vide which Section 29 of the 2005 Act was amended and the consequent notice dated 07.10.2014 served on the basis of 2013 Amendment. Section 29 before Amendment and after Amendment w.e.f 15.11.2013 reads as under:

Before amendment on 15.11.2013 Section 29(4).	**After amendment from 15.11.2013 Section 29(4).**
An assessment under sub section (2) or sub-section (3) may be made within **(three)** years, after the date when the annual statement was filed or due to be filed whichever is later. PROVIDED THAT where circumstances so warrant, the Commissioner may by an order in writing, allow able person or a registered person after three years, but not later than six years, from the date, when annual statement was filed or due to be filed by such person, whichever is later.	An assessment under subsection (2) or sub-section (3), may be made within **(six)**years, after the date when the annual statement was due to be filed whichever is later. PROVIDED THAT the assessment under sub section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20thday of November, 2014. **EXPLANATIONS**: (1) The limitation period of six years for an assessment under sub-section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired. (2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.

The writ petition came up for hearing on 17.11.2014 and a Division Bench of this Court was pleased to pass the following order:

"Notice of motion for 29.12.2014.

Interim order in the same terms as order dated 30.10.2014 passed in CWP No.21811 of 2014. To be heard along with CWP No.21811 of 2014."

The interim order dated 31.10.2014 passed in CWP No.21811 of 2014 being relevant reads as under:

"Notice of motion for 19.12.2014.

Proceedings will continue but no final order shall be passed."

CWP No.23446 of 2014 filed by the petitioner was dismissed along with other connected writ petitions vide judgment dated 07.8.2015 (P.1) and the observations of the Division Bench recorded in paragraphs Nos. 59,60 & 81 read as under:

" 59. Xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

For the year 2006-07, the assessee is not bound to keep the books after 31.03.2013. The amendment, however, extends the period of assessment to 20.11.2014. For the year 2007-08, the assessee is bound to keep the books upto 31.03.2014. The amendment, however, extends the period of assessment to 20.11.2014. Thus, if a notice under Section 29(2) is given even on the basis of the amendment before 31.03.2014, an assessee would have kept the books but if it is given after 31.03.2014 it is possible that the assessee would not have preserved the books. For the years 2008-09 and 2009-10, this situation would not arise as everything would be back in place. For instance, under Rule 47 of the PVAT Rules, 2005, the notice for the purpose of provisional assessment must provide a time period of not less than 10 days for production of such accounts and documents as may be specified in the notice and a person who has been served such a notice is required to produce on the specified date and time accounts and documents as mentioned in the notice. The petitioners contend that for the years 2006-07 and 2007-08 it is possible that the *assessee may not have preserved the books beyond the period that they were statutorily bound to. The petitioner in this petition for instance submits that it had sold its edible oil business and the manufacturing facility to another entity as an inseparable whole and as a going concern on slump sale basis with effect from 10.02.2012. The reference pertains to the assessment year 2006-07. It would, therefore, be very difficult for it to locate the original records pertaining to this period. The amendment, however, extends the date for completing the assessment, beyond the period for which the books were to be preserved statutorily. Thus, if in respect of these assessment years, a notice is given for assessment, such assessees would be prejudicially affected for they would be unable to produce the books. In that event, they may be subjected to a best assessment for no fault of theirs. This, it is contended, is unfair, arbitrary and unduly excessive.*

60. This may well be a difficulty in the way of an assessee. It is not, however, such an insuperable difficulty as to render the enactment unconstitutional. <u>If the books are not available because they were destroyed or are otherwise unavailable to the assessee prior to the amendment, it would always be open to the assessee to bring this to the notice of the Assessing Authority who must take the same into consideration. It would be open to the assessee to take this factor as a defence and a justification for not having preserved the books. Obviously, in such cases, an adverse inference cannot be drawn against the assessee</u>. The validity of the amendment, therefore, cannot be struck down on the ground that it is unconstitutional for this reason."

81. We mentioned at the outset that in several connected writ petitions, the counsel agreed that the result of those writ petitions would follow the result of this writ petition. However, in some of those writ petitions, the challenge is also to the show cause notices issued and/or assessment orders made. It is clarified that all the contentions on-merits are kept open and the petitioners concerned in all

> *the connected writ petitions are relegated to the appropriate remedy in respect thereof except on the grounds already dealt with in this judgment. All the petitioners concerned in the connected writ petitions are granted four weeks time from today to enable them to adopt the appropriate proceedings. In cases where the assessment orders have already been passed, coercive steps shall not be taken upto and including 21.09.2015."*

As a sequel to the aforesaid discussion, it is apparently clear that the order dated 14.11.2014 was never communicated to the petitioner, in view of the interim stay granted by the Division Bench of this Court and the writ petition was finally although dismissed on 07.8.2015; but with certain observations as reproduced hereinabove and the same has not been followed either in letter or in spirit. The order, which was pronounced on 14.11.2014 by respondent No.2, has been communicated by another Officer on 29.9.2015 without due application of mind and has not taken into consideration the import of the observation made by Division Bench of this Court reproduced hereinabove.

For the aforesaid discussion, this Court instead of proceeding further for non-compliance of the observations made by Division Bench, as contained in para 59,60 & 81 of Judgment dated 07.8.2015 deems it expedient to quash and set aside the assessment order dated 14.11.2014 conveyed on 29.9.2015 for the assessment year 2006-2007 and 2007-2008 with liberty to the respondents to pass fresh order by giving due opportunity of hearing to the petitioner within a period of three months from the receipt of certified copy of order, in accordance with law.

Ordered accordingly. Parties are directed to appear before the Assessing Authority/Excise and Taxation Officer-cum-Designated Officer, Nabha, District Patiala on 16.5.2017.

March 22, 2017 (JASWANT SINGH)
Manoj JUDGE