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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 556 OF 2015

M/s Hardeo Traders Pvt. Ltd., Through its Director Arjun Tayal, S/o Shri Shambhuram Tayal, aged about 42 years, R/o Christal Orchade, Shankar Nagar, Raipur (C.G.)

… Appellant

Versus

1. State of Chhattisgarh, Through the Secretary, Finance and Planning Department (Commercial Tax Department), Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)

2. The Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhawan), South Civil Lines, Raipur (C.G.)

3. The Additional Commissioner, Division Il, Commercial Tax Department Government of Chhattisgarh (Vanijya Kar Bhawan), South Civil Lines, Raipur (C.G.)

4. The Assistant Commissioner, Division Il, Commercial Tax Department Government of Chhattisgarh (Vanijya Kar Bhawan), South Civil Lines, Raipur (C.G.)

5. The Commercial Tax Officer, Circle 7, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhawan), South Civil Lines, Raipur (C.G.)

... Respondents

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... Respondents

For Appellants	:	Mr. Moolchand Jain and Mr. Varun Sharma, Advocates.
For Respondent-State	:	Mr. J.K. Gilda, Advocate General.

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

Judgment on Board

Per NAVIN SINHA, C.J.

24/11/2015

1. The present two Appeals arise from separate interim orders dated 1.9.2015 passed in Writ Petition (T) No. 73 of 2015 and Writ Petition (T) No. 74 of 2015.

2. The Learned Single Judge has granted interim relief to the extent of stay against recovery of penalty amount, without any injunction in so far as levy of additional tax with interest was concerned.

3. Learned Counsel for the Appellants sought to persuade us that the manner for the exercise of discretionary jurisdiction in the facts of the case warranted interference in the appellate jurisdiction in as much as the liabilities have been imposed not only contrary to the law but without proper prima facie adjudication of facts and consideration of the defences.

4. Learned Advocate General opposing the maintainability of the writ appeals submitted that no appeal lies before the Division Bench against an interim order under the proviso to Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter called 'the Act'). Without prejudice to the same, he next submitted that the exercise of discretionary jurisdiction by the Learned Single Judge was fair and reasonable when partial injunction has been granted with regard to penalty. It being a discretionary order, the appellate Court should not normally interfere with it relying on 1990 (Supp.) SCC 727 (Wander Ltd. & Another Vs. Antox India P. Ltd.).

5. We have considered the submissions and consider it proper to first set out Section 2 of the Act in its entirety:-

> "**2. Appeal to the Division Bench of the High Court from a judgment or order of one Judge of the High Court made in exercise of original jurisdiction.-** (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court :
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> Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India."

6. In our considered opinion, the writ appeals arising out of an interlocutory order are not maintainable under the proviso to Section 2 of the Act.

7. Furthermore, the Learned Single Judge hearing the writ petitions, while considering the application for vacating the stay, was exercising discretionary jurisdiction. So long as the Learned Single Judge had the jurisdiction to exercise discretionary jurisdiction, and that jurisdiction has apparently been exercised by a reasoned and discussed order granting relief to the Appellants partially which in our opinion is further evidence of exercise of sound discretion, there is no occasion for us to interfere with the interlocutory order, especially in view of the proviso to Section 2 of the Act.

8. In Wander Ltd. (supra) relied upon by the Advocate General, with regard to interference by an appellate Court of discretionary jurisdiction exercised by the Learned Single Judge, it was observed as follows:-

> "**14.** The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the

> exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :
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>> "... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton* & *Co*. v. Jhanaton '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."
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> The appellate judgment does not seem to defer to this principle.

9. Before we part with these appeals, we are surprised to notice that the Stamp Reporter did not care to point out that the appeals were arising out of an interlocutory order raising an objection regarding its maintainability under the proviso to Section 2 of the Act. The Registrar General of the Court is directed to hold an enquiry on the administrative side for appropriate action in accordance with law.

10. The writ appeals are dismissed.

Sd/-	Sd/-
(Navin Sinha)	**(P. Sam Koshy)**
Chief Justice	**Judge**

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