**NAFR**

# HIGH COURT OF CHHATTISGARH, BILASPUR

**WPT No. 138 of 2016**

- M/s S. K. Sarawagi & Co. Pvt. Ltd. a Company incorporated under the Companies Act,1956 having its business At Plot. 38-41 & 48-52, Siltara, Phase-II Raipur, Chhattisgarh Through Its Director And Authorized Signatory, Shri Naveen Kukmar Sarawagi, S/o Shri Murari Lal Sarawagi Aged About 48 Years, Resident Of Shiv Mohan Bhawan 2nd Floor, Pandri, Raipur, (Chhattisgarh)

**---- Petitioner**

**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mahanadi Bhavan, Naya Raipur, Raipur, (Chhattisgarh).

2. Commissioner Of Commercial Tax, Vanijyik Kar Bhawan, Civil Lines, Raipur, (Chhattisgarh)

3. Additional Commissioner (Appeals), Commercial Tax, Raipur, (Chhattisgarh)

**---- Respondents**

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| For Petitioner | Shri Neelabh Dubey, Advocate |
| For Respondent-State | Shri A. S. Kachhawaha, Addl. AG |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**Order On Board**

**10/11/2016**

1. Challenge in this petition is to the order dated 05.08.2016 passed by the Commissioner of Commercial Tax, Chhattisgarh vide Annexure-P-4 imposing penalty of Rs.2,40,13,952/- and further directing reducing the said amount by Rs.56,35,590/-, which was the amount of refund in favour of the petitioner and thus the net recoverable penalty is Rs.1,83,78,362/-.

2. Placing reliance on the Division Bench's order passed by the Madhya Pradesh High Court in the matter of **M/s Ram Kumar and Suresh Kumar vs. The State of M.P.**, passed in WP No.8772/2014, decided on 20.06.2014, it is putforth that when the original assessment order is challenged in appeal, which is pending consideration, the proceedings for recovery of penalty should not be initiated before finalization of the original proceedings.

3. At this stage, learned Addl. Advocate General would inform this Court that the second appeal, arising out of the original assessment order, has been decided by the Chhattisgarh VAT Tribunal on 19.10.2016, therefore, the proceedings have attained finality and at present, there is no bar for continuing with the penalty proceedings.

4. Rejoining the issue, Shri Dubey, learned counsel for the petitioner, would submit that the order passed by the Tribunal is based on incorrect facts and perverse reasoning, therefore, a review petition has already been filed. He would submit that in view of this, the proceedings have not yet attained finality.

5. Although, the review proceedings are not treated as continuation of the original proceedings, yet considering the fact that the recovery order was passed during pendency of the appellate proceedings and it is informed that the review petition is pending, ends of justice would be served if the Tribunal is directed to decide the petitioner's review petition, at the earliest, preferably within a period of 8 weeks from today.

6. It is expected that during pendency of the review application, the Department shall not take any coercive steps for recovery of the penalty.

7. The writ petition stands disposed of.

Sd/-
JUDGE
PRASHANT KUMAR MISHRA

Nirala