

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

CWP No. 16333 of 2016
Date of decision: 26.07.2017

M/s Huawei Telecommunications India Co. Pvt. Ltd.

.....Petitioner

Vs.

The State of Haryana and another

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Ms. Mamta Singla Talwar, DAG, Haryana.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the assessment order dated 31.03.2016, Annexure P.3 for the assessment year 2012-2013 passed by respondent No.2-Excise and Taxation Officer-cum-Assessing Authority, Gurgaon, being in violation of the principles of natural justice as no notice in Form VAT N-2 had ever been served upon the petitioner within time, which is a pre-requisite for initiating assessment proceedings as per Section 15 of Haryana VAT Act, 2003 (in short, "HVAT Act").

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a multi-national company having its Head Office at Gurgaon. It is

engaged in the business of trading and manufacturing of telecommunication equipment. For the purpose of sales tax in the State of Haryana, the petitioner got itself registered with Assessing Authority, Gurgaon on 16th October 2006. Prior to 21.08.2013, the petitioner was having its principal place of business at 14th Floor, Tower-C, Unitech Cyber Park, Sector 39, Gurgaon. Thereafter, the petitioner shifted its principal place of business to 7th and 8th Floor, Tower-A, Spaze I-Tech Park, Sohna Road, Sector 49, Gurgaon. The petitioner duly filed an application for amendment in the registration certificate intimating the change in registered/communication address. In pursuance thereto, the department changed the address of the petitioner in its record. For the assessment year 2012-13, the petitioner filed its quarterly as well as Annual Return in Forms R-1 and R-2 respectively in compliance with the provisions of HVAT Act. According to the petitioner, no notice in Form VAT N-2 had ever been served upon it. On 10th June 2016, to the utter surprise of the petitioner, the official of the Excise and Taxation Department, Gurgaon served the assessment order dated 31.03.2016 upon it for the year 2012-13 raising a demand of ₹ 2,43,623/- under the HVAT Act and ₹ 8,77,96,656/- under the Central Sales Tax Act, 1956 (in short, "CST Act"). The demand under the CST Act had been raised on account of non-production of declaration Forms and turnover had been taxed at 13.125%. Interest under Section 14(6) of HVAT Act had been levied to the tune of ₹ 4,00,81,082/-. According to the petitioner, limitation period as per Section 15 of the HVAT Act for completion of assessment is three years from the end of the relevant financial year. For the assessment year 2012-13, limitation period expired on 31st March 2016. The demand order in Form N-4 was served on 10th June

2016 by hand at the petitioner's new address. From the assessment order and the notice of demand, it transpired that respondent No.2 failed to serve any notice upon the petitioner as the same was being served at its old address. The petitioner asserts that it had already changed the principal place of business and the same had been intimated to the Department. The petitioner applied for inspection of the assessment file on 02.08.2016 from which it transpired that no notice in Form VAT N-2 had been served on the petitioner as there was no copy of the same available on the file. It was further noticed that the notices dated 01.03.2016 and 16.03.2016 had been sent at the old address of the petitioner, as a result of which, the same could not be served upon the petitioner. Since the order in question is alleged to have been passed in violation of principles of natural justice, the petitioner is left with no alternative remedy but to approach this Court through the instant writ petition.

3. A written statement has been filed by respondent No.2 for and on behalf of respondent Nos.1 and 2 wherein a preliminary objection has been raised that the petitioner has challenged the validity of an ex-parte assessment order dated 31.03.2016, Annexure P.3, without exhausting the alternative and efficacious remedy of appeal which was available to it in terms of Section 33 of the HVAT Act.

4. Learned counsel for the petitioner submitted that the petitioner had changed its address and intimation thereof was given to the Assessing Authority vide letter dated 15.09.2013. Even the return for the year in question i.e. 2012-13 was filed on 30.11.2013 by mentioning the new address. Still the assessment was framed on 31.03.2016 by sending the notices on the old address and affixation was

made when the firm was not found to be existing there. Learned counsel for the petitioner further submitted that the substantial demand had been raised under the CST Act only in the absence of production of statutory declaration form and export sales which were in possession of the petitioner and could be produced in case opportunity was given.

5. We have heard learned counsel for the parties.

6. After perusing the averments made in the petition and the preliminary objection raised by the respondents, we find that the petitioner has an alternative remedy of appeal against the impugned order. The narration of facts noticed hereinbefore clearly shows that certain factual matrix is required to be established for which the first appellate authority would be proper forum instead of invoking writ jurisdiction of this Court under Articles 226/227 of the Constitution of India at the first instance.

7. The Apex Court in *Commissioner of Income Tax and others vs. Chhabil Dass Agarwal*, (2013) 357 ITR 357, considered the question of entertaining writ petition where alternative statutory remedy was available. After examining the relevant case law on the point, it was recorded as under:-

“14. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.

15. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ

jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See: ***State of U.P. vs. Mohammad Nooh***, AIR 1958 SC 86; ***Titaghur Paper Mills Co. Ltd. vs. State of Orissa***, (1983) 2 SCC 433; ***Harbanslal Sahnia vs. Indian Oil Corpn. Ltd.***, (2003) 2 SCC 107; ***State of H.P. vs. Gujarat Ambuja Cement Ltd.***, (2005) 6 SCC 499).

16. The Constitution Benches of this Court in ***K.S. Rashid and Sons vs. Income Tax Investigation Commission***, AIR 1954 SC 207; ***Sangram Singh vs. Election Tribunal, Kotah***, AIR 1955 SC 425; ***Union of India vs. T.R. Varma***, AIR 1957 SC 882; ***State of U.P. vs. Mohd. Nooh***, AIR 1958 SC 86 and ***K.S. Venkataraman and Co. (P) Ltd. vs. State of Madras***, AIR 1966 SC 1089 have held that though Article 226 confers a very wide powers in the matter of issuing writs on the High Court, the remedy of writ absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

(See: ***N.T. Veluswami Thevar vs. G. Raja Nainar***, AIR 1959 SC 422; ***Municipal Council, Khurai vs. Kamal***

Kumar, (1965) 2 SCR 653; *Siliguri Municipality vs. Amalendu Das*, (1984) 2 SCC 436; *S.T. Muthusami vs. K. Natarajan*, (1988) 1 SCC 572; *Rajasthan SRTC vs. Krishna Kant*, (1995) 5 SCC 75; *Kerala SEB vs. Kurien E. Kalathil*, (2000) 6 SCC 293; *A. Venkatasubbiah Naidu vs. S. Chellappan*, (2000) 7 SCC 695; *L.L. Sudhakar Reddy vs. State of A.P.*, (2001) 6 SCC 634; *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra*, (2001) 8 SCC 509; *Pratap Singh vs. State of Haryana*, (2002) 7 SCC 484 and *GKN Driveshafts (India) Ltd. vs. ITO*, (2003) 1 SCC 72).

17. In *Nivedita Sharma vs. Cellular Operators Assn. of India*, (2011) 14 SCC 337, this Court has held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. In *Thansingh Nathmal v. Supdt. of Taxes*, AIR 1964 SC 1419 this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7).

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 this Court observed: (SCC pp. 440-41, para 11)

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*, 141 ER 486 in the following passage: (ER p. 495) ‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’ The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*, 1919 AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.*, 1935 AC 532 (PC) and *Secy. of State v. Mask and Co.*, AIR 1940 PC 105 It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

14. In *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

“77. ... So far as the jurisdiction of the High Court under Article 226-or for that matter, the jurisdiction of this Court under Article 32-is concerned, it is obvious that the

provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.””(See: *G. Veerappa Pillai v. Raman & Raman Ltd.*, AIR 1952 SC 192; *CCE v. Dunlop India Ltd.*, (1985) 1 SCC 260; *Ramendra Kishore Biswas v. State of Tripura*, (1999) 1 SCC 472; *Shivgonda Anna Patil v. State of Maharashtra*, (1999) 3 SCC 5; *C.A. Abraham v. ITO*, (1961) 2 SCR 765; *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433; *H.B. Gandhi v. Gopi Nath and Sons*, 1992 Supp (2) SCC 312; *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1; *Tin Plate Co. of India Ltd. v. State of Bihar*, (1998) 8 SCC 272; *Sheela Devi v. Jaspal Singh*, (1999) 1 SCC 209 and *Punjab National Bank v. O.C. Krishnan*, (2001) 6 SCC 569)

18. In *Union of India vs. Guwahati Carbon Ltd.*, (2012) 11 SCC 651, this Court has reiterated the aforesaid principle and observed:

“8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in *Munshi Ram v. Municipal Committee, Chheharta*, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).

“23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.”

8. This Court in *Larsen and Toubro Limited v. The State of Haryana and others*, 2012(2) 166 PLR 345, considering the question of entertaining writ petition where alternate statutory remedy was available, had in paras 6 and 7 observed thus :-

“6.The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies:-

i) where the writ petition seeks enforcement of any of the fundamental rights;

ii) where there is failure of principles of natural justice;
or

iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

7. We are not inclined to entertain this petition against the assessment order as it does not fulfil any of the broad outlines noticed herein above.....”.

7. In view of the above, the writ petition is disposed of by relegating the petitioner to alternative remedy of appeal against the impugned order dated 31.03.2016. In case, the appeal is filed within 30 days from the date of receipt of a certified copy of this order, the same shall not be dismissed on the ground of limitation and decided by the respondents expeditiously in accordance with law.

(Ajay Kumar Mittal)
Judge

July 26, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes