IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104 ***2023:PHHC:067370-DB***

CWP No. 21973 of 2020 (O & M)
Date of Decision: 10.05.2023

Aman Gupta .....Petitioner(s)

Versus

State of Haryana and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Raj Kumar Chandiwal, Advocate,
for the petitioner.

Mr. Arun Beniwal, DAG, Haryana.

****

G.S.SANDHAWALIA, J. (Oral)

1. Prayer in the present writ petition filed under Article 226 of the Constitution of India is for quashing of demand notice dated 04.02.2020 (Annexure P-1) wherein, an *ex parte* order of assessment was passed against M/s. Aman Enterprises by the Excise and Taxation Officer-cum-Assessing Authority, Sonipat and tax demand of Rs.2,19,53,519/- was made. As per demand notice dated 25.02.2020 (Annexure P-13), the amount due which was sought to be recovered from the petitioner was pertaining to the year 2016-17 as per the assessment made. The recovery certificate was issued on 19.06.2020 (Annexure P-19) by way of arrears of land revenue and the outstandings were against the petitioner who is stated to be proprietor of M/s. Aman Enterprises, against whom the assessment had been made in pursuance of which the recovery certificate has been issued to recover the arrears as such.

2. Counsel for the petitioner has argued that his firm is in the name and style of M/s. Mehak Enterprises and he has nothing to do with M/s.

Aman Enterprises and the firm was not owned by the petitioner and not connected with him in any manner.

3. In the reply filed by the State, the stand is that the petitioner has filed the writ petition without exhausting the statutory remedies available under Section 33 of the Haryana VAT Act, 2003 and CST Act. There is a remedy of appeal provided before the Joint Excise and Taxation Commissioner (Appeal) against the assessment orders. The statutory remedy being available to the petitioner as such and, therefore, the writ petition is not maintainable.

4. It has also been averred that the Excise and Taxation Officer, Sonipat had received application dated 27.04.2015 (Annexure R-1) from the petitioner who is stated to be the resident of A-82, Kamla Nagar, Delhi for issuance of the registration certificate under the Haryana VAT Act, 2003 and the Central Sales Tax Act, 1956 in favour of M/s. Aman Enterprises of which he was a proprietor. A bank guarantee had also been issued and reference is also made to the PAN card and the voter card which have been attached as Annexures R-3 and R-4. It has been further averred that physical verification of the business premises was done and registration certificate had also been issued including the TIN number. The four quarterly returns for the assessment year 2015-16 and two returns for 2016-17 had been filed for the first and second quarter. The notices for framing assessment had been issued and the dealer had been directed to appear and submit the requisite documents but he did not turn up and registered notices were also sent. Thereafter, *ex parte* assessment had been framed.

5. The said averments have been controverted by taking the plea that there was impersonation regarding the registration certificate under the

Haryana VAT Act, 2003 and, therefore, reliance has been placed upon the opinion of the hand writing expert.

6. In our considered opinion, once there is an alternative and efficacious remedy provided by way of filing an appeal, the writ Court would not step in as an alternative Forum. The issue stands settled regarding the said aspect and the principles have been laid down by the Apex Court in ***United Bank of India vs. Satyawati Tondon and others, (2010) 8 SCC 110*** wherein, the following was laid down.

> *30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*
>
> *(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
>
> *(b) the petition reveals all material facts;*
>
> *(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
>
> *(d) person invoking the jurisdiction is guilty of unexplained delay and laches;*
>
> *(e) ex facie barred by any laws of limitation;*
>
> *(f) grant of relief is against public policy or barred by any valid law; and host of other factors.*
>
> *The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further,*

> *empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."*

7. Keeping in view the above, we are of the considered opinion that the petitioner has a remedy of filing an appeal and he cannot as such skip the same and come under Articles 226 and 227 of the Constitution of India. Also the disputed questions cannot as such be settled in writ jurisdiction whether there was impersonation or not and the writ Court is not in a position to opine upon it.

8. Accordingly, the petition stands dismissed as not maintainable. All pending applications also accordingly stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

10.05.2023
shivani

(GURBIR SINGH)
JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes