IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16609 of 2019
Date of decision: 19.2.2020

M/s Shiva Traders
.. Petitioner

v.

Union Territory of Chandigarh and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Goyal, Mr. Rishab Singla, Mr. Puneet Bassi, Mr. Ishan Malhotra, Mr. Chetan Jain, Mr. Navdeep Monga, Mr. Pranav Jain, Mr. Avneet Singh, Mr. B. D. Rana, Mr. Ravinder Arora and Mr. Amit Aggarwal, Advocates for the petitioners.

Mr. Ajay Jagga, Senior Panel Counsel for U.T., Chandigarh.

...

AVNEESH JHINGAN, J.

The following writ petitions have been filed seeking quashing of impugned notices/assessment orders being time-barred:

Sr. No.	*Petition No.*	*Assessment year*	*Impugned notice/assessment order*
1	16609 of 2019	2010-11	Notice
2	16613 of 2019	2010-11	Notice
3	16744 of 2019	2010-11	Notice
4	16747 of 2019	2010-11	Notice
5	16763 of 2019	2010-11	Notice
6	17448 of 2019	2009-10 and 2010-11	Notice
7	18541 of 2019	2010-11	Notice
8	18746 of 2019	2009-10	Notice
9	21771 of 2019	2010-11	Notice
10	22133 of 2019	2010-11	Notice
11	22289 of 2019	2010-11	Notice
12	22584 of 2019	2009-10 and 2010-11	Notice
13	22735 of 2019	2009-10	Notice
14	22924 of 2019	2009-10	Notice
15	23172 of 2019	2010-11	Notice
16	23461 of 2019	2010-11	Notice

Sr. No.	Petition No.	Assessment year	Impugned notice/assessment order
17	23620 of 2019	2010-11	Notice
18	23916 of 2019	2010-11	Notice
19	24079 of 2019	2009-10	Notice
20	24107 of 2019	2010-11	Notice
21	24127 of 2019	2009-10	Notice
22	24146 of 2019	2009-10	Notice
23	24445 of 2019	2010-11	Notice
24	24485 of 2019	2010-11	Notice
25	24616 of 2019	2010-11	Notice
26	24641 of 2019	2009-10	Notice
27	24670 of 2019	2009-10 and 2010-11	Notice
28	24970 of 2019	2010-11	Notice
29	24983 of 2019	2009-10	Notice
30	25556 of 2019	2008-09 and 2010-11	Notice
31	26425 of 2019	2010-11	Notice
32	26462 of 2019	2009-10	Notice
33	27488 of 2019	2009-10 and 2010-11	Notice
34	27500 of 2019	2009-10 and 2010-11	Notice
35	27750 of 2019	2009-10	Notice
36	28591 of 2019	2009-10	Notice and assessment order dated 28.08.2019
37	28677 of 2019	2009-10	Notice
38	29659 of 2019	2010-11	Notice
39	30350 of 2019	2008-09 and 2009-10	Notice and assessment order dated 26.08.2019
40	30393 of 2019	2010-11	Notice and assessment order dated 26.08.2019
41	30567 of 2019	2008-09	Notice
42	16308 of 2019	2008-09	Notice
43	16310 of 2019	2010-11	Notice
44	16322 of 2019	2010-11	Notice
45	16325 of 2019	2009-10	Notice
46	33859 of 2019	2009-10 and 2010-11	Notices and assessment orders dated 28.08.2019
47	33938 of 2019	2009-10 and 2010-11	Notices and assessment orders dated 28.08.2019

The assessment years involved in all these petitions are from 2008-09 to 2010-11. The notices for assessment under Section 29(2) of the Punjab Value Added Tax Act, 2005 (for short, 'the Act') (as applicable to

Union Territory, Chandigarh) were issued in the year 2019 and in C.W.P. Nos. 28591, 30350, 30393, 33859 and 33938 of 2019, after issuance of notices in 2019, assessment orders were finalised in the year 2019. The case of the petitioners is that notices/assessment orders are beyond limitation as prescribed under Section 29(4) of the Act, hence are liable to be quashed.

Section 29(1) to (4) during the relevant assessment years read as under:

> “ **SECTION 29. ASSESSMENT OF TAX:**
>
> (1) Where a return has been filed under sub-section (1) or sub-section (2) of Section 26 or in response to a notice under sub-section (6) of Section 26, if any tax or interest is found due on the basis of such return, after adjustment of any tax paid and self-assessment and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the person specifying the sum so payable, and such limitation shall be deemed to be a notice of demand issued under sub-section (11) and all the provisions of this Act shall apply accordingly:
>
> PROVIDED THAT except as otherwise provided in this sub-section, the acknowledgment of the return shall be deemed to be an intimation under this sub-section, in case, either no sum is payable by the person or no refund is due to him:
>
> PROVIDED FURTHER THAT no intimation under

this sub-section shall be sent after the expiry of two years from the end of financial year in which the return is filed.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner or the designated officer, as the case may be, may, on his own motion or on the basis of information received by him, order or make an assessment of the tax, payable by a person to the best of his judgment and determine the tax payable by him, where,

(a) a person fails to file a return under section 26; or

(b) there are definite reasons to believe that a return filed by a person is not correct and complete; or

(c) there are reasonable grounds to believe that a person is liable to pay tax, but has failed to pay the amount due; or

(d) a person has availed input tax credit for which he is not eligible; or

(e) provisional assessment is framed.

(3) The Commissioner on his own motion or on the basis of information received by him, by an order in writing, direct the designated officer to make an assessment of the amount of tax payable by any person or any class of persons for such period, as he may specify in his order.

(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 assessment of a taxable 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."

The said provision was amended vide notification dated 29.6.2016 and following changes were made:

"**Amendment in section 29 of Punjab Act 8 of 2005**

6. In the principal Act, in section 29:-

(1) for sub-section (4), the following sub-section shall be substituted, namely:-

"4) An assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or 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 20th day 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"; and

(ii) after sub-section (10), the following sub-section shall be inserted, namely:-

"(10-A) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal or other authority, an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013 shall not be invalid on the ground of prior service of notice or communication of such order to the concerned person."

As per Section 29(1), if any amount is found due on the basis of return filed, an intimation is to be sent to the person specifying the sum payable then the same shall be deemed as demand notice. The first proviso to sub-section (1) states that acknowledgment of the return shall be deemed to be intimation under the sub-section either that no sum is payable or no refund is due. Sub-section (2) provides for best judgment assessment in the circumstances prescribed in clauses (a) to (e). As per sub-section (3), the Commissioner on his own motion or on an information received can order framing of an assessment by designated officer by any person or any class of persons for the period prescribed. Sub-section (4) provides limitation for making assessment under sub-section (2) or sub-section (3).

From the above provisions, it is evident that during the relevant time the limitation prescribed for making the assessment was within three years from the date when the annual statement was filed or was due to be filed, whichever was later. The said provision was amended and the period was extended to six years. In the explanation added, it was clarified that the period of six years would apply to those cases in which the period of six years had not yet expired.

For deciding the present petitions, we are not considering the issue as to whether the amended period of limitation of six years would apply to the present cases or not. We are proceeding by assuming that there was period of six years from the date of filing of the annual statement or when it was due.

As per Rule 40 of the Punjab Value Added Tax Rules, 2005 (as applicable to Union Territory, Chandigarh), the annual statement is to be filed by 20th November of the year concerned. The last assessment year involved in the bunch is assessment year 2010-11. The annual statement was to be filed by 20.11.2011 and six years expired on 19.11.2017. Admittedly, all the notices have been issued in the year 2019.

In spite separate writs, only a common reply has been filed in CWP No. 15870 of 2019. It would be relevant to quote the following stand taken by the respondents in the written statement:

> "The case of the petitioner and all other connected cases falls in the category of those assessment orders, which were finalized by committing a fraud and even computer entries were made fraudulently. As such show cause notices were issued as an opportunity to the petitioners to verify the correctness of assessment orders/computer entries and records of petitioners related to framed assessments."

Learned counsel for the respondents submitted that considering the circumstances, a memo No. 3628 dated 30.7.2018 was issued to all

Excise and Taxation Officers, Excise & Taxation Department and in pursuance to the memo notices were issued. He placed reliance on Section 29(7) of the Act and argued that in case of fraud or misrepresentation or escaped assessment, the assessment order can be amended. The same is reproduced below:

> "(7) The designated officer may, with the prior permission of the Commissioner, within a period of three years from the date of the assessment order, amend an assessment, made under sub-section (2), if he discovers under-assessment of tax, payable by a person for the reason that, -
>
> (a) such a person has committed fraud or wilful neglect; or
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> (b) such a person has misrepresented facts; or
>
> (c) a part of the turnover has escaped assessment:
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> PROVIDED THAT no order amending such assessment, shall be made without affording an opportunity of being heard to the affected person."

Learned counsel for the respondents was not able to dispute the fact that notices issued were under Section 29(2) of the Act and were beyond the period of six years

The reliance on memo dated 30.7.2018 is of no help. The relevant portion is quoted below:

> "To safeguard the Government revenue in the cases which have been falsely entered in electronic disposal registers pertaining to VAT assessments, the Competent Authority has ordered that the following steps are to be taken immediately:-

1. Scrutiny assessments in these cases will be framed by the concerned Designated Officers by issuing statutory notices to the concerned dealers as per provisions of the Punjab Value Added Tax Act, 2005 (as applicable to U.T., Chandigarh).

2. The concerned ward officers are also directed to check disposal registers of their wards for the last three years along with the additional demands created and submit the status report within fortnight."

(emphasis supplied)

Memo specifically states that the designated officers shall issue statutory notices as per the provisions of the Act whereas the notices under Section 29(2) were not in consonance with the provisions of the Act.

From the stand quoted above, it is forth coming that the case of the respondents is that assessment orders were finalised and computer entries were made, albeit fraudulently. No dates of assessment orders have been mentioned in the reply. In any case, if there was already an assessment order, there was no occasion to proceed under Section 29(2). From the writs challenging assessment orders, it is apparent that not only the notices under Section 29(2) were issued but the assessments were also framed under Section 29(2) of the Act. The contention of fraud does not enhance the case of the respondents. There is a specific provision, i.e. Section 29(7) authorising to amend the assessment order in eventuality of fraud etc., in the present case, though reliance has been placed on the said provision, however no action till date is initiated under Section 29(7). Moreover, under Section 65 of the Act, there are supervisory powers with the Commissioner to initiate revision proceedings who at his own motion can call the pending as well as disposed of proceedings by the subordinate authority.

Normally interference under Article 226 of the Constitution of India is not made in the cases where there is alternative statutory remedy available, more so against challenge to show cause notice or assessment order directly. The law is well-settled that exception can be given to the self imposed restriction, for enforcement of fundamental right in case of violation of principles of natural justice, the proceedings are without jurisdiction or vires are challenged. In **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1**, the Supreme Court held as under:

> "14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".
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> 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this

Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights where there has been violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

The facts are not disputed, admittedly the notices are beyond limitation and it is in these circumstances that interference is made in the writ petitions. The impugned notices/assessment orders are set aside.

However, it is clarified that the respondents shall be at liberty to proceed against the petitioners in accordance with law if so advised.

The writ petitions are allowed.

Considering the magnitude of the alleged fraud vis-a-vis the number of cases and the amount involved, as it is pleaded that in a single case there was involvement of ₹60 crores, one of the petition from the bunch has been kept pending for the respondents to file status report on the various aspects of the matter.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

19.2.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No