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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.235 of 2014

1. State of Chhattisgarh, through the Secretary, Department of Commercial Tax, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur (Chhattisgarh) (Old address D.K.S. Mantralaya Bhavan, Raipur, Chhattisgarh)

2. The Assistant Commissioner, Commercial Tax, Korba, Chhattisgarh

---- Appellants

versus

M/s Budhia Auto, T.P. Nagar, Korba, Chhattisgarh, a registered partnership firm through partner Vijay Budhia, S/o Late Shyamsunder Budhiya, aged about 46 years, resident of Plot No.236/237, T.P. Nagar, Korba, Chhattisgarh

---- **Respondent**

AND

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---- **Respondent**

For Appellants/State	:	Shri U.N.S. Deo, Government Advocate
For Respondent	:	Shri Shashank Dubey, Senior Advocate with Shri Siddharth Dubey, Advocate

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Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

13/8/2015

1. These two appeals arise from a common order dated 18-1-2013 disposing Writ Petition (T) No.847 of 2010 and Writ Petition (T) No.7700 of 2010 with regard to the same Petitioner though pertaining to two different assessment years for 2002-2003 and 2003-2004. Since the questions of law involved are common, they have been heard together and are being disposed by a common order.

2. Learned Counsel for the Appellants/State submits that the Learned Single Judge erred in holding that re-assessment of an earlier assessment done under the Chhattisgarh Commercial Tax Act, 1994 had not been saved under Section 72 of the Chhattisgarh Value Added Tax Act, 2005 which came into effect from 1.4.2006. The very wide conclusion of the Learned Single Judge that any re-assessment proceeding initiated after the new Act came into force cannot be saved does not take into consideration Section 22 of the Chhattisgarh Value Added Tax Act, 2005.

3. Learned Senior Advocate for the Respondent submits that it was their specific case in the writ petition that any re-assessment of the earlier assessment had to be made strictly in terms of the provisions of Section 22 of the new Act.

4. In the nature of the limited controversy arising for consideration and the fact that the attention of the Learned Single Judge does not appear to have been invited to Section 22 of the new Act, we consider it appropriate to set out the same hereinafter:

> "**22. Assessment/reassessment of tax in certain circumstances**.— **(1)** Where an assessment or re-assessment of a dealer has been made under this Act or the Act repealed by this Act and for any reason any

sale or purchase of goods liable to tax under this Act or the Act repealed by this Act during any period,—

(a) has been under assessed or has escaped assessment; or

(b) has been assessed at a lower rate; or

(c) any wrong deduction has been made while making the assessment; or

(d) a rebate of input tax has incorrectly been allowed while making the assessment; or

(e) is rendered erroneous and prejudicial to the interest of revenue consequent to or in the light of any judgment or order of any Court or Tribunal, which has become final,

the Commissioner may at any time within a period of three calendar years from the date of order of assessment, or from the date of judgment or order of any Court or Tribunal proceed in such manner as may be prescribed, to assess or re-assess, as the case may be the tax payable by such dealer after making such enquiry as he considers necessary and assess or re-assess to tax.

(2) The Commissioner shall, where the omission leading to assessment or re-assessment made under sub-section (1) is attributable to the dealer, impose upon him a penalty not exceeding twice the amount of tax so assessed, or re-assessed but shall not be less than the amount of tax assessed.

(3) The assessment or re-assessment under sub-section (1) shall be made within a period of two calendar years from the date of commencement of the proceedings under the said sub-section.”

5. A bare reading of Section 22 reveals that where an assessment of a dealer had been made under the repealed Act and for any reason goods liable to tax under the repealed Act had been under assessed, had escaped assessment, was assessed at a lower rate, wrong deductions made, rebate incorrectly allowed, or otherwise erroneous and prejudicial to the interest of the revenue, after the promulgation of the new Act, the Commissioner may at any time within a period of three calendar years from the date of order of assessment, which in the present case is 20.9.2004, could proceed to re-assess the tax payable in accordance with law.

6. The statutory provision is therefore very clear and admits of no ambiguity. An assessment made under the repealed Act on 20.9.2004 was open to re-assessment even after coming into force of the new Act if the Commissioner was satisfied with regard to the existence of any of the grounds mentioned in Section 22(1)(a) to (e), but such re-assessment of a closed assessment done under the repealed Act was to be done within a period of three calendar years from the date of the original assessment.

7. In the present case, admittedly the notice for re-assessment was issued on 15.10.2009, which was itself beyond the period of three years from the date of the original assessment under the repealed Act.

8. The intention of the Legislature being very clear, we find no reason to interfere with the order under appeal though for different reasons.

9. The appeals are dismissed.

Sd/-
(**Navin Sinha**)
CHIEF JUSTICE

Sd/-
(**P. Sam Koshy**)
JUDGE

Gopal