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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 237 of 2015

Century Textiles & Industries Ltd. P.O. Baikunth, District Raipur Through Its Joint President (Commercial)

---- Appellant

Versus

1. Additional Commissioner of Commercial Tax, Raipur (Chhattisgarh)
2. Appellate Dy. Commissioner Of Commercial Tax, Raipur (Chhattisgarh)
3. Assistant Commissioner Of Commercial Tax, Raipur (Chhattisgarh)

------Respondents

For Appellant:	Shri Ashish Shrivastava along with Shri Animesh Verma and Shri Soumya Rai, Advocates.
For Respondent/State:	Shri Prafull N. Bharat, Additional Advocate General.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per **Navin Sinha, Chief Justice**

25/1/2016

1. The present appeal arises from order dated 10.2.2015 dismissing Writ Petition No.5602 of 1999. The Learned Single Judge declined to interfere with the order of the Assessment Officer dated 30.12.1994 imposing entry tax on movement of limestone and also plant and machinery, granting exemption only on items considered incidental as affirmed by the Appellate authority on 17.10.1995 and interference declined by the Revisional authority on 4.5.1999.

2. The Learned Single Judge held that if the issue with regard to levy of entry tax on limestone movement was not raised before the Appellate authority, the Revisional authority committed no error by not permitting the Appellant to agitate the same for the first time before it. With regard to entry

tax liability on plant and machinery except incidental items, it was held that the order of the Assessment Officer having been affirmed by the Appellate and Revisional authority no interference was called for in exercise of supervisory jurisdiction under Article 227 of the Constitution.

2. Learned Counsel for the Appellant submitted that the controversy relates to the assessment year 1991-92. The petitioner had lease for mining limestone in village Tandwa. The limestone was transported to village Kundru for crushing and was then brought back to village Tandwa in the same form to be used for manufacture of cement. Since the goods originated from village Tandwa and returned to Tandwa in the same form, there was no liability for entry tax at all either at Kundru or its return to Tandwa. The Appellant in support of the same had relied upon (1987) 20 Vikray Kar Nirnay 290 (Bhedaghat Minerals & Industries Limited vs. Divisional Dy. Commissioner, Sales Tax, Madhya Pradesh). Likewise, before the Revisional authority, the Appellant had relied upon (1996) 29 Vikray Kar Nirnay 516 (Commissioner of Sales Tax, Madhya Pradesh vs. Vippy Solvex Products Pvt. Ltd) with regard to exemption on entry tax on plant and machinery used for expansion which has not been considered by Revisional authority.

3. Since the questions sought to be raised in Revision were pure questions of law, the Learned Single Judge erred in holding that the Revisional authority was not required to examine them on the ground that they had not been raised earlier or due to consecutive findings.

4. Learned Additional Advocate General appearing on behalf of the Respondents submitted from the original assessment order along with the grounds of appeal, that the Appellant did not raise any issue with regard to liability for payment of entry tax for limestone mined at Tandwa taken to

Kundru for crushing and brought back to Tandwa for use in their cement unit. Limestone entering Kundru attracted entry tax. It underwent change at Kundru and therefore entered Tandwa as a new product attracting entry tax again. Without prejudice to the same, it was submitted that if the Appellant did not raise any specific objections with regard to assessment for entry tax on limestone originating from village Tandwa undergoing procedural change at village Kundru and then returning to village Tandwa for consumption in the cement unit, any objection on that ground is deemed to have been waived. The Revisional authority committed no error by not permitting it to be raised for the first time before it. The Learned Single Judge rightly held that in exercise of supervisory jurisdiction under Article 227 of the Constitution, there was no occasion for it to interfere with this sound reasoning of the Revisional authority. It was lastly submitted that if three authorities consecutively arrived at a finding that exemption from entry tax could be granted to incidental goods only and not on plant and machinery, the Learned Single Judge again committed no error in declining interference with the same. In exercise of supervisory jurisdiction, this Court does not normally interfere with the concurrent findings.

5. We have considered the submissions and deem it appropriate to set Section 62 (1) of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (hereinafter referred to as 'the Act') providing for Revisional jurisdiction and which reads as follows:-

> 62(1). The Commissioner (a) either on his own motion, may; or (b) on an application by a dealer or person made within the prescribed period from the date of order, shall; call for the record of the proceeding in which any order was passed and on receipt of the record may make such enquiry or cause such enquiry to be made, as he considers necessary [and subject to the provisions of this Act shall pass such order not being an order prejudicial to the dealer or person, as he thinks fit [within six months starting from the first day

> of the month following the month in which the application for revision has been filed]........

6. A Revisional power is generally and normally restricted to supervisory jurisdiction for correcting errors in the decision making process and it is not permissible for the Revisional authority to examine all issues of facts and law like an appellate authority. But much will depend on the facts of a case in view of the language used in the particular Statute with regard to the nature of Revisional jurisdiction vested. In the present case, the Statute vesting Revisional power is widely worded and full effect has to be given to the intention of the legislature. The Revisional authority can exercise jurisdiction either suo moto or an application filed by a dealer. It can call for the records of any case and make such enquiry as it considers necessary or direct such enquiry and then pass such orders as it deems fit. It is therefore apparent that the Revisional authority is not assigned the limited Revsional jurisdiction regarding errors in the decision making process. The powers vested are akin to an appellate court before whom all issues of facts and law are open as otherwise it would not have been vested with jurisdiction to make fresh enquiry and pass appropriate orders to its satisfaction. The only restriction is that the power cannot be used to pass an order prejudicial to a dealer.

7. Once the Appellant raised the issue with regard to entry tax liability on limestone mined at village Tandwa transmitted to village Kundru and brought back to Tandwa before the Revisionl authority, the facts not being in dispute, and relied upon Bhedaghat Mineral Industries (supra), the Revisional authority was required to decide the same on merits. Declining of jurisdiction on the reason that it was not raised before the Appellate authority amounts to abdication of the Revisional jurisdiction. The power under Section 62 of the Act being very wide, resort to unsustainable technicalities was not justified.

The Appellant also relied upon a precedent in support of its submission. It is trite law that justice must not only be done but must appear to be done. The Revisional authority therefore ought to have applied its mind to the precedent sought to be relied upon and then given its finding with regard to its applicability or non-applicability as the case may be.

8. On the question of payment of entry tax under the head plant and machinery except for incidental items, if the Appellant contended that he was not required to pay entry tax upon the same and relied upon a precedent again, it could not have been ignored by the Revisional authority without discussion regarding its applicability or non-applicability.

9. The Writ Petition was decided when the proviso to the explanation to Section 2 of the Chhattisgarh (Appeal to Division Bench) Act, 2006 existed before it was struck down by a Full Bench of this Court in Writ Petition (C) No.2193 of 2014 and analogous Writ Petitions dated 6.8.2015. The Learned Single Judge was essentially exercising certiorari jurisdiction under Article 226 of the Constitution but was restrained in view of the law as it stood then.

10. There is no invariable principle that merely because an order has been affirmed by three consecutive authorities, the matter cannot be re-examined by this Court under Article 226 of the Constitution especially when the facts are not in dispute and the aggrieved relies upon a precedent even if it be of the administrative authorities which is required to be discussed and considered.

11. The Revisional order dated 4.5.1999 is set aside. The matter is remanded to the Revisional authority limited to the question of liability for entry tax with regard to limestone mined at village Tandwa transmitted to village Kundru and then brought back to Tandwa for manufacture of cement.

Likewise, the matter is also remanded to consider the liability for entry tax on plant and machinery except to the extent exemption was granted in view of Vippy Solvex Products Pvt. Ltd (supra) sought to be relied upon by the Appellant.

12. It is made clear that the present order may not be deemed or construed to have made any observation or taken any view that the Revisional order was not sustainable on merits. Our conclusion is based on the refusal of the Commissioner to exercise his powers under Section 62 of the Act and the failure to apply his mind to the issues sought to be raised before him and decide it by a reasoned and speaking order.

13. The Appellant shall continue to pay entry tax as presently determined till such time that the Revisional authority decides the matter afresh by a reasoned and speaking order. The entry tax paid by the Appellant in the interregnum shall abide by the final order that the Revisional authority may pass.

14. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Priya