CIVIL MISCELLANEOUS.

Before A. N. Grover, J.

MAYA RAM BHATIA,—*Petitioner.*

versus

K. K. UPAL,—*Respondent.*

Civil Writ No. 2198 of 1964.

1964

December, 16th.

Constitution of India (1950)—Article 226—Existence of alternative remedy—Whether a bar to the maintainability of a writ petition—Procedure prescribed by a taxing statute for redress of grievance—Whether can be ignored—Conduct of the petitioner—Whether relevant—Punjab General Sales Tax Act (XLVI of 1948)—SS. 10, 20 and 21—Order imposing penalty passed by Assessing Authority other than that before whom assessment proceedings pending—Remedy by way of appeal and revision—Whether equally effective and should be exhausted.

Held, that even though the existence of alternative remedies may not constitute an insuperable bar to the maintainability of a writ petition under Article 226 of the Constitution of India, yet in some cases, a petitioner should not be permitted to by-pass and ignore proper procedure prescribed by the legislature for the redress of grievances under taxing statutes. In this connection the conduct of the petitioner is also very relevant.

Held, that an order passed by an Assessing Authority imposing penalty under section 10(7) of the Punjab General Sales Tax Act, 1948, is valid even if it has been passed by an Assessing Authority other than the one before whom the assessment proceedings are pending and no order transferring the proceedings to him is necessary to be passed.

Held, that the order imposing the penalty which has been impugned could be appealed against under section 20 of the Act even without the amount of penalty being deposited first before the appeal is entertained. Therefore, the remedy provided by section 20 is quite effective and could have been availed of by the petitioner. Yet a further remedy is provided by section 21 and that also could have been resorted to by the petitioner. There is no reason, in this case, to permit the petitioner to by-pass and ignore proper procedure prescribed in the Act.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, or any other appropriate writ, order or direction be issued quashing the order dated the 15th September, 1964, passed by the respondent under Section 10(7) of the Punjab General Sales Tax Act imposing a penalty of Rs. 25,000, for the year 1963-64.

BHAGIRATH DASS AND B. K. JHINGAN, ADVOCATES, for the Petitioner.

D. S. NEHRA AND K. S. NEHRA, ADVOCATES, for the Respondents.

ORDER

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GROVER, J.—This is a petition under Articles 226 and 227 of the Constitution of Maya Ram Bhatia, a *ghee* dealer of Amritsar. The firm of the petitioner is registered as a 'dealer' under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act). For the year 1963-64, namely from the 1st of April, 1963 to the 31st of March, 1964, four quarterly returns were filed by the petitioner and the amount of tax in accordance with the returns was deposited under section 10(4) of the Act. The gross turnover was Rs. 11,30,502.11 and the exemptions which were claimed were for Rs. 10,17,577.89. These returns were filed with the Assesing Authority, Amritsar, who had jurisdiction to deal with the matter in accordance with a notification of the 30th of March, 1949.

By a recent notification, dated the 10th of February, 1964, Shri K. K. Upal, Excise and Taxation Officer (Enforcement), has been appointed as an authority to assist the Excise and Taxation Commissioner under sub-sections (1) and (2) of section 3 of the Act. He is authorised to make any assessment within the whole of the State of Punjab. Shri S. K. Jain, Excise and Taxation Officer, had been similarly constituted an assessing authority for the whole of Punjab and he had issued notices prior to the 31st of March, 1964, for the three quarters ending the 31st of December, 1963. Against that a writ petition (Civil Writ No. 92 of 1964), was filed in this Court, which is stated to be still pending.

The respondent Shri K. K. Upal, who is functioning at Amritsar, issued a notice to the petitioner under section 10(7) of the Act requiring him to show cause why a penalty be not imposed in terms of that sub-section. According to

the petitioner this notice was issued on the 3rd of September, 1964 and the 15th of September, 1964, was fixed as the date of hearing. It is alleged by the petitioner that he was in Delhi on the 14th of September, 1964, from where he sent a telegram to the respondent praying for an adjournment of the case. The petitioner, however, finished his work in Delhi and returned to Amritsar by the night train. On the 15th of September, 1964, Shri Arjan Singh, Assistant Excise and Taxation Officer, visited his shop in the afternoon and found him there. By an order, dated the 15th of September, 1964, which was made *ex parte*, a penalty of Rs. 25,000 has been imposed on the petitioner by the respondent under section 10(7) of the Act. It is this order which has been impugned by the present petition.

