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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 35 of 2016

Akhilesh Kumar Agrawal aged about 37 years son of Shri Ramnarayan Agrawal Proprietor M/s Goyal Jute Udyog 268 Samta Colony Raipur Police Station Saraswati Nagar Civil and Revenue District Raipur (Chhattisgarh)

---- Appellant

Versus

1. State of Chhattisgarh through the Secretary Department of Commercial Tax Raipur (Chhattisgarh)

2. Deputy Commissioner Department of Commercial Tax Division No.1 Raipur (Chhattisgarh)

3. Commercial Tax Officer Department of Commercial Tax Circle-5 Raipur (Chhattisgarh)

---Respondents

For Appellant	:	Shri Malay Kumar Bhaduri, Advocate.
For Respondent/State	:	Shri B. Gopa Kumar, Deputy Advocate General.

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

Judgment on Board

Per Navin Sinha, Chief Justice

28/01/2016

1. Heard Learned Counsel for the Appellant and the Respondents.

2. The present appeal arises from order dated 14.1.2016 dismissing Writ Petition (T) No.62 of 2014.

3. Learned Counsel for the Appellant submits that the Commercial Tax Officer Circle-5, Raipur cancelled the Appellant's registration as a dealer under Section 16(10)e of the Chhattisgarh Value Added Tax Act, 2005 (hereinafter referred to as 'the Act'). A search and seizure was carried out as a prelude to the same for alleged non-submission of returns for four consecutive years. The documents seized were not returned. In Writ Petition (T) No.6091 of 2011, this Court while

disposing the writ petition to pursue matters in revision under Section 43 of the Act had observed that the Appellant may also pray for return of the documents. The documents were not returned. The Appellant in the meantime was issued a notice under Section 143(2) of the Income Tax Act, 1961 with regard to assessment for the same period requiring him to submit certain documents. Since the documents had been seized by the Commercial Tax Authorities, the Appellant moved this Court again in Writ Petition (T) No.83 of 2013, which was disposed to pursue matters in the revision application.

4. The Respondents in the revisional order dated 21.10.2013 have wrongly concluded that no documents had been seized and that the Appellant had not been able to submit any proof with regard to seizure. The search and seizure was conducted on 1.10.2011 and as early as 4.10.2011, the Appellant had made a request for return of his documents and also addressed a copy to the Officer In-charge of Police Station Khamtarai, on which also no action has been taken.

5. In the Writ Petition, the Appellant has specifically stated that various documents kept in loose shape in the godown of the firm were taken without giving acknowledgment. The relevant documents though not mentioned specifically are the cash book, vouchers, etc. The search and seizure was carried out in his absence when his father was alone at the place of business.

6. The Learned Single Judge erred in accepting the recitals in the impugned order dated 21.10.2013 as a gospel truth. The observation that this objection was being taken to escape liability for payment of commercial tax and income tax during the period in question is therefore perverse and requires to be interfered with.

7. Learned Counsel for the State has opposed the appeal submitting that the Appellant has nowhere stated the exact nature of documents seized and even the submission that cash book and vouchers were seized is being made verbally, not supported by any pleadings. The Learned Single Judge has rightly observed that

the Appellant was taking vacillating stands by simultaneously stating that the documents were not available with him at the time of verification and yet asserting that they had been seized. Any observation with regard to the Appellant desiring to avoid the liability of commercial tax and income tax does not prejudice the Appellant in any manner as he will have the full opportunity to defend and protect his interest in any proceedings that the concerned authorities may draw.

8. We have considered the submissions on behalf of the parties and find no reason to interfere with the order under appeal.

9. A show cause notice was issued to the Appellant on 26.9.2011 by the Commercial Tax Authorities for non-filing of returns with regard to years 2008-09, 2009-10, 2010-11 and 2011-12. On 29.9.2011, he wrote to the authorities that his house was under repairs and all his documents were lost/misplaced. He was attempting to locate them and as soon as he found them, he would present them and sought eight weeks time.

10. The verification by the authorities was carried out barely two days later on 1.10.2011. The Appellant on 4.10.2011 wrote to the Commercial Tax Authorities that since his house was under repairs, he had kept all his papers in the office of one Parwati Devi Agrawal at Ravabhata, Raipur. It had slipped his mind where he had kept his documents. On 29.9.2011, he had already intimated that he has lost/misplaced his papers. On 1.10.2011, the authorities visited the house of Parwati Devi Agrawal and seized all his papers from there and did not give any receipt.

11. The impugned order dated 21.10.2013 by the revisional authority reflects that his father told the authorities on 1.10.2011 that the Appellant had gone away to Nagpur and there were no business records of the Appellant available. The Revisional Authority therefore concluded as a matter of fact that no documents had been seized and hence question of returning them did not arise.

12. The Learned Single Judge has noticed from the order of the Revisional Authority that no documents were made available to the authorities referring to the statement of father of the Appellant. Reading the Appellant's replies dated 26.9.2011, 29.9.2011 and his father's statement dated 1.10.2011, it was concluded that no documents were seized at any time.

13. We have gone through the statement of father of the Appellant dated 1.10.2011 stating that the authorities visited the Appellant's place of business at 268 Samta Colony, Raipur for verification. No documents were available and the Appellant was away to Nagpur. The godown from where business was carried out was also locked and he did not have the keys. A glaring contradiction emerges from the shifting stands taken by the Appellant at different times. On 29.9.2011 he stated in no uncertain terms that all his documents had been lost/misplaced because renovation work was going on at his house and that he was attempting to locate them. On 1.10.2011, his father gave in writing at the place of business that no records were available as the business was carried out from one room and the rest was being used as residence, in the house of Parwati Devi Agrawal. Using this as a foundation for churning out a new ground the Appellant wrote to the authorities on 4.10.2011 that he forgot to tell them that all his papers were lying in the office of Parwati Devi Agrawal.

14. Quite obviously this was an afterthought because if the residence of Parwati Devi Agrawal was in the same house, it is difficult to appreciate how the Appellant forgot and recollected things within a day or two of the verification done by the Commercial Tax Authorities. Contrary to what his father stated on 1.10.2011, the Appellant on 4.10.2011 asserted that they had seized his documents. The contradiction between his father's statement and the Appellant's contention is apparent. Being a prudent businessman surely the Appellant was aware of the nature of the documents that he may have possessed in the context to show cause notice dated 26.9.2011. Noting prevented him from specifically mentioning the

nature of the documents in his representation dated 4.10.2011. It does not appear from the Revisional order dated 21.10.2013 that he put-forth any specific case with regard to any identified documents. In the writ petition a vague statement has been made that various documents kept in loose shape in the godown of the firm were seized. We have already noticed from the statement of the father of the Appellant dated 1.10.2011 that the godown was locked and his father did not have the keys. The statement that the lock of the godown was broken and documents seized are being made in the writ petition for the first time. It has not been asserted in the writ petition that no inventory was prepared.

15. It appears that the Appellant is taking shifting stands at different stages of time, which itself is evidence of complete lack of bonafides on his part and inability to even prima facie establish the seizure of any documents by the Respondents. Self contradictory stands being taken by him leaves us satisfied that as a matter of fact that no documents were ever seized by the authorities.

16. The conclusion of the Learned Single Judge that this frivolous defence was being taken only to overcome the liability that may follow in any proceedings by the Commercial Tax Authorities or the Income Tax Authorities because the Appellant did not have proper papers and documents, call for no interference.

17. The present was an appeal fit to be dismissed with exemplary costs but we refrain from doing so. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE

Anu