(2020) 02 P&H CK 0238

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16609 Of 2019

M/s Shiva Traders — APPELLANT

Vs

Union Territory Of Chandigarh And Others — RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Punjab Value Added Tax Act, 2005 — Section 29, 29(2), 29(4)
Punjab Value Added Tax Rules, 2005 — Rule 40
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 P&H CK 0238

Hon'ble Judges : Ajay Tewari, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Sandeep Goyal, Rishab Singla, Puneet Bassi, shan Malhotra, Chetan Jain, Navdeep Monga, Pranav Jain, Avneet Singh, B. D. Rana, Ravinder Arora, Amit Aggarwal, Ajay Jagga

Final Decision : Allowed

Judgement

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

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

24","24445 of 2019

24485 of 2019","2010-11

2010-11","Notice

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

â??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:-",,,

â??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 assessmentâ?; and (ii) after sub-section (10), the following sub-",,,

section shall be inserted, namely:-",,,

â??(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.â??,,,

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:,,,

â??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.â??,,,

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:",,,

â??(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,,,

(b) such a person has misrepresented facts; or,,,

(c) a part of the turnover has escaped assessment:,,,

PROVIDED THAT no order amending such assessment, shall be made without affording an opportunity of being heard to the affected person.â??",,,

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:,,, â??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.â??,,,

(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:",,,

â??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 â??any other,,,

purposeâ??.,,,

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.â??,,,

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.,,,

