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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 176 of 2016

1. M/s Lal Medicine Centre A Proprietorship Firm Having Its Business At Bhudapara, Raipur, Chhattisgarh Through Its Proprietor, Shri Chandiram Mandhani, S/o Late Shri Tikiyomal Mandhani Aged About 62 Years, R/o Tagore Nagar, Raipur (Chhattisgarh)

2. Shri Chandiram Mandhani, S/o Late Shri Tikiyomal Mandhani Aged About 62 Years R/o Tagore Nagar, 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 Bhavan, Civil Lines, Raipur (Chhattisgarh)

3. Deputy Commissioner (Appellate), Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (Chhattisgarh)

4. Commercial Tax Officer, Circle- I Raipur (Chhattisgarh)

---- Respondent

For Petitioners	Mr. Neelabh Dubey, Advocate
For Respondent/State	Mr. UNS Deo, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

21/12/2016

1. Heard.

2. The petitioner would assail the impugned order- Annexure P/1, whereby, the Commercial Tax Officer, Circle 1, Raipur, has

imposed penalty of Rs.3,45,56,784/- on the petitioner in penalty proceedings under Section 45 of the Value Added Tax Act, 2005 (in short "the Act, 2005").

3. The petitioner has preferred this writ petition directly without availing the remedy of preferring an appeal under Section 48 of the Act, 2005 for the reason that although in the assessment proceedings, the petitioner was held liable to additional demand of Rs.86,39,196/- and penalty of 4 times of this amount at Rs.3,45,56,784/-, however, in appeal against the assessment order, the Appellate Deputy Commissioner, Commercial Tax, Raipur, by its order dated 30.11.2016 has reduced the additional tax liability of Rs.86,39,196/- by Rs.81,21,346/-. Therefore, the very basis of valuation of penalty imposed on the petitioner is wiped off.

4. Mr. Neelabh Dubey, learned counsel for the petitioner, would argue that it is exactly for this reason that this Court, relying on the order passed by the Division Bench of M.P. 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,** has held in the matter of **M/s. S.K. Sarawagi & Co. Pvt. Ltd. Vs. State of Chhattisgarh (W.P.T. No.138 of 2016, decided on 10.11.2016)** that when appeal against the original assessment order is pending consideration, the proceedings for recovery of penalty should not be initiated before finalisation of the original proceedings.

5. Learned counsel for the State would not dispute that in view of

the assessment order which has reduced the additional tax liability by Rs.81,21,346/-, the penalty proceedings needs to be re-initiated, as the petitioner may not be liable for penalty of Rs.3,45,56,784/-.

6. In view of the assessment order passed by the Appellate Deputy Commissioner, Commercial Tax, Raipur, the penalty imposed on the petitioner at 4 times of Rs.86,39,196/- do not survive lacking the foundation thereof, therefore, the impugned order -Annexure P/1 is set-aside at the motion stage itself. However, liberty is reserved in favour of Commercial Tax Officer, Circle-1, Raipur to re-initiate the proceedings in view of the assessment order passed by the Appellate Deputy Commissioner.

7. The writ petition is allowed to the above extent.

Sd/-

Judge

(Prashant Kumar Mishra)

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