In the order, dated the 15th of September, 1964, a few more details are stated as to the circumstances in which the *ex parte* order was made. The relevant portion of the order may be reproduced—

> "The dealer did not attend but managed to send a telegram No. A-5—New Delhi—dated 14th September, 1964, stating "CASE MAYA RAM BHATIA ASR. FIXED 15TH SEPTEMBER, 1964 UNABLE ATTEND DETAINED DELHI PRAY ADJOURNMENT—MAYARAM BHATIA." This dealer has always avoided production of account-books and has bad reputation. The telegram was suspected to be incorrect and false. In order to verify its incorrectness, Shri Tarsem Lal Constable was sent in plain clothes to see whether Shri Maya Ram Bhatia, was at the shop on the date of hearing. After visiting the spot he confirmed that Shri Maya Ram Bhatia, was sitting at his shop in Islamabad along with his sons. A gazetted officer, Shri Arjan Singh, Assistant Excise and Taxation Officer, was then deputed to confirm the facts and examine the accounts. He found Shri Maya Ram Bhatia, sitting at his shop. He requested him to produce the account-books of his business, but the latter did not produce and the statement to this effect was recorded by the assessing authority. While his statement was being recorded, Shri Maya

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Ram Bhatia, insisted on the assessing authority to record that he (Shri Maya Ram Bhatia), had just returned from Delhi. The guilty conscience discloses itself and this was all to cover up the telegram that he had got issued from New Delhi. Apart from this behaviour, I do not find any ground why the dealer should not make all possible arrangements to represent himself when called for, especially when sufficient notice was given for the purpose. The conduct of the dealer is such that he intentionally wanted to hold back the account-books which are false and incorrect. He has also avoided the production of declaration in form S.T. XXII asked for in the show-cause notice."

The respondent after a discussion of the various facts and circumstances came to the conclusion that the petitioner was liable to be assessed to tax on a turnover of Rs. 9,11,814, which would come to about Rs. 30,000. The penalty imposed was to the extent of Rs. 25,000 for maintaining false and incorrect accounts and furnishing false returns.

The first contention of Mr. Bhagirath Dass, learned counsel for the petitioner, is that the respondent had no jurisdiction to impose any penalty or take any proceedings under the Act, because the returns which had been filed were pending consideration by the Assessing Authority, Amritsar, and it was that authority alone which could make assessment as also levy penalty, if any. It is contended that in the absence of any specific order of transfer by the Excise and Taxation Commissioner the respondent had no jurisdiction to initiate or continue any proceeding under the Act, more so when Shri S. K. Jain, an authority exercising concurrent jurisdiction with the respondent, had already issued notices prior to the 31st of March, 1964, for the three quarters ending the 31st of December, 1963. Mr. Bhagirath Dass, relied on a Bench decision of this Court in Civil Writ No. 382 of 1964 (which was disposed of with some other writ petitions). There also assessment proceedings had commenced before the assessing authority at Amritsar, but notices had been issued by the Assessing Authority, Punjab, Chandigarh, in the matter of assessment relating to certain periods, for which proceedings were

pending before the assessing authority at Amritsar. The Chandigarh assessing authority had been appointed Divisional Enforcement Officer, Jullundur, and by a notification issued in the year, 1963, the Divisional Enforcement Officer had been authorised to assist the Excise and Taxation Commissioner and also authorised to make assessment under the Act within the whole of Punjab. The question which the Bench was called upon to decide was whether it was lawful for the officer appointed by the aforesaid notification to transfer to his own record pending cases of assessment from those of the assessing authority duly appointed under the rules. It was argued in that case that the place of business of the petitioner was at Amritsar, and normally he was to be assessed by the assessing authority having jurisdiction over that area, and holding of assessment proceedings away from Amritsar would entail a lot of inconvenience and harassment.

The Bench held that the appointment of the Divisional Enforcement Officer, who was the respondent there, was good and the scheme of the Act and the rules *prima facie* contemplate the place of assessment proceedings ordinarily to be at the dealer's place of business. The following observations are noteworthy for the purposes of this case:—

> "We do not mean, and of course we do not hold, that an assessment made by the respondent in respect of a dealer whose place of business is at Amritsar would be open to be struck down as invalid for want of inherent jurisdiction; and this, not even if the assessment proceedings had properly been commenced before the assessing authority functioning at Amritsar; nor do we hold that an irregular manner of seizing of an assessment proceeding would by itself attract jurisdictional infirmity necessarily vitiating a final assessment order. All that we hold in the instant case is that without a proper order transferring assessment proceedings completely from the file of the appropriate assessing authority actually seized of the present assessment proceedings at Amritsar, to the record of the respondent at Chandigarh, on a proper consideration of both the exigencies of tax

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collection and inconvenience to be caused to the assessee, the respondent's action is operating to the serious prejudice of the petitioner's rights, and the respondent should be restrained from so acting. In our opinion there should be a proper precise lawful order, transferring the petitioner's assessment proceedings from the record of the appropriate assessing authority actually seized of the matter, by which he would be bound, to that of the respondent."

