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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 160 of 2016

Dharampal Premchand Ltd. Through its General Manager (Commercial And Legal), Shashi Kumar Maheshwari, S/o Harish Chandra Maheshwari, Aged About 59 Years, R/o 406- A, Jeevan Apartment, G H- 7, Sector- 6, Vasundhara, Ghaziabad (Uttar Pradesh) Corporate Office : A- 34 & 35, Sector 60, Noida (Uttar Pradesh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh)

2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur (Chhattisgarh)

3. Deputy Commissioner, Department Of Commercial Tax, Division II, Raipur (Chhattisgarh)

4. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur (Chhattisgarh)

5. Commercial Tax Officer, Raipur, Circle- 8, Raipur, District Raipur (Chhattisgarh)

6. Aanya Trading, Proprietorship Firm, through the Proprietor Smt. Bimla Jain, W/o Champa Lal Jain, aged about 56 years, Shop No.C-26, First Floor, Shyam Market, Pandri,Raipur, District-Raipur (CG)

7. Arihant Agencies, Proprietorship Firm, through the Proprietor Amit Jain, S/o C.L. Jain, aged about 32 years, Shop No.C-26 Shyam Market, Pandri,Raipur, District-Raipur (CG)

8. Aashi Agencies, Proprietorship Firm, through the Proprietor Amit Jain, S/o C.L.Jain, aged about 32 years, Shop No.C-26/C-27 First Flor, Shyam Market, Pandri, Raipur,District,Raipur (CG)

9. Anant Agencies, Proprietorship Firm, through the Proprietor Namit Jain, S/o Champa Lal Jain, aged about 31 years, Shop No.C-27 Shyam Market, Saheed Hemu Kalyani Ward, Raipur, District-Raipur (CG)

10. Arnab Enterprises, Proprietorship Firm, through the Proprietor Namit Jain, S/o Champa Lal Jain, aged about 31 years, Lal Ganga Midas,Raipur,District-Raipur (CG)

---- Respondents

For Petitioner	:	Shri Brijesh Kumar and Shri S.S. Baghel, Advocates
For State/Res. No.1 to 5	:	Shri R.K.Gupta, Dy. Advocate General, on advance copy
For Respondents 6 to 10	:	Shri Siddharth Dubey, Advocate, on advance copy

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/12/2016

Heard.

1. By this petition under Article 226 of the Constitution of India, the petitioner has assailed legality and validity of the demand notice issued by respondent-State on 9.11.2016 seeking to recover value added tax (VAT) from the petitioner in its capacity as the principal in respect of certain transactions of sale.

2. Learned counsel for the petitioner argued that in the present case, the petitioner, as principal, would not be statutorily liable because it is the agents who are liable for payment of VAT in respect of transactions of sale carried out by them as agent of the petitioner/principal. In support of his submission, learned counsel for the petitioner places reliance upon the provisions contained in Section 6 (2) (b)(i) of the Chhattisgarh Value Added Tax, 2005 (hereinafter referred to as "*the Act*").

3. The relevant provisions, pressed into service before the Court provides, inter alia, that if the principal, on whose behalf commission agent has sold the goods, proves in the prescribed manner to the satisfaction of the Commissioner that tax has been paid or payable by his commission agent on such goods, the principal shall not be liable to pay tax in respect of the sale of such goods.

   Under Section 6 (2) (a) of the Act, it has been clearly provided that where a dealer who bonafide buys or sells for an agreed consideration any goods specified in schedule-II on behalf of his principal, such commission agent and his principal shall both be jointly and severally liable to pay tax under the Act.

4. A conjoint reading of the aforesaid statutory scheme reveals that unless the

principal proves in the prescribed manner, as provided under Section 6 (2) (b) (I) of the Act, his liability would be joint and several with the commission agent.

5. Rule 7 of the Chhattisgarh Value Added Tax Rules, 2006 (hereinafter referred to as "*the Rules*") prescribe the manner in which the principal can raise a claim of exemption from payment of tax, referred to hereinabove. Under sub-rule (2) of Rule 7 of the Rules, it has been provided that a claim made by a principal under sub-clause (i) of clause (b) of sub-section (2) of Section 6 shall be supported by an *adat patti* or sale account issued by the commission agent in accordance with the system prevalent in the market and shall be admitted in proof of such claim.

6. Along with the petition, though the petitioner has annexed the notice issued to him, claim, if any, made by the petitioner in accordance with the Rules, have not been placed on record.

   Learned counsel for the petitioner, however, during the course of the hearing, submitted that in fact, the petitioner had submitted a reply on 11.11.2016 to the concerned authority.

7. Be that as it may, I do not find on record that the petitioner has raised a claim for being exempted from payment of tax as provided under the scheme of Section 6 of the Act read with Rule 7 of the Rules. Therefore, in these circumstances, at this stage, no relief can be granted to the petitioner.

8. Reserving petitioner's liberty to raise claim if he wishes to do so as provided in Rule 7 of the Rules, this petition is dismissed.

9. Learned counsel for the petitioner vociferously argued that looking to the huge recovery directed to be made and coercive steps to be taken against the petitioner, the petitioner may be granted some protection for a short period of seven days so that in the meantime, he could work out his remedy.

10. A Division Bench of this Court in the case **Punjab National Bank & Anr. Vs. Holistic Foundation Bhilai & Ors.**[1], has ruled that where the writ petitions are not entertained by the Court, the Court should restrain from passing any interim order

1 Writ Appeal No.119 of 2016 decided on 15.3.2016

of any protection to a litigant who has not been granted any principal relief in the matter. Therefore, this Court cannot issue such a direction of any protective umbrella till the petitioner takes appropriate steps.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen