**SUPREME COURT OF INDIA**

Commissioner of Trade and Taxes

Vs.

Ahluwalia Contracts (India)Ltd.

C.A.No.15605-15606 of 2017

(Ranjan Gogoi and Navin Sinha,JJ.,)

04.10.2017

**JUDGMENT**

**Ranjan Gogoi,J.,**

SLP(Civil)No.9631-9632 of 2017

1. Leave granted.

2.A recital of the facts of the Civil Appeals arising out of Special Leave Petition (Civil) Nos.9631-9632 of 2017 alone are being made as the facts in the other connected proceedings [i.e. Civil Appeals arising out of Special Leave Petition (Civil) Nos.10485/2017 and 9633/2017] are largely similar.

3. The challenge by the Revenue is to an order of the High Court of Delhi by which the High Court has allowed the writ petitions filed by the respondents - Assessees challenging the orders issued by the Designated Authority i.e. Additional Commissioner of Income Tax rejecting the applications filed by the Respondent writ petitioners under the Delhi Tax Compliance Achievement Scheme, 2013 (hereinafter referred to as "the Amnesty Scheme"), details of which are noted below.

4. Under Section 107 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as "the DVAT Act"), the Government of National Capital Territory of Delhi ("GNCTD" for short) is empowered to notify amnesty scheme(s) covering payment of tax, interest, penalty or any other dues under the DVAT Act relating to any period ending before 1st April, 2013.

5. In exercise of powers under Section 107 of the DVAT Act, an Amnesty Scheme was notified by the GNCDT on 20th September, 2013. Clause 2(c) of the Amnesty Scheme which defines the ' designated authority; clause 4 which delineates the procedure for making declaration and payment of tax dues; clause 5 which deals with immunity from interest, penalty and other proceedings; and the provisions of clause 8 which deals with the failure

to make true declarations would require a consideration of the Court. The same are, therefore, reproduced below for convenience:

> "2(c) "designated authority" means officer(s) not below the rank of Joint Commisioner as notified by the Commissioner, Value Added Tax for the purposes of this Scheme;
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> 4. Procedure for making declaration and payment of tax dues - (1) Subject to the other provisions of this Scheme, a person may make a declaration of the tax dues to the designated authority on or before the 31st day of January 2014 in Form DSC-1 appended to this notification.
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> (2) The designated authority shall acknowledge the receipt of declaration in Form DSC-2 appended to this notification, within a period of fifteen working days from the date of receipt of the declaration.
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> (3) The declarant shall pay not less than fifty per cent of the tax dues declared under sub-clause (1) along with the declaration and submit proof of such payment to the designated authority.
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> (4) The remaining amount of tax dues or part thereof remaining to be paid after adjusting the payment made under sub-clause (3) shall be paid by the declarant on or before the 21st day of March, 2014.
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> (5) Notwithstanding anything contained in sub-clause (3) and sub-clause (4), any tax which becomes due or payable by the declarant for the tax period(s) beginning from 1 day of April, 2013 and thereafter shall be paid by him in accordance with the provisions of the Act: Provided that where an unregistered dealer has made Declaration referred to in sub-clause (1) of this clause, such dealer shall obtain registration and pay net tax for the period from 1 day of April, 2013 to the date of regisration and furnish return in Form DVAT-16 for that period along with proof of payment in Form DVAT-20 to the designated authority at the time of furnishing of declaration under this Scheme. Such a dealer shall be eligible for immunity under clause 5 ofteh Scheme for late payment of such tax and non-filing of return under the Act.
>
> (6) The declarant shall furnish to the designated authority, details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-clause (2).
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> (7) On furnishing the details of full payment of declared tax dues payable under sub-clause (4), the designated authority shall issue an acknowledgement of discharge of such dues within fifteen days to the declarant in Form DSC-3 appended to this notifycation.

(8) A dealer who has not taken registration shall obtain registration prior to filing of declaration as referred in sub-clause (1) of clause 4. Likewise, a person who is responsible for making deduction of tax under section 36A of the Act, shall obtain a Tax Deduction Account Number (TAN), if not already obtained.

