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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 111 of 2015

- M/s. Sadguru Traders, Through Its Proprietor Shri Binod Kumar Agrawal, Age 42 Years, Resident Of Flat No. 401, Block : H Maruti Lifestyle, Kota Road, Mahobabazar, P. S Saraswati Nagar, Raipur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Finance & Planning (Commercial Tax Department), New Raipur, Mahanadi Bhawan, P. S Rakhi, Distt. Raipur (Chhattisgarh)

2. Deputy Commissioner, Department Of Commercial Tax, Government Of Chhattisgarh, Vanijya Kar Bhawan, Dhamtari Road, Raipur (Chhattisgarh)

3. Commercial Tax Officer, Circle II Commercial Tax, Vanijya Kar Bhawan, Raipur (Chhattisgarh)

---- Respondents

For Petitioner	Shri Himanshu Sinha, Advocate
For Respondent/State	Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

26/11/2015

1. The petitioner is aggrieved by the order passed by the Divisional Deputy Commercial Tax Officer, Division-I, Raipur on 23.07.2015, whereby its revision application against the order dated 05.01.2015 passed by the Commercial Tax Officer, Raipur, Circle-II, Raipur cancelling its registration under Section 16 (10) of the Chhattisgarh Value Added Tax Act, 2005 (for short 'the VAT Act, 2005') has been dismissed.

2. Facts of the case, briefly stated, are that during the financial year 2009-10 to 2012-13, the petitioner purchased coal coke to the tune of Rs.2,51,46,853/- from several firms namely, M/s Shivshakti Enterprises, Raipur, M/s Laxmi Trading Company, Raipur, M/s Jay Ambe Sales Corporation, Raipur, M/s Chetna Traders, Durg, M/s Anmol Traders, Raipur and M/s Shyam Baba Steel Traders, Durg and have claimed Input Tax Rebate (ITR) for the said transactions. On verification, the said business entities were found non existent and bogus, therefore, their registrations were cancelled, however, they did not prefer any appeal or revision challenging their de-registration.

3. The petitioner was also issued notice under Section 16 as to why its registration under the VAT Act, 2005 may not be cancelled and thereafter on 05.01.2015, the registration was cancelled, because the petitioner could not satisfy the registering authority that the said firms were existing and the petitioner had lawfully claimed the ITR. The revision application filed by the petitioner has also been dismissed by the impugned order.

4. It is argued that the firms are existing and the burden to prove that the transactions were bogus was on the department and not on the petitioner. It is further argued that the petitioner would be able to pay tax only when the registration is continued and the petitioner is allowed to carry on the business, therefore, the cancellation of registration is illegal and arbitrary.

5. Per contra, learned State counsel would submit that if a registered dealer is found to engage in fraudulent trade activity, the registration is liable to be cancelled and the petitioner cannot claim to continue business contrary to the provisions of the VAT Act, 2005.

6. It appears, when the petitioner was directed to submit proof of transaction from genuine firms, the petitioner submitted his own books of account, but did not produce any proof of actual movement of goods or its delivery at its premises. It also did not submit any proof as to the payment made to the said bogus firms for purchasing of goods from them. The petitioner claimed that it has purchased through agents.

7. It is settled law that the onus to prove that the delivery of goods has taken place through physical movement of the goods lies on the purchaser. When the suspicion is raised regarding transaction from bogus or non existing firms, it is the duty of the concerned purchaser or the dealer to satisfy the authorities that the firms are existing. In the case at hand, the registration of the non existing firms has been cancelled, but the said firms have not assailed the order of their de-registration. It is also to be seen that the petitioner has availed ITR by showing the subject transactions in its account for the relevant years and has thus, evaded tax on these transactions.

8. In the considered opinion of this Court, the issue as to the genuineness of a transaction or the existence of a firm is a pure question of fact and not a question of law.

9. For the foregoing, there is no substance in this writ petition, it fails and is hereby dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

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