HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 63 /2016

Akhilesh Agrawal, S/o. Shri Ram Narayan Agrawal, Aged About 38 Years, Proprietor M/s. Goel Jute Udyog, 268, Samta Colony, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through the Secretary, Department Of Commercial Tax, New Mantralaya, Mahandi Bhawan, Raipur, Chhattigarh.
2. The Commissioner, Department Of Commercial Tax, Chhattisgarh, Raipur.
3. Asst. Commissioner, Department Of Commercial Tax, H Q, Raipur, Chhattisgarh.

---- Respondents

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WPT No. 65 /2016

Akhilesh Agrawal, S/o. Shri Ram Narayan Agrawal, Aged About 38 Years, Proprietor M/s. Goel Jute Udyog, 268, Samta Colony, Raipur, Chhattisgarh.

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2. The Commissioner, Department Of Commercial Tax, Chhattisgarh, Raipur.
3. Asst. Commissioner, Department Of Commercial Tax, H Q, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Malay Kumar Bhaduri, Advocate.
For Respondents/State	:	Mr. Gary Mukhopadhyay, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

<u>02/05/2016</u>

1. Both the petitions are being heard and decided together by this common order, as similar facts and issues are involved.

2. The petitions are filed predominantly for the following reliefs :

A. The Hon'ble Court may kindly be pleased to call for the records pertaining to the present case from the respondent authorities.

B. The Hon'ble Court may kindly be pleased to direct the Respondent No.3 to provide and supply all the material and relevant documents like bills, vouchers, invoices etc. upon which they have initiated assessment proceeding in reference to Notice received by the petitioner on 10.12.2015 & 18.01.2016 respectively (Annexure P-2).

C. The Hon'ble Court may kindly be pleased to direct the Respondent No.3 not to proceed against the petitioner in pursuance to notice (Annexure P-2) without providing and supplying material documents, upon which the proceeding has been initiated.

D. The Hon'ble Court may kindly be pleased to grant any other relief(s), which deems fit and proper in the facts and circumstances of the case with cost.

3. Learned counsel for the petitioner submits that a notice was served under Section 19(4), 21(5), 22 & 54 of the Chhattisgarh Value Added Tax Act, 2005 *(for short "the Act of 2005")* and in course of such proceeding of Annexure P-2, the petitioner appeared and filed an application calling upon to supply the documents as to under what basis such notice is served. Therefore, he may be given all the documents to reply and defend the proceedings so commenced. It is submitted that neither the application is allowed or rejected but the assessing authority is sitting over it and as such there is a gross violation of the natural justice. It is further submitted that the respondents may be directed to give all the documents to the petitioner on which the proceedings have commenced. It is also

submitted that the concerned authority be directed to decide the application filed for want of document.

4. Perusal of the notice Annexure P-2 would show that it is a notice wherein it was observed that from 01.04.2009 to 31.03.2010 in WP(T) No.63/2016 and from 01.04.2011 to 31.03.2012 in WP(T) No.65/2016, the petitioner has not submitted any return. Consequently, he was directed to appear on 22.012.2015 & 28.01.2016 respectively and during such proceeding, an application was filed to get the copy of the documents by Annexure P-3.

5. Perusal of Section 19 of the Act of 2005 would show that the return has to be filed under Section 19 and Section 19(4) further postulates that if a dealer required to furnish return under sub-section (1) fails to pay the amount of tax and fails to furnish the return then the proceeding under Section 19(4)(iii) shall be commenced.

6. The prayer sought is almost in the nature to shift the burden on the department though it is within the statutory domain of the department to commence a proceeding under Section 19(4) of the Act of 2005. The grievances, if any, can be raised during the course of proceeding and the burden cannot be shifted on the department to divulge that how the assessment is being made. If the petition is entertained, it would lay down the different route for all the assessee and laying down a different aspect which would amount to legislate the Act & Rules by Court.

7. In view of the above, I am not convinced to admit the petition. Therefore, the petitions are dismissed at the threshold.

Sd/-
(Goutam Bhaduri)
Judge

Ashok