

**Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 4762 of 2021**  
(Arising out of SLP (C) No 11916 of 2021)

**Union Territory of Chandigarh and Others**

**Appellant(s)**

**Versus**

**M/s. Shiva Traders**

**Respondent(s)**

**ORDER**

- 1 Leave granted.
- 2 The respondent is a dealer and an assessee registered under the Punjab Value Added Tax Act. Returns were filed for 2008-2011. In 2018, during the course of regular assessment, an assessment order which was produced by another dealer is alleged to have revealed that a provisional demand of Rs 5,90,53,342 had been settled finally at an amount of Rs 5,000. Based on the discovery, a scrutiny of assessment orders which had been passed earlier was carried out by the revenue arm of the State. An internal enquiry revealed that entries of assessment which had actually never taken place

had been interpolated into the computer system. As many as 884 entries of assessment were found to be fabricated.

- 3 The case of the department is that the dealers involved in the above set of cases could not have been actually assessed because the computerized system indicate **wrongly** that they had already been assessed. The department alleges that the enquiry revealed that the purported assessment orders in the case of the dealers involved were fabricated and were probably passed in collusion with the officials of the department and the dealers. It has been alleged that the respondent is one such dealer whose assessment was found to be forged.
- 4 A complaint was filed and FIR No 3 came to be registered under the provisions of Section 409, 420, 466, 468, 471 and 120B of the Penal Code before the PS: Vigilance.
- 5 On 1 June 2019, the appellant issued three separate notices of assessment to the respondent under Section 29(2) of the PVAT Act 2005 and under Section 9(2) of the Central Sales Tax Act 1956 for the accounting period 2008-2009, 2009-2010 and 2010-2011. The respondent instituted three writ petitions, being Civil Writ Petition Nos 16609, 16613 and 30567 of 2019, to challenge the assessment notices before the High Court of Punjab and Haryana. These Writ Petitions were heard and disposed of together with a batch of petitions instituted by other dealers. The assessment notices were set aside by the

High Court on 19 February 2020 on the ground that the assessment proceedings were initiated beyond the stipulated period of limitation in the statute.

- 6 The judgment of the High Court was challenged before this Court under Article 136 of the Constitution in SLP(C) Nos 13764-13811 of 2020. The contention of the State in those proceedings is that since a fraud had been perpetrated on the department, the period of limitation which is prescribed in the statute would not govern on the premise that fraud vitiates all underlying proceedings. On 1 December 2020, this Court passed the following order in the above Special Leave Petitions:

- “1 Issue notice, returnable in six weeks.
- 2 Dasti, in addition, is permitted.
- 3 Till the next date of listing, there shall be a stay of the operation of the judgment and order of the High Court dated 19 February 2020.”

- 7 On 26 December 2020, the appellant issued a notice under Section 29(2) in continuation of the previous notices. On 2 January 2021, the respondent filed an interlocutory application for ‘modification/clarification’ of the order of this Court dated 1 December 2020. The relief claimed in the interlocutory application, being IA No 97 of 2021, is extracted below:

- “i. ...the order passed by this Hon'ble Court may be clarified

to the extent that the same does not authorize the Designated Officer or that the same does not authorize the Designated Officer of the petitioner (UT of Chandigarh) to proceed ahead with the assessment notices issued beyond the period of limitation;

- ii. Alternatively, during the pendency of the present SLP, the petitioner UT may be restrained from proceeding ahead with the assessment notices issued by them pursuant to the order dated 01.12.2020 passed by this Hon'ble Court."

8 The relief which has been sought in the interlocutory application which has been moved before this Court in the previous Special Leave Petitions is that the order of stay which has been passed on 1 December 2020 would not authorize the designated officer to proceed ahead with the assessment. In the alternative, the appellants are sought to be restrained from proceeding ahead with the assessment notices which were issued pursuant to the order dated 1 December 2020.

9 The respondent filed a reply to the notice dated 26 December 2020 on 7 January 2021. On 18 February 2021, an order was passed by which a final opportunity was granted to the respondent to appear in person or through an authorized representative on 1 March 2021.

10 Despite the fact that this court is seized of the proceedings, a writ petition was filed before the High Court of Punjab and Haryana - CWP No 4834 of 2021- for challenging the notice dated 18 February 2021. The High Court

entertained the writ petition, and stayed further proceedings pursuant to the notice dated 18 February 2021. The proceedings have travelled to this Court.

11 Mr Nikhil Goel, learned counsel appearing on behalf of the appellants submits that the institution of a subsequent writ petition before the High Court under Article 226 overreaches the proceedings which are pending before this Court. It has been urged that once the judgment of the High Court dated 19 February 2020 was stayed on 1 December 2020, the department was within its rights in issuing a fresh notice, which was in continuation of the earlier notice under Section 29(2). Learned counsel submitted that as a matter of fact, an interlocutory application was moved before his Court for seeking a restraint on the action which was adopted by the department. However, without pursuing those remedies or, for that matter, filing a counter affidavit in the earlier Special Leave Petitions, a fresh writ petition was filed before the High Court which has been entertained by the Division Bench. This, it has been submitted, is clearly an act of impropriety and amounts to overreaching the order and jurisdiction of this Court.

12 On the other hand, Mr Puneet Bali, learned senior counsel appearing on behalf of the respondent submitted that the cause of action for the second petition before the High Court arose after this court had entertained the SLP. Moreover, while seeking relief before the High Court there was a disclosure of the IA and the proceedings before this Court. Learned counsel urged that the

Division Bench relied upon the judgment of this Court in ***Shree Chanmudi Mopeds Limited vs Church of South India Trust Association CSI Cinod Secretariat, Madras*** (1992) 3 SCC 1. The aforesaid decision has been relied on to buttress the submission that an order by this Court staying a judgment of the High Court does not revive the show cause notice which stands quashed by the High Court and it was not open to the department to take action in pursuance to the earlier notice which had been set aside. Hence, it has been submitted that the High Court was justified in entertaining the subsequent writ petition under Article 226 of the Constitution and in staying all further proceedings.

- 13 Having considered the rival submissions, the undisputed position which emerges before this Court is that the High Court by its judgment dated 19 February 2020 quashed and set aside the notices which were issued by the department in a batch of matters including the notice dated 1 June 2019 which was issued to the respondent. The order of the High Court has been questioned under Article 136 of the Constitution. Notice has been issued and the judgment of the High Court has been stayed. The impact of the order of stay is a distinct issue but what we are concerned about is judicial propriety and discipline. The respondent took recourse to the pending proceedings before this Court by filing an interlocutory application where two specific reliefs were sought, namely, (i) an order of restraint on the assessing officer from proceeding ahead with the assessment notices; and (ii) alternatively a

restraint from proceeding ahead with the assessment notices which were issued in pursuance of the order dated 1 December 2020. Proceedings are pending before the Court. Instead of pursuing the interlocutory application to its logical conclusion, the respondent chose to institute a fresh writ petition before the High Court, which the High Court has entertained and it stayed the notice which was issued in continuation of the earlier notice under Section 29(2). Entertaining the petition under Article 226 of overreaches the jurisdiction of this Court. The pendency of the earlier proceedings was evidently brought to the notice of the High Court since it has been referred to in the impugned order. The High Court should have deferred to the proceedings pending before this court.

- 14 Having noticed the aforesaid factual position, the High Court should have dismissed the writ petition at the threshold and relegated the respondent to the pursuit of such rights and remedies as are available in the earlier proceedings which are pending before this Court.
- 15 We accordingly allow the appeal and set aside the impugned order of the High Court dated 1 March 2021. CWP No 4834 of 2021 shall stand dismissed. However, this shall not preclude the respondents from pursuing such remedies as are available to them in Special Leave Petition (C) No 13764-13811 of 2020, which is pending on the file of this Court. The respondents shall file their responses within a period of four weeks, after which the Special Leave Petitions shall be listed for hearing and final disposal

in the first week of October 2021.

- 16 The Registrar (Judicial) shall forward a copy of this order to the Registrar General of the High Court of Punjab and Haryana which shall be entered on the records of CWP No 4834 of 2021.
- 17 Pending applications, if any, stand disposed of.

.....J.  
**[Dr Dhananjaya Y Chandrachud]**

.....J.  
**[M R Shah]**

New Delhi;  
August 13, 2021  
CKB

ITEM NO.12

Court 4 (Video Conferencing)

SECTION IV-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.11916/2021

(Arising out of impugned final judgment and order dated 01-03-2021 in CWP No.4834/2021 passed by the High Court of Punjab & Haryana at Chandigarh)

UNION TERRITORY OF CHANDIGARH & ORS.

Petitioner(s)

VERSUS

M/S SHIVA TRADERS

Respondent(s)

(With appln.(s) I.R. and IA No.92295/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 13-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Nikhil Goel, AOR  
Ms. Naveen Goel, Adv.  
Mr. Vinay Mathew, Adv.

For Respondent(s) Mr. Puneet Bali, Sr. Adv.  
Mr. Surjeet Bhadu, Adv.  
Mr. Uday Agnihotri, Adv.  
Mr. Aditya Soni, AOR

**UPON hearing the counsel the Court made the following  
O R D E R**

- 1 Leave granted.
- 2 The appeal is allowed in terms of the signed reportable order.
- 3 Pending applications, if any, stand disposed of.

**(CHETAN KUMAR)**

**A.R. -cum-P.S.**

**(Signed reportable order is placed on the file)**

**(SAROJ KUMARI GAUR)**

**COURT MASTER**