5. Immunity from interest, Penalty and other proceedings.-(1) Notwithstanding anything contained in any provision of the Scheme, the declarant, upon payment of the tax dues declared by him under sub-clause (1) of clause 4, shall get immunity from penalty or penalties, interest other than interest payable in terms of sub-clauses (2) and (4) of clause 3, prosecution or any other proceedings under the Act or, as the case may be, under the Central Sales Tax Act, 1956 or the erstwhile Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002) or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 (Delhi Act 4 of 1995), in relation to the tax dues declared by the declarant; and from penalty and prosecution for non-registration and non-furnishing of returns in time.
Explanation.- For the purpose of this sub-clause, the term "declarant" shall include-

(1) in relation to the declarant being a contractee, who has awarded the works contract under section 36A(1) of the Act, his immediate contractor to whom he has awarded the works contract, to the extent of amount declared by the contractee; and
(ii) in relation to the declarant being a contractor, his immediate contractee who has awarded the works contract under section 36A(1) of the Act.

Explanation -For removal of doubts, it is hereby declared that, to avoid double taxation, if the contractee has declared tax dues, his immediate contractor will also get immunity to that extent, and vice-versa.

(2) Subject to the provisions of clause 8, a declaration made under sub-clause (1) of clause 4 shall be come conclusive upon issuance of acknowledgement of discharge under sub-clause (7) of clause 4 and no matter shall be reopened/ reassessed/ reviewed thereafter in any proceedings under this Scheme or under the Act before any authority or court relating to the period covered by such declaration to the extent of tax dues declared by the declarant.

(3) All statutory appeals/ Revisions pending before quasi-judcial forums upto the stage of Tribunal shall be deemed to have been withdrawn once the Scheme is opted for. Further, all matters pending in the High Court and Supreme Court shall be withdrawn by the declarant and he will need to submit the application filed for withdrawl with the declaration. for the case to be withdrawn before the court.

(4) No proceeding shall be instituted within 48 hours of securing a registration, provided, the registrant declares his intent of opting under the Scheme at the time of applying for TIN/ TAN.

(5) The information gathered vide a declaration under the scheme shall be kept confidential and shall not be used except under the Scheme and the same shall not be shared with any other person/ government department/agency.

8. Failure to make true declaration.-(1) Notwithstanding anything contained in clause 5 of the Scheme, where the Commissioner has, for a period beginning from 1st April, 2009, Reasons to believe that the declaration was false in material particulars, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause as to why he should not be required to pay the tax dues unpaid or short-paid as per the provisions of the Scheme.

(2) If the Commissioner is satisfied, for reasons to be recorded in writing, that the declaration made by the dealer was substantially false,

(i) he shall within three months of service of notice under sub-clause (1) make assessment of tax and penalty under section 32 and 33 of the Act, as if that dealer had never made declaration under this Scheme. However, the dealer shall be entitled to the credit of tax paid by him under this Scheme; and

(ii) such dealer may be proceeded under sub-section (2) of section 89 of the Act for furnishing of false declaration.

(3) No notice shall be issued under sub-clause (1) of this clause after the expiry of one year from the date of declaration."

6. There is no dispute between the parties that on the basis of the declaration filed by the respondent - Assessee, the Designated Authority had issued the "acknowledgement of discharge" in favour of the respondent- Assessee. However, on 16th January, 2015 a show cause notice in exercise of powers under clause 8 of the Amnesty Scheme was issued by the Additional Commissioner (Spl. Zone), Department of Trade and Taxes, New Delhi to which the respondent - Assessee submitted its reply on 27th January, 2015. In the reply so submitted, the respondent - Assessee did not raise any question with regard to the jurisdiction of the Additional Commissioner to issue the show cause notice under clause 8. The adjudication was finalized by order dated 11th February, 2015 which was served to the Assessee. The Assessee then filed the writ petitions in question before the High Court contending, inter alia, that the show cause dated 16th January, 2015 was unauthorized and without jurisdiction inasmuch as the power to issue such notice under clause 8 is vested with the Commissioner and the same had not been delegated to the Designated Authority i.e. the concerned Additional Commissioner. The said contention found favour with the High Court. Accordingly, the writ Petitions filed by the respondents - Assessees were allowed and the impugned consequential proceedings were interfered with. The High Court also took the view that as under clause 8(3) of the Amnesty Scheme show cause notice has to be issued within one year of the date of declaration which in the present case was made on 18th February, 2014 and 28th February, 2014, respectively, issuance of any further/fresh show cause notice was time barred. Aggrieved the Revenue is in appeal before this Court.