It is clear from the above observations that the Bench did not lay down any general rule that an order of transfer was necessary in every such case as of the present nature. Indeed the Bench held that the jurisdiction of the authority functioning at Chandigarh could not be disputed, but owing to the peculiar facts of that case the view taken was that a transfer order was necessary. One of the main factors which weighed with the Bench was that the petitioner in that case would be put to a good deal of trouble and inconvenience by having assessment proceedings at Chandigarh and not at Amritsar. In the present case there are a few points of distinction which must be noticed.

The first is that the respondent is functioning at Amritsar and not at Chandigarh or at any other place at a considerable distance from Amritsar. The second is that the respondent has imposed a penalty under section 10(7) of the Act and has not made any assessment under the provisions contained in section 11 with regard to the periods of which returns have been filed with the assessing authority at Amritsar and which are still pending the consideration of that authority. I do not consider, therefore, that the impugned order deserves to be struck down on the ground that no specific order of transfer was made by the Excise and Taxation Commissioner transferring the proceedings pending before the assessing authority at Amritsar to the respondent.

Mr. Bhagirath Dass, has next urged that it was not open to the respondent to impose a penalty under section 10(7) without it first being determined under section 11 as to how much tax is payable by the petitioner. It is stated and with a certain measure of plausibility—that

penalty can only be imposed after the amount of tax has been determined as according to the language of section 10(7) it cannot be less than ten percentum and it cannot exceed one and a half times the amount of tax to which the dealer is assessed. In this connection the language of section 10(7) is material and may be reproduced:—

> "10(7) If a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods, or has concealed any particulars of his sales or purchases, or has furnished to, or produced before any authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount which shall not be less than ten per centum, but which shall not exceed one and a half times, of the amount of tax to which he is assessed or is liable to be assessed."

The argument canvassed on behalf of the respondent is that penalty can be levied even before the tax is assessed, and this is clear from the words with which the sub-section concludes—"or is liable to be assessed." Similar words appear a little earlier, after the words "in addition to the tax to which he is assessed." According to the learned counsel for the respondent a penalty is to be levied if the dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases, etc., or has concealed any particulars of his sales or purchases or has furnished a return which is false or incorrect. In that eventuality the Commissioner or any person appointed to assist him under sub-section (1) of section 3 can impose a penalty and it is wholly immaterial whether the amount of the tax has yet been assessed or not. I do not propose to give any decision on the point for the reasons to be presently stated.

In my opinion there is a good deal of force in the objection raised by the learned counsel for the respondent

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that there could be no interference in the present case under Article 226 of the Constitution. It is pointed out that the conduct of the petitioner, as is evident from admitted facts, has been such as to disentitle him to any discretionary relief. The respondent had fixed the 15th of September, 1964, for the hearing of the matter and although the petitioner was present in Amritsar, having arrived there on the morning of the 15th, he deliberately absented himself and did not attend the proceedings, where he could have legitimately raised all the objections which he is seeking to raise now. Secondly it is contended that there are adequate alternative remedies provided by the Act for getting rid of the penalty imposed by the impugned order and unless the petitioner exhausts those remedies, he ought not to be granted any relief under Article 226. In this connection sections 20 and 21 of the Act may be referred to. Section 20 provides for an appeal by any dealer aggrieved by any notice issued under sub-section (7) of section 11 or by any order passed by the assessing authority under the Act. Admittedly the respondent has made the impugned order in his capacity as the assessing authority under the Act, and, therefore, an appeal lay. The petitioner could even move the Commissioner on the revisional side; section 21 provides for remedy by way of revision. There can be no dispute, and counsel agree that an order imposing penalty can be appealed against under section 20 and that a revision can be preferred against it under section 21. As regards such an appeal it would appear from the language of the proviso that it is not necessary even to deposit the amount of the penalty before the appeal would be entertained although it is obligatory to deposit the amount of tax assessed before an appeal can be entertained. It follows in the present case that the order imposing the penalty which has been impugned could be appealed against under section 20 even without the amount of penalty being deposited first before the appeal is entertained. Therefore, the remedy provided by section 20 is quite effective and could have been availed of by the petitioner. Yet a further remedy is provided by section 21 and that also could have been resorted to by the petitioner, but the petitioner has approached this Court under Article 226 of the Constitution without exhausting the aforesaid alternative remedies. Even though the existence of alternative remedies may not constitute an insuperable bar to the maintainability of a writ petition under Article

226, I cannot see why in the present case the petitioner should be permitted to by-pass and ignore proper procedure prescribed by the legislature for the redress of grievances under the taxing statutes. This matter has been considered at length in a Bench decision of this Court in *Khem Chand-Vijay Kumar* v. *Shri J. S. Malhotra, Assessing Authority* (1), and it is unnecessary to refer to other authorities on the point.

Keeping in view, therefore, the conduct of the petitioner as also the fact that he has not exhausted the alternative remedies available to him under the Act, I decline to exercise the extraordinary powers conferred by Article 226 of the Constitution and dismiss this petition, but in the circumstances make no order as to costs.

K.S.K.