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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.838 of 2008

M/s Cosmos Casting (India) Ltd., Through its Director Ravi Vaswani, having Registered Office at 299/1, Jarway Tendwa Road, Heerapur, Raipur (C.G.)

---- Petitioner

Versus

1. Assistant Commissioner, Commercial Taxes, Raipur (C.G.)
2. Commissioner, Commercial Taxes, Raipur (C.G.)

---- Respondents

For Petitioner:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma, Advocate.
For Respondents:	Mr. Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/06/2017

1. The petitioner has called in question the order passed by the Commissioner, Commercial Tax, dated 8-11-2007 whereby the order of the Assistant Commissioner levying tax under Section 28 (1) of the Chhattisgarh Commercial Tax Act, 1994 (for short, 'the Act, 1994') to the extent of ₹ 2,23,330/-, has been affirmed.

2. Mr. H.B. Agrawal, learned Senior Advocate appearing for the writ petitioner, would submit that levy of penalty to the extent of ₹ 2,23,330/- under Section 28 (1) of the Act, 1994 without recording a finding that omission leading to such reassessment is attributable to the petitioner dealer, is contrary to law and as such deserves to be set aside.

3. Mr. Shashank Thakur, learned Government Advocate appearing for the State/respondents, would submit that the petitioner itself has admitted its tax liability as well as the penalty liability before the Assistant Commissioner which has been duly recorded in the order dated 14-11-2005, therefore, no exemption can be taken to that part of the order levying penalty.

4. In reply, Mr. Agrawal would submit that the petitioner has challenged the order of the Assistant Commissioner in revision questioning the liability of tax as well as the penalty liability which itself would show that the petitioner has never admitted such penalty liability before the Assistant Commissioner.

5. I have heard learned counsel for the parties.

6. Section 28 (1) of the Act, 1994 provides as under: -

> "(1) Where an assessment has been made under this Act or the Act repealed by this Act and if for any reason any sale or purchase of goods chargeable to tax under this Act or the Act repealed by this Act during any period has been under assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom or a set off has been wrongly allowed, the Commissioner may, at any time within five calendar years from the date of order of assessment after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to reassess within a period of two calendar years from the commencement of such proceedings the tax payable by such dealer and the Commissioner may, where the omission leading to such reassessment is attributable to the dealer, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount."

7. A studied perusal of the aforesaid provision would show that

penalty would be payable if the omission leading to such reassessment is attributable to the dealer. The order passed by the Assistant Commissioner is conspicuously silent on the said point and no finding has been recorded that the omission leading to such reassessment of tax is attributable to the petitioner dealer. Therefore, the order is in teeth of second part of Section 28 (1) of Act, 1994. The impugned order so far as levying the penalty of ₹ 2,23,330/- is hereby quashed.

8. The matter is restored to the file of the Commissioner, Commercial Tax, Raipur, Chhattisgarh, who shall consider as to whether the petitioner is liable to pay penalty of ₹ 2,23,330/- in light of the provisions contained in Section 28 (1) of the Act, 1994. The petitioner is entitled to raise all such plea including that he has not made any such admission so far as interest and penalty are concerned before the assessing authority.

9. With the aforesaid observation, the writ petition stands finally disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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