7. Shri Maninder Singh, learned Additional Solicitor General appearing for the Revenue has vehemently contended that the Government Order dated 30th April, 2014 contains a clear delegation of the power under clause 8 of the Amnesty Scheme by the Commissioner to the Designated Authority. The power of disposal of the application received under the Scheme, according to the learned ASG, must necessarily include the power to finalize the matter after issuing the show cause notice under clause 8 in an appropriate case. Learned ASG has further urged that under clause 4 the declarations are required to be considered by the Designated Authority i.e. the Additional Commissioner. It is natural that the power to reopen the cases concluded on mistaken/suppressed facts must be understood to have been available to the Designated Authority at all times.

8. The above contentions are contested by Shri S. Ganesh, learned Senior Counsel appearing for the respondents - Assessees who has urged that keeping in mind the necessity of finality of decisions under the Amnesty Scheme, the power of reopening the concluded cases by issuing show cause notices has been conferred on a higher authority i.e. the Commissioner. The said power has to be distinguished from the power to decide an application filed, which is vested in the designated authority under Clause 4. It is urged that in the present case the power vested in the Commissioner under clause 8 has not been delegated to any other authority, in the absence whereof, it was not open for the Additional Commissioner to issue the impugned show cause notice dated 16th January, 2015. The fact that the Assessee did not raise the issue of jurisdiction before the Adjudicating Authority would not clothe the Additional Commissioner with the jurisdiction to issue the show cause notice. As the said issue is primarily a question of law which goes to the root of the matter the question could always have been raised before the High Court. The same having been so raised and answered by the High Court, the answer provided needs to be dealt with by this Court on merits and ought not to be foreclosed merely on the ground that the respondents - Assessees had not raised the same in the course of the adjudication of the show cause notice. Learned Senior Counsel has referred to the provisions of clause 8(3) of the Amnesty Scheme to contend that the show cause notice under clause 8 has to be issued within one year of the date of declaration/declarations and there is no enabling provision to condone any delay that has occurred or extend the time stipulated by clause 8(3). As the period of one year from the date of declaration Is long over, in the event this Court is to hold that the impugned show cause notice was issued by the Authority which did not have the power and jurisdiction to So act the question of issuance of any fresh/revised notice does not arise.

9. On the rival contentions, two issues arise for consideration in the present appeal.

10. The first relates to the power and jurisdiction of the Designated Authority to issue the notice under clause 8 of the Amnesty Scheme. Related, is whether, in the present case, there has been any delegation of the said power which is vested in the Commissioner under the aforesaid clause 8.

11. The second issue arising would depend on an answer to the first, namely, if it is to be held that the Designated Authority is not empowered to act under clause 8, whether a fresh

notice under the aforesaid clause of the scheme can still be issued by the competent authority i.e. the Commissioner or the delegatee of the Commissioner.

12. What category of officers would come within the expression "designated authority" is contemplated by the definition contained in clause 2 (c) of the Amnesty Scheme. An Officer not below the rank of Joint Commissioner as may be notified by the Commissioner would be a designated authority under the Scheme.

13. Clause 4 of the Scheme requires a declaration of the tax due to be made to the designated authority and, thereafter, following the procedure prescribed by the various sub-clauses of clause 4, the Designated Authority is empowered to issue the acknowledgment of discharge of dues under clause 4 (7) of the Scheme.

