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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 129 of 2015

M/s Sarda & Semec Electromech Pvt. Ltd. A Company Duly Registered Under The Companies Act, 1956 Having Its Offices At 2 Industrial Area, Rajnandgaon, Chhattisgarh Ramlila Maidan, Raigarh A Proprietorship Firm Through Its Managing Director Shri Laxmi Niwas Sarda, S/o Late Shri Ratan Lal Sarda Aged About 70 Years Residing At Jain School Road, Vardhman Nagar, Rajnandgaon. (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Finance, Mantralaya, Naya Raipur, Chhattisgarh
2. Commissioner, Commercial Tax, Vanijyik Kar Bhawan, Raipur (Chhattisgarh)
3. Assistant Commissioner, Commercial Tax, Rajnandgaon Chhattisgarh
4. Commercial Tax Officer, Rajnandgaon (Chhattisgarh)

------Respondents

For Petitioner:	Shri Neelabh Dubey, Advocate.
For Respondents/State:	Shri UNS. Deo, Government Advocate.

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

Judgment on Board

Per **Navin Sinha, Chief Justice**

09/02/2016

1. The Petitioner is aggrieved by show cause notice dated 11.11.2014, for reassessment of its commercial tax liability with regard to input rebates relating to the assessment year 2011-2012.

2. Learned Counsel for the Petitioner submits that it had filed its return on 5.8.2014 for the period in question on basis of self assessment under Section 19 of the Chhattisgarh Value Added Tax Act, 2005 (hereinafter referred to as 'the Act'). The Petitioner had received a notice dated 20.8.2014 under Section 19(5) of the Act which was duly replied on 23.8.2014 mentioning specifically

that M/s Stayam Traders, Swastik Traders and Shiv Enterprises were duly registered with the Commercial Tax Department along with the TIN number. The Petitioner had made all purchases from them under valid bills enclosing copies of the same. Necessary refund was also made to the Petitioner. If there was any lapse in deposit of the necessary tax thereafter by those from whom the Petitioner had made purchases, the Petitioner cannot held liable for the same. All payments to the concerned dealers were made through RTGS of nationalised Banks which was also furnished to the authorities along with other necessary details.

3. The Petitioner filed its preliminary objections to the impugned notice dated 11.11.2014 objecting that no grounds had been made out for reassessment. Without disposing the same and in teeth of the interim order dated 2.11.2015, the Respondents have passed final assessment order on 18.11.2015, imposing tax liability for Rs. 23,74,668/- for the assessment year 2011-12.

4. It is submitted that Section 22 of the Act does not vest absolute power to reopen an assessment at whims and fancies. The words “for any reason” have to be read as judicially interpreted, as 'reasons to believe'. There must therefore be a satisfaction that there has been no assessment or escaped assessment under Section 22(a) in which event only the power to issue a show cause notice is attracted and not otherwise. Unless the authorities have reason to believe that an assessee had obtained assessment deliberately by under-assessment or a representation which enabled assessment to escape, the jurisdiction for re-opening an assessment under Section 22 cannot be invoked. The show cause notice under this provision is therefore not an empty formality and must strictly comply with the requirements of the law containing prima facie materials on basis of which 'reason to believe' may rest. A show cause notice which does not comply with this requirement is not

a show cause notice at all.

5. Learned Counsel for the Petitioner further sought to persuade us on basis of precedents that the power to reopen an assessment on basis of the very same materials to arrive at a different and fresh conclusion was not permissible. He also sought to urge that Section 22 of the Act by using the words “for any reason” vests arbitrary and uncanalized powers and therefore the provision itself was bad.

6. Learned Counsel for the State submitted that the final order dated 18.11.2015 was an inadvertent mistake due to communication gap with reference to the interim order dated 2.11.2015. He next submits that the Writ Petition against a show cause notice is not maintainable. The notice is not without jurisdiction. Section 22 of the Act read with Rule 30 of the Chhattisgarh Value Added Tax Rules, 2006 (hereinafter referred to as 'the Rules') vests powers in the authority to issue a show cause notice. The notice mentions that there has been under-assessment based on bogus bills. The Department has come into knowledge of bogus firms which have been cropped up for availing benefits of input tax rebate wrongly. The Petitioner may file its reply on merits after which the authorities may be directed to pass fresh appropriate orders. Till final orders are passed all possibilities remain open.

7. We have considered the submissions on behalf of the parties and are satisfied that at this stage the Writ Application can be disposed on a very short question of law with regard to the correctness of the show cause notice issued to the Petitioner leaving open the larger questions sought to be urged on behalf of the Petitioner for consideration at an appropriate time, if necessary.

8. Section 22 of the Act undoubtedly provides for re-opening of an

assessment. But the re-opening cannot be at ipse dixit of the authorities and must be strictly in accordance with and within the jurisdiction and power vested in the authorities under that provision. The mere fact that the authorities may have the power and the jurisdiction to issue a show cause notice for re-opening assessment will not inevitably lead to a conclusion that no Writ Petition will lie against a show cause notice. The purpose of a show cause notice is explicit, to let the person concerned know on what basis and on what materials the authorities were prima facie satisfied to re-open the assessment. Once an assessment has been concluded in accordance with law, a presumption would arise about its correctness unless it is rebutted in accordance with law.

9. We have gone through the show cause notice which is in a pre-printed prescribed format for Sections 19(4), 21(5), 21(6), 22 and 54. It contains fill in the blanks. While other columns have remained blank, the relevant portion states that the authorities have reason to believe that tax assessment for the period 1.4.2011 to 31.3.2012 had been under assessed/had escaped assessment/had been assessed at the lower rate/erroneous deletions had been made from the assessment by mistake/input tax liability had been wrongly assessed at 16,06,6243/-. Which of the situations applies has also not been indicated by striking off the irrelevant. It then states that a decision had been taken to re-open the assessment. When the decision was taken by whom and on what date has been left blank. This decision would obviously contain the reasons for the satisfaction of the authorities to re-open the assessment and which would then provide a window to the petitioner into the mind of the authorities to file an effective reply to the show cause notice. Unless the Petitioner is first told why the authorities opined of under assessment or escaped assessment, what does he reply to. Merely stating that the reason was bogus billing of iron steel, to our mind does not meet the

requirement of Section 22 of the Act.

10. We are therefore satisfied that unless the Petitioner is first told and made known the reasons and materials on basis of which the authorities had reasons to believe with regard to what may have happened under the earlier assessment compelling them to re-open it, the Petitioner would be seriously handicapped in filing its reply.

11. In the facts of the present case, we are therefore satisfied that show cause notice is not in accordance with Section 22 of the Act. The authorities therefore cannot proceed on basis of the same. The show cause notice dated 11.11.2014 is therefore set aside but without prejudice to the rights of the Respondents afresh in accordance with law.

12. Any order passed by the authorities in teeth of the order of the Court dated 2.11.2015 is but a nullity in the eyes of the law and the Court only formally pronounces so. The order dated 18.11.2015 will be deemed to have never come into existence.

13. The Writ Petition is allowed.

Sd/-	Sd/-
(Navin Sinha)	(P. Sam Koshy)
CHIEF JUSTICE	**JUDGE**

Priya