NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 174 of 2016

- Panchsheel Solvent Private Limited A Company Incorporated Under The Companies Act, 1956 Having Its Office At Baldeo Bagh Rajnandgaon, (Chhattisgarh) Through Its Director Mr. Samir Lalani, Aged About 50 Years, S/o Late Sadruddin Lalani, R/o House No.301, Baldeo Bagh, Rajnandgaon (Chhattisgarh)

---- Petitioner

Versus

1. Assistant Commissioner of Commercial Tax, Rajnandgaon, Office Of C.T.O., Behind Old Rest House, Rajnandgaon (Chhattisgarh)

2. Commercial Tax Officer, Circle- Rajnandgaon Office Of C.T.O, Behind Old Rest House, Rajnandgaon (Chhattisgarh)

3. Bank Of Baroda Through Its Assistant General Manager, Rajnandgaon Branch Rajnandgaon (Chhattisgarh)

4. Commissioner Of Commercial Tax, Office Of Commissioner, Commercial Tax, Behind Raj Bhavan, Civil Line, Raipur (Chhattisgarh)

5. State Of Chhattisgarh, Through Secretary, Department Of Commercial Taxes, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)

---- Respondents

For Petitioner Shri Siddharth Dubey, Advocate
For Respondent-State Shri U. N. S. Deo, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/12/2016

1. The petition is preferred to challenge the order passed by the Assessing Authority under the Chhattisgarh Value Added Tax

Act, 2005 (henceforth 'the VAT Act, 2005') holding that the petitioner is liable to pay Value Added Tax at Rs.1,87,16,783/-, entry tax of Rs.38,35,518/- and penalty of Rs.22,08,756/-.

2. It is argued that by denying deduction of input tax rebate, the Assessing Officer has acted beyond jurisdiction. He would submit that reassessment proceeding was initiated on the ground that during the assessment proceeding, the assessee was wrongly allowed the input tax rebate and on this count the reassessment proceeding could not have been opened or initiated after 2 years.

3. Relying on the order passed by the Supreme Court in WP(C) No.1055/2013 (**AIRCEL Ltd. and another vs. The Commercial Tax Officer and another**) on 22.04.2016, it is argued that when the pure question of law arises for determination, the availability of alternative remedy is not a bar for entertaining the writ petition.

4. Per contra, learned State counsel would submit that the petitioner has a remedy of preferring an appeal or revision before the Appellate Deputy Commissioner, therefore, the petitioner has efficacious statutory remedy wherein all the questions are open to be raised.

5. In the matter of AIRCEL (supra), the assessee has raised the competency and jurisdiction of the Assessing Officer in the State of Tamilnadu to make assessment for imposition of VAT tax under the Tamilnadu Act on the Telecommunication Power located outside the State of Tamilnadu. Thus, it was a case for inherent lack of jurisdiction to make assessment for such a matter

falling outside the State, whereas in the case at hand no such contingency has arisen.

6. It is argued that since the condition precedent for opening reassessment proceeding is not satisfied, the impugned order is without jurisdiction. When the reassessment notice was issued to the petitioner, it was open for it to raise the issue before the Assessing Officer, however, perusal of the impugned order would not demonstrate that any such plea was raised to be decided by the Assessing Officer.

7. Once assessment has been made, the petitioner can prefer an appeal or revision under the VAT Act, 2005. The law laid down by the Supreme Court in the matter of **Commissioner of Income Tax and others vs. Chhabil Dass Agrawal**[1] would apply in the present case, wherein the Supreme Court has set aside the order passed by the High Court directly entertaining a writ petition against the assessment proceeding under the Income Tax Act, 1961.

8. In view of the above and since the petitioner has alternative remedy of preferring an appeal or revision before the Appellate Deputy Commissioner, in my considered opinion the writ petition is not maintainable. It is accordingly dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala

1 (2014) 1 SCC 603