14. Under clause 8 of the aforesaid scheme, the Commissioner is vested with the power, to be exercised for reasons recorded in writing, to issue notice to the assessee requiring him to show cause as to why he should not pay the tax/ dues unpaid or short paid as per the provisions of the scheme. The power to issue the notice under clause 8 is undoubtedly vested with the Commissioner and not in the Designated Authority. What is vested in the Designated Authority is the power under clause 4 of the Scheme which is the power to hear and decide applications and issue acknowledgments of discharge on due satisfaction. The said power to hear and decide applications, by no means, would include the power to reopen a decided matter which is what clause 8 specifically contemplates. The Government order dated 30th April, 2014 relied upon by the Revenue as a delegation of the power under clause 8, on a plain reading thereof, is only an empowerment of a particular Additional Commissioner of a particular Zone (a Zone may have several Additional Commissioners) to hear and decide applications filed under the Scheme. The said G.O dated 30th April, 2014 cannot be construed to be an exercise of delegation of powers vested in the Commissioner under Clause 8 to Designated Authority. The plain language contained in the said G.O is capable of sustaining the above conclusion. We will, therefore, have to hold that the Additional Commissioner who had issued the show cause notice under clause 8 in the present case was not competent to do so and on that basis we affirm the conclusion of the High Court on the said question.

15. This will bring us to a consideration of the second issue arising in the case details of which have already been mentioned in preceding paragraphs of the present order.

16. The declarations in the present case were issued to the assessee on 18th February, 2014 and 28 th February, 2014 respectively. The show cause notice under Clause 8 was issued on 16th January, 2015. The reply was submitted by the respondent-assessee on 27th January, 2015. The adjudication was completed by the Order dated 11th February, 2015 against which the respondent-Assessee filed a writ petition before the High Court on 4th March, 2015. In the reply filed by the respondent-Assessee to the show cause notice or in the proceedings pursuant thereto, as already mentioned, no objection was taken by the assessee to the power and jurisdiction of the Additional Commissioner to issue the notice in question. The adjudication order, therefore, did not deal with the said issue. It is only after the period of

one year from the date of declaration was over that the writ petition was filed wherein the question of jurisdiction of the Additional Commissioner was raised for the first time. It is in these facts that the High Court took the view that as the period of limitation prescribed by Clause 8(3) was over, fresh proceedings stood barred by time.

17. While it is correct that the failure to raise the issue of jurisdiction by the assessee will not necessarily clothe the Additional Commissioner with the jurisdiction if the same is not contemplated by law, there are certain aspects of the case which need to be considered. Had the assessee raised the question of jurisdiction in its reply or in the course of the adjudication proceedings there would have been still time for the Commissioner to cure the defect and issue a valid notice. Cases under Amnesty Scheme would fall outside the arena of ordinary and routine matters and, therefore, it is possible to attribute a genuine mistake on the part of the Additional Commissioner in invoking jurisdiction under Clause 8 of the Amnesty Scheme. The question that looms large before the Court is that whether in such a situation the assessee should be allowed to raise the question of limitation and defeat the claim of the revenue to proceed afresh in the matter on that basis.

18. Dealing with a somewhat similar situation that arose before this Court in *Grindlays Bank Ltd. vs. Income Tax Officer, Calcutta and Ors.*[1] it was observed as follows in Para 7 of the report in the following manner.

> "7. The next point is whether the High Court possessed any power to make the order directing a fresh assessment. The principal relief sought in the writ petition was the quashing of the notice under Section 142(1) of the Income Tax Act, and inasmuch as the assessment order dated March 31, 1977 was made during the pendency of the proceeding consequent upon a purported non-compliance with that notice, it became necessary to obtain the quashing of the assessment order also. The character of an assessment proceeding, of which the impugned notice and the assessment order formed part, being quasi-judicial, the "certiorari" jurisdiction of the High Court under Article 226 was attracted. Ordinarily, where the High Court exercises such jurisdiction it merely quashes the offending order and the consequential legal effect is that but for the offending order the remaining part of the proceeding stands automatically revived before the inferior court or tribunal with the need for fresh consideration and disposal by a fresh order. Ordinarily, the High Court does not substitute its own order for the order quashed by it. It is, of course, a different case where the adjudication by the High Court establishes a complete want of jurisdiction in the inferior court or tribunal to entertain or to take the proceeding at all. In that event on the quashing of the proceeding by the High Court there is no revival at all. But although in the former kind of case the High Court, after quashing the offending order, does not substitute its own order it has power nonetheless to pass such further orders as the justice of the case requires. When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be

neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. The present case goes further. The appellant would not have enjoyed the advantage of the bar of limitation if. notwithstanding his immediate grievance against the notice under Section 142(1) of the Income Tax Act, he had permitted the assessment proceeding to go on after registering his protest before the Income Tax Officer, and allowed an assessment order to be made in the normal course. In an application under Section 146 against the assessment order, it would have been open to him to urge that the notice was unreasonable and invalid and he was prevented by sufficient cause from complying with it and therefore the assessment order should be cancelled. In that event, the fresh assessment made under Section 146 would not be fettered by the bar of limitation. Section 153(3)(i) removes the bar. But the appellant preferred the constitutional jurisdiction of the High Court under Article 226. If no order was made by the High Court directing a fresh assessment, he could contend as is the contention now before us, that a fresh assessment proceeding is barred by limitation. That is an advantage which the appellant seeks to derive by the mere circumstance of his filing a writ petition. It will be noted that the defect complained of by the appellant in the notice was a procedural lapse at best and one that could be readily corrected by serving an appropriate notice. It was not a defect affecting the fundamental jurisdiction of the Income Tax Officer to make the assessment. In our opinion, the High Court was plainly right in making the direction which it did. The observations of this Court in *Director of Inspection of Income Tax (Investigation) New Delhi v. Pooran Mall & Sons*[2] are relevant. It said: The Court in exercising its powers under Article 226 has to mould the remedy to suit the facts of a case. If in a particular case a court takes the view that the Income Tax Officer while passing an order under Section 132(5) did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the Income Tax Officer was correct or dismissing the petition because otherwise the party would get an unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of a case the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a court quashes an order because the principles of natural justice have not been complied with, it should not while passing that order permit the tribunal or the authority to deal with it again irrespective of the merits of the case.

The point was considered by the Calcutta High Court in *Cachar Plywood Ltd. v. ITO*[3] and the High Court, after considering the provisions of Section 153 of the Income Tax Act, considered it appropriate. while deposing of the writ petition, to issue a direction

to the Income Tax Officer to complete the assessment which, but for the direction of the High Court, would have been barred by limitation."

19. Having considered the matter and the manner in which this Court has approached the issue arising in Grindlays Bank Ltd. (supra) we are of the view that Clause 8(3) of the Amnesty Scheme will have no application to the present case where the initial show cause notice was issued within time and its legitimacy was not contested by the respondent-Assessee. Had such legitimacy been questioned at the stage of reply or even in the course of the adjudication proceedings, there would still have been room/ time for the revenue to correct the error that had occurred. A rectified Notice could even have been issued after the order of adjudication was passed on 11th February, 2015. The close proximity of time between the reply submitted by the assessee to the Show Cause Notice (27.01.2015) and the proceedings in adjudication Revenue on the one hand and the date of filing of the Writ Petition (4.3.2015) would permit us to infer that the conduct of the assessee in raising the issue in the writ petitions and not earlier was not entirely bonafide. The respondent-Assessee, therefore, cannot be allowed to take advantage of its own wrong. The courts exercising extraordinary jurisdiction cannot be understood to be helpless but concede to the assessee an undeserved victory over the Revenue. The power of the High Court under Article 226 of the Constitution, wide and pervasive as it is, should have enabled the High Court to appropriately deal with the situation and issue consequential directions permitting initiation of fresh proceedings, if the Revenue was so inclined. The High Court having failed to so act, we now correct the error and issue directions to enable the Revenue to issue a fresh notice to the assessee under clause 8 of the Amnesty Scheme, if it so desires and is so advised.

20. In the light of the foregoing, we allow these appeals in terms of the directions as above and set aside the order of the High Court impugned in the appeals.

Judgment Referred.

[1]*(1980) 2 SCC 0191*
[2]*(1975) 4 SCC 0568*
[3]*(1978) 114 ITR 0379 (Cal)*