HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) S.B. Civil Writ Petition No. 5734/2020

M/s. J.k. Cement Limited, Registered Office At Kamla Tower Kanpur. Through Its Legal Manager Shri Akshat Srivastava Son Of Shri N.p. Srivastava, Aged About 41 Years, Resident Of E 217, Shrinathpuram, Kota

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Rajasthan State Tax, Commercial Tax Department, Anti-Evasion, Kota, Rajasthan.
2. Deputy Commissioner, Commercial Tax Department, Anti Evasion, Kota, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Kota, Rajasthan.
4. State Tax Officer, Commercial Taxes Department, Ward-I, Circle Anti Evasion, Kota, Rajasthan.

----Respondents

<u>Connected With</u>

(2) S.B. Civil Writ Petition No. 5699/2020

M/s J.k. Cement Ltd., Registered Office At Kamla Tower Kanpur. Through Its Legal Manager Akshat Srivastava S/o N.p. Srivastava, Aged About 41 Years, Resident Of E 217, Shrinath Puram, Kota

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Rajasthan State Tax, Commercial Tax Department, Anti Evasion, Kota, Rajasthan.
2. Deputy Commissioner, Commercial Tax Department Anti Evasion, Kota.
3. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Kota, Rajasthan
4. Commercial Tax Officer, Anti Evasion Circle, Commercial Tax Department, Kota, Rajasthan
5. State Tax Officer, Commercial Taxes Department, Ward-I, Circle Anti Evasion, Kota, Rajasthan.

----Respondents

(3) S.B. Civil Writ Petition No. 5724/2020

M/s. J.k. Cement Limited, Registered Office At Kamla Tower Kanpur. Through Its Legal Manager Shri Akshat Srivastava Son Of Shri N.p. Srivastava, Aged About 41 Years, Resident Of E 217, Shrinathpuram, Kota

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Rajasthan State Tax, Commercial Tax Department, Anti-Evasion, Kota, Rajasthan.
2. Deputy Commissioner, Commercial Tax Department, Anti Evasion, Kota, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Kota, Rajasthan.
4. State Tax Officer, Commercial Taxes Department, Ward-I, Circle Anti Evasion, Kota, Rajasthan.

----Respondents

(4) S.B. Civil Writ Petition No. 5725/2020

M/s J.k. Cement Limited, Registered Office At Kamla Tower Kanpur Through Its Legal Manager Shri Akshat Srivastava Son Of Shri N.p. Srivastava, Aged About 41 Years, Resident Of E 217, Shrinathpuram, Kota.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Rajasthan State Tax, Commercial Tax Department, Anti-Evasion, Kota, Rajasthan.
2. Deputy Commissioner, Commercial Tax Department, Anti-Evasion, Kota.
3. Commercial Tax Officer, Special Circle Ii, Commercial Tax Department, Kota, Rajasthan.
4. State Tax Officer, Commercial Taxes Department, Ward-I, Circle Anti-Evasion, Kota, Rajasthan.

----Respondents

(5) S.B. Civil Writ Petition No. 6501/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized

Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Sing, Aged About 42 Years, Resident Of B-14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

(6) S.B. Civil Writ Petition No. 6596/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Singh, Aged About 42 Years, Resident Of B-14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

(7) S.B. Civil Writ Petition No. 6597/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Singh, Aged About 42 Years, Resident Of B-

14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

(8) S.B. Civil Writ Petition No. 6598/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Singh, Aged About 42 Years, Resident Of B-14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajashtan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

(9) S.B. Civil Writ Petition No. 6616/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Singh, Aged About 42 Years, Resident Of B-14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajashtan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

(10) S.B. Civil Writ Petition No. 6620/2020

M/s. J.k. Lakshmi Cement Limited, Registered Office At Jaykaypuram , District Sirohi, Rajasthan, Through Its Authorized Signatory And Power Of Attorney Holder Mr. Alok Kumar Son Of Shri Arun Kumar Singh, Aged About 42 Years, Resident Of B-14/1, Lal Bahadur Nagar, Jln Marg, Jaipur 302017.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner, Commercial Tax Department, Kar Bhawan, Jaipur Rajasthan.
2. Assistant Commissioner, Commercial Tax Department, Anti Evasion, Pali, Rajasthan.
3. Assistant Commissioner, Commercial Tax Department, Special Circle, Pali, Rajasthan.
4. Assistant Commercial Tax Officer, Commercial Tax Department, Anti Evasion, Circle-I, Pali, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Ravi Bhansali, Sr. Advocate assisted by Mr. Ramit Mehta and Mr. Saurabh Maheshwari
For Respondent(s)	:	Mr. Sunil Bhandari Mr. Hemant Dutt

JUSTICE DINESH MEHTA

Order

02/03/2021

1. These matters have come up on board for consideration of applications under Article 226 (3) of the Constitution of India filed by the respondents, seeking vacation of the following interim order granted by a Coordinate Bench of this Court on 24.07.2020 :

> *"In wake of onslaught of COVID-19, abundant caution is being taken while hearing the matter in Court.*
> *Issue notice to the respondents, returnable within six weeks.*
> *In the meanwhile, effect and operation of the impugned notices dated 20.03.2020, 06.07.2020 and summon dated 27.12.2019 shall remain stayed."*

2. Mr. Sunil Bhandari, learned counsel appearing for the respondent – Department, at the outset submitted that this Court has stayed the effect and operation of notice, which has resulted in stalling the proceedings initiated by the respondent – authority; ignoring the fact that petitioner has simply challenged a notice/summons, while emphasising that final final adjudication is yet to be made, he argued that in light of the settled position of law, this Court cannot exercise its writ jurisdiction, while citing hordes of judgments noted hereunder :

