Single Bench

c.f. 1001 — 1.

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG)

WRIT PETITION NO. 841 /2005

PETITIONER

M/s. Oswal Ispat Udgyog, A Proprietorship Firm, through : Its Proprietor, Mool Chand Jain, son of Late Amarchand Jain, M/s. Oswal Ispat Udyog, R/o. 240, Malviya Nagar, Durg (Chhattisgarh)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through : Secretary, Department of Vanijyik Kar, Dau Kalyan Singh Bhawan, Raipur (Chhattisgarh)

P.R. No. 048/05
Presented by Shri Sushil Sahu
dated 01-03-05

2. The Commissioner, Department of Vanijyik Kar, Raipur (CG)

3. The Additional Commissioner, Department of Vanijyik Kar, Raipur (Chhattisgarh)

4. The Deputy Commissioner, Department of Vanijyik Kar, District Durg (Chhattisgarh)

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5. Commercial Tax Officer / Additional Tahsildar, Circle I, Durg (Chhattisgarh)

6. The Settlement Officer, Department of Commissioner, Under the Kar Vivada Samadhan Yojana, 2000.Raipur.

free

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA,

1425/05
2/1/05

01. PARTICULARS ABOUT THE PETITIONER

As per the cause title.

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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 841 of 2005

- M/s Oswal Ispat Udyog, Durg

---- Petitioner

Versus

- State Of Chhattisgarh & Ors.

---- Respondent

For Petitioner : Shri Rajeev Shrivastava, Advocate.
For Respondents : Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/06/2016

1. The petitioner is a dealer registered under the Commercial Tax Act, 1994. For the assessment period 1988-89, 1989-90 and 1990-91, the petitioner was in default of payment of tax to the department. In order to settle the pending disputes between the assessees and the Government, the State Government formulated a scheme namely, Madhya Pradesh Kar Vivad Samadhan Yojna, 2000 (for short 'the Scheme'). The scheme provided that the tax imposed and payable, penalty and interest which relates to the year 1994-95 or previous periods, which is in arrears wholly or partly as on 1st April, 2000 shall be considered for "Samadhan". The scheme further categorized the

Samadhan amount in each category of the cases. After the Samadhan authority would calculate the Samadhan amount on which settlement was to be arrived at, the defaulter was required to deposit the amount in cash in the Government treasury, failing which Samadhan scheme shall not be available or on compliance thereof, Samadhan certificate shall be issued for the full and final disposal of the amount of the arrears of the dealer and no penal action against the defaulter under any Act shall be initiated.

2. The State Government thereafter framed Madhya Pradesh Kar Vivad Samadhan Yojna Niyam, 2000 (for short 'the Niyam') prescribing the procedure for moving the application by the defaulter for availing the benefits of the scheme. Clause 2(i) of the Niyam defines the Competent Authority to mean the Commercial Tax Officer of the circle to whom the submission of the declaration is expected. Samadhan Authority was defined under clause 2(k) to mean officer not below the rank of Assistant Commissioner, Commercial Tax who will be authorised to sanction Samadhan amount. Clause 3 of the Niyam provided that the defaulter shall submit the application in the prescribed form I in duplicate before the competent authority during the period from 1st October, 2000 to 31st December, 2000 and the competent authority shall give acknowledgment in writing of the receipt of the declaration. Similarly, clause 5 provided that after receiving the declaration the competent authority shall send the whole record relating to the

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verification of the amount of arrears to the Samadhan authority who will scrutinise the case and sanction the Samadhan amount.

3. It is the case of the petitioner that application along with declaration to avail the scheme was presented before the competent authority i.e. Commercial Tax Officer, Durg, Circle I, Durg in two cases on 27.12.2000 and 30.12.2000 and the third application before the Commercial Tax Officer, Raipur Circle I, Raipur on 27.12.2000, therefore, all the applications were presented before the competent authority within time. However, the applications have been dismissed by the Additional Commissioner, Commercial Tax, Raipur without considering them on merits on the ground that they were not received within time.

4. Shri PK Bhaduri, learned Govt. Advocate would submit that under the Scheme read with the Niyam the petitioner was required to submit application before the competent authority and obtain his signatures which he has failed to do, therefore, the respondents cannot be blamed for non-consideration of his application for the assessment year 1986-87. He would also submit that application for the remaining two years i.e. 1987-88 and 1988-89 were considered under the Scheme, therefore, prayer for these two years do not survive for consideration.

5. The petitioner has submitted 3 applications under the Samadhan Scheme by presenting the same in the office of Commercial Tax Officer,

Durg or Raipur. The first application was pertaining to the period 1.7.1986 to 30.6.1987; the second application was for the assessment year 1987-88 and the third application was for the assessment year 1988-89. The first application has not been considered on merits and rejected summarily vide Annexure-R/1 dated 12.4.2001 on the ground that it was received by the Samadhan Authority after the prescribed date.

6. In respect of the second application for the assessment year 1987-88, statement has been made in the writ petition, in subject matter in brief, that dispute for this year was settled under the Samadhan Scheme and the petitioner has cleared the dues. Thus this application under the Samadhan Scheme has been rendered infructuous and does not survive for consideration by this Court.

7. The third application presented before the Commercial Tax Officer, Raipur Circle I for the assessment year 1988-89 was considered by the Samadhan authority and orders were passed informing the petitioner about Samadhan amount to be deposited by him. As mentioned in para-I of the Additional Return filed on 7.3.2009, which has not been controverted, therefore, the matter is not open for consideration under the Samadhan scheme because the same has already been considered and appropriate orders have been passed but the petitioner failed to deposit the Samadhan amount nor challenged the said orders, thus the same has rendered final.

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8. The above leaves this Court to consider as to whether non-consideration of the application under the Scheme for the period 1.7.1986 to 30.6.1987 on the ground that it was presented after the prescribed date is justified.

9. After giving anxious consideration and particularly for the reason that on respondents own showing, similar applications moved before the competent authority for the assessment year 1987-88 and 1988-89 have been considered and orders were passed in petitioner's favour and as a matter of fact, for the year 1987-88, the petitioner was informed about Samadhan amount and he deposited the amount to clear the dues and for the year 1988-89, statement has been made in the return that this application was also considered on merits and Samadhan amount was informed to the petitioner but he failed to deposit the amount, there was absolutely no reason for the respondents to have refused to consider the application for the assessment year 1986-87 on merits and rejected the same on the ground that it was not received by Samadhan authority within time.

10. Otherwise also, once it is admitted in the return that the application was submitted before the competent authority within time but was received in the office of Samadhan authority after due date, the petitioner cannot be blamed for the delay occasioned in between the office of competent authority and the Samadhan authority.

11.For the aforestated reasons, the petitioner's application under the Samadhan Scheme, 2000 for the assessment period 1.7.1986 to 30.6.1987 deserves to be considered on merits.

12.Accordingly, the Writ Petition for the application under the Samadhan scheme for the year 1987-88 (Annexure-P/9) is dismissed as infructuous and that of the year 1988-89 (Annexure-P/10) is dismissed as not maintainable, as the same has already been considered on merits and the application for the assessment period 1.7.1986 to 30.6.1987 is remitted back to the Samadhan Authority for consideration on merits, in accordance with law.

13.No other points were raised before this Court at the time of hearing.

14.Till the petitioner's application for the assessment period 1986-87 is considered and decided on merits by the concerned authority, recovery of arrears for the said period shall remain in abeyance.

Sd/-
Prashant Kumar Mishra
Judge

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