

**VATAP No. 89 of 2016 (O&M) and
VATAP No. 97 of 2016 (O&M)**

2025:PHHC:028023-DB



**208-a IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**1. VATAP No. 89 of 2016 (O&M)
Date of Decision: February 24, 2025**

M/s Jullundhur Engineering CompanyAppellant

Versus

State of Punjab and others Respondents

2. VATAP No. 97 of 2016 (O&M)

M/s Jullundhur Engineering CompanyAppellant

Versus

State of Punjab and others Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

**Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Kashish, Advocate for appellant in VATAP-89-2016.**

**Mr. Aditya Narayan Arya Garg, Advocate for
Mr. Rahul Sharma, Advocate for appellant in VATAP-97-2016.**

Mr. R.S. Pandher, Sr. DAG, Punjab.

LISA GILL, J.

**1. This order shall dispose of two appeals i.e. VATAP Nos. 89 and
97 of 2016 which are taken up together for adjudication and decision, at
request and with consent of learned counsel for parties as both the appeals**

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arise out of common order dated 26.05.2016 passed by learned Value Added Tax Tribunal, Punjab, Chandigarh (for short – ‘the Tribunal’).

2. Notice for re-assessment under Section 27 of the Punjab VAT Act, 2005 (for short – ‘PV Act, 2005’) was issued for Assessment years 2009-10 and 2010-11. Before issuance of said notices, permission was sought from Excise and Taxation Commissioner for carrying out amendment in the assessment earlier carried out, for the reasons as were duly detailed therein. Sanction was granted by Commissioner vide memo dated 29.01.2014. Appellants preferred appeals against order granting permission.

3. Effective question raised for adjudication was whether order granting permission/sanction for re-assessment had been correctly passed and whether the Commissioner is entitled to grant such permission for re-assessment without affording opportunity of hearing to the Assessee.

4. Learned Tribunal on considering the facts and circumstances concluded that letter sent by the designated Officer for seeking permission contained all grounds and details which were duly perused by Commissioner, who correctly approved the request for amendment of assessment earlier carried out with there being no requirement of affording an opportunity of hearing to assessee at that stage. Learned Tribunal dismissed the appeals filed by present appellants alongwith six other similar appeals filed by others, while correctly confining itself to the limited question of correctness and validity of order granting permission for re-assessment.

5. Question as raised in these appeals is squarely covered in favour of the Department, in view of decision dated 08.07.2015 passed in CWP-12851-2014, filed by none other but present appellant itself wherein prayer

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addressed was for setting aside Section 29(7) of PV Act, 2005 as unconstitutional besides being illegal and invalid, statedly violative of principles of natural justice. Appellants also sought setting aside of order dated 29.01.2014 passed by Excise and Taxation Commissioner under Section 29(7) of PV Act, 2005 (which is also the subject matter of present appeals) granting permission to amend assessment order for assessment years 2009-10 and 2010-11 and consequential notices issued thereafter.

6. CWP Nos. 12851 and 12847 of 2014 filed by present appellants were dismissed by co-ordinate Division Bench of this Court on 08.07.2014, alongwith other writ petitions filed by similarly situated petitioners, lead case being CWP-12839-2014 titled 'M/s Surbhi Armouring Incorporation, Bulandpur versus The State of Punjab and others'.

7. Identical arguments, as raised in the writ petitions above, have been raised before us today by learned counsel for appellants. It is submitted that order dated 29.01.2014 granting sanction for re-assessment could not have been passed without affording opportunity of hearing to the Assessee. While reiterating the arguments as raised in writ petitions mentioned above, learned counsel for appellants prayed that present appeals be allowed, with learned counsel for the respondent seeking dismissal of these appeals.

8. It is to be noted that vide order dated 08.07.2014 in CWP-12839-2014 and other connected writ petitions, vires of Section 29(7) of PV Act were upheld, approval given by Commissioner and notices issued by concerned authority for amending assessment order were held to be in order and without any fault. While reproducing Section 29(7) of PV Act, 2005 it was held as under:-

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“ A plain reading of Section 29 (7) of the PVAT Act shows that the designated officer within a period of three years from the date of assessment is authorised to amend assessment order made under Sub section 2 or 3 of Section 29 of the PVAT Act if he discovers that there has been under-assessment of tax payable by a person as a result of fraud or willful neglect or misrepresentation of facts on the part of such person or part of the turnover has escaped assessment. However, the amendment of an assessment order is subject to seeking prior permission from the Commissioner and after affording an opportunity of hearing to the affected person by the designated officer.”

9. Reference was thereafter made to Rule 49 of Punjab VAT Rules in regard to amendment of assessment and procedure to be followed therein. In respect to question of grant of opportunity of hearing at the stage of grant of approval, while referring to judgment of Hon’ble the Supreme Court in **Assistant Commissioner Assessment-II, Bangalore and others versus Velliappa Textiles Limited and another (2003) 11 SCC 405**, it was held that grant of sanction is a purely administrative act with no opportunity of hearing required to be provided to the affected person before it. Reference was also made to judgment of Hon’ble the Supreme Court in **Subramanian Swamy vs. Manmohan Singh and another (2012) 3 SCC 64** and it was held as under:-

“ Section 29(7) of the PVAT Act nowhere envisages personal hearing to be provided to the dealer before granting of prior permission by the Commissioner. The grant of permission is an administrative function and cannot be termed to be quasi judicial in nature. The prior permission of the Commissioner has been incorporated to safeguard the interest of the dealer so that the designated officer, where he is of the opinion that action is

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required to be taken, seeks approval of the higher officer of the rank of Excise and Taxation Commissioner. The dealer is provided with an opportunity of hearing at the time when the designated officer after getting approval from the Commissioner proceeds to amend the assessment order. Under the circumstances, the provision in question cannot be termed to be unreasonable, unconstitutional and ultravires.”

10. In the given factual matrix, learned Tribunal has correctly proceeded to dismiss the appeals filed by present appellant. In our considered opinion, no question of law is involved for consideration in these appeal.

11. Keeping in view the facts and circumstances as above, no ground whatsoever is made out for interference in these appeals which are accordingly, dismissed being devoid of any merit.

**(LISA GILL)
JUDGE**

**(ALOK JAIN)
JUDGE**

February 24, 2025
Rts

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