(i) Banswara Syntex Ltd Vs. Union of India & Ors. reported in 2008 (2) WLN 320 (Raj.);

(ii) M/s. Electrolux Kelvinator Ltd. Vs. Union of India & Ors. reported in 2005 (6) RDD 1825 (Raj);

(iii) M/S. HCL Infosystems Ltd. vs. The State of Rajasthan reported in 2019 (4) WLC (Raj.) 708;

(iv) Assistant Commissioner (CT) LTU, Kakinada and Ors. vs. Glaxo Smith Kline Consumer Health Care Limited in Civil Appeal No. 2413/2020;

(v) Commissioner of Income- Tax vs. Chhabil Dass Agarwal reported in [2013] 36 taxmann.Com 36 (SC);

(vi) Siemens Ltd vs. State of Maharashtra and Ors. reported in (2006) 12 Supreme Court Cases 33;

(vii) Commissioner of Income-Tax, Gujarat vs. Vijaybhai N. Chandrani reported in 2013 AIR SCW 4675;

(viii) Union of India vs. Bajaj Tempo Ltd. & Ors. reported in (1998) 9 Supreme Court Cases 281.

3. As against this, Mr. Ravi Bhansali, learned Senior Counsel, appearing for the petitioner argued that the Coordinate Bench was pleased to grant interim order after considering the submissions made by the petitioner, including non-availing the opportunity to file reply.

4. Learned Senior Counsel invited Court's attention towards the assessment order dated 20.03.2017 (Annexs.2 & 3) passed by the Assessing Officer and highlighted that while passing the order aforesaid, the Assessing Officer had examined books of account; relevant record so also record relating to HSD (Diesel) and passed an assessment order under Sections 24, 25 & 55 of Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as the 'Act of 2003'). Inspite of the complete enquiry being done, respondents No.2 to 4 (same person) have initiated proceedings for reassessment in exercise of powers purported under Section 26 of the Act of 2003 read with Section 174 of the Rajasthan Goods & Service Tax Act, 2017 (hereinafter referred to as the 'Act of 2017).

5. It was argued by Mr. Bhansali that once a detailed and reasoned assessment order has been passed, that too after examining each aspect of the matter and considering all relevant facts and documents on record, the respondent – Assessing Officer cannot initiate reassessment proceedings in the manner attempted to. He added that it is nothing but a mere change of opinion and arbitrary exercise.

6. It was also asserted that petitioner – Company has not sold diesel, purchased on concessional rate or otherwise to anyone including its contractor or sub-contractor. He maintained that the diesel was supplied free of cost besides being used by the Company and the allegation levelled by the respondents in their notice that the petitioner has sold diesel against price received is, absolutely incorrect.

7. Learned Senior Counsel argued that since the foundational fact, i.e. sale of diesel is absent, the notice proposing to initiate reassessment proceedings by the respondents No.2 to 4 is fundamentally without jurisdiction, besides being arbitrary and the same deserves to be quashed and set aside.

8. During the course of arguments, a specific question was posed by the Court to Mr. Bhandari, leaned counsel for the respondent - Department, as to whether any material or evidence is on record to show that the petitioner – Company has sold diesel, as has been alleged in notice(s) dated 20.03.2020 (Annexs.6 & 7). In response to such questions, learned counsel for the Department responded that Assessing Officer has simply issued a notice in this regard and the petitioner – Company should go and satisfy him.

9. Heard.

10. In considered opinion of this Court, the fact that the diesel has been sold for consideration, is an assertion of fact by the Assessing Officer and the initial burden thereof lies upon him. The Assessing Officer is obliged to bring at least prima facie evidence before this Court to satisfy that the exercise of jurisdiction is legit, particularly when this Court is seized of the matter and has stayed the proceedings.

11. The respondents have simply filed a preliminary reply and application under Article 226 (3) of the Constitution of India without filing any reply or response to the assertions so made by the petitioner – Company. Even the issues raised by the petitioner has not been touched upon. Mr. Bhandari without joining the issue, however, insisted that petitions be dismissed as not maintainable.

12. So far as the judgments cited by Mr. Sunil Bhandari are concerned, this Court is of the view that there is no absolute bar on exercise of jurisdiction under Article 226 of the Constitution of India. It is a settled preposition of law that exercise of writ jurisdiction is subject to self-imposed restriction and each case has to be examined in light of facts and law.

13. Even for taking a final view, as to whether these petitions should be entertained or not or the petitioner should be asked to participate in the proceedings the respondents are required to place some material, at least for invocation of jurisdiction.

14. Having perused the material available on record and upon considering the submissions so made by rival counsel, this Court is of the prima facie opinion that exercise undertaken by the respondents on the allegation that the petitioner – Company has

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sold diesel is not based on any cogent-evidence or material, respondents No.2 to 4 are attempting to conduct a fishing and roving enquiry.

15. The powers of reassessment or escaped assessment cannot be exercised in the manner attempted to by the respondents No.2 to 4.

16. The applications under Article 226 (3) of the Constitution of India in each case are rejected.

17. List these matters after four weeks.

18. The respondent may (if so desired) file a response/reply to the notices issued by this Court by the next date of hearing.

19. The interim order dated 24.07.2020 shall continue till further orders.

(DINESH MEHTA),J.

133 to 143-A.Arora/-