NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 109 of 2015

1. M/s Dainik Kelo Pravah Ramlila Maidan, Raigarh A Proprietorship Firm Through Its Sole Proprietor Shri Udairam Thwait, S/o Late Shri Bhukhau Ram Thwait Aged About 76 Years Residing At Jain School Road, Vardhman Nagar, Rajnandgaon. (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Finance, Mahanadi Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. Additional Commissioner, Commercial Tax, Bilaspur (Chhattisgarh)
3. Assistant Commissioner, Commercial Tax, Raigarh. (Chhattisgarh)

---- Respondents

For Petitioners.	: Shri Neelabh Dubey, Advocate.
For Respondent/State.	: Shri R. K. Gupta, Dy. Advocate General.

Order On Board

17/08/2015

Heard.

1. This petition has been filed against the order dated 17.12.2014 passed by the Assistant Commissioner in exercise of revisional jurisdiction in remanding the matter for due enquiry and consideration with regard to petitioner's liability towards payment of penalty.

2. Learned counsel for the petitioner submits that in view of the findings recorded by the Revisional Authority, it is clear that the order of revenue authority was only the basis of conjecture and surmises. It is submitted that in order to impose penalty under Section 10(A) of the CST Act, the existence of *mens rea* is *sine qua none*. The material on record which was

under examination before the Revisional Authority clearly indicated that there was no basis. Therefore, in such circumstances, having held that there was no material, it ought not to remand the matter.

3. After going through the impugned order I find that a detailed order has been passed by the Revisional Authority. The Revisional Authority pointed out illegality in exercise of jurisdiction by the SDO that without making proper enquiry or affording opportunity to the petitioner penalty was levied. In those circumstances, the Revisional Authority exercised its descretion and remanded the case under Section 49 of the Act. Therefore, in these circumstances, I am not inclined to interfere with the order, particularly, when the order is not prejudicial to the petitioner. The petitioner would be at liberty to avail opportunity of hearing and satisfy the authority as to why penalty should not be imposed on him.

4. Accordingly, the petition is dismissed.

Sd/-

Manindra Mohan Shrivastava

Judge

Amita