

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.46 of 2017

Order reserved on: 11-4-2017

Order delivered on: 17-5-2017

1. M/s. Kishan Lal & Company, S-1, Shree Complex, T.P. Nagar, Stadium Road, Korba (C.G.), through proprietor Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)
2. Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

---- Petitioners

Versus

1. Additional Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur (C.G.)

---- Respondents

Writ Petition (T) No.19 of 2017

1. M/s. Kishan Lal & Company, S-1, Shree Complex, T.P. Nagar, Stadium Road, Korba (C.G.), through proprietor Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)
2. Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

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Versus

1. Additional Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur (C.G.)

---- Respondents

Writ Petition (T) No.18 of 2017

1. M/s. Kishan Lal & Company, S-1, Shree Complex, T.P. Nagar, Stadium Road, Korba (C.G.), through proprietor Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)
2. Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

---- Petitioners

Versus

1. Additional Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur (C.G.)

---- Respondents

Writ Petition (T) No.25 of 2017

1. M/s. Kishan Lal & Company, S-1, Shree Complex, T.P. Nagar, Stadium Road, Korba (C.G.), through proprietor Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)
2. Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

---- Petitioners

Versus

1. Additional Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur (C.G.)

---- Respondents

Writ Petition (T) No.26 of 2017

1. M/s. Kishan Lal & Company, S-1, Shree Complex, T.P. Nagar, Stadium Road, Korba (C.G.), through proprietor Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

2. Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

---- Petitioners

Versus

1. Additional Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur (C.G.)

---- Respondents

AND

Writ Petition (T) No.24 of 2017

1. M/s. Kishan Lal & Company, S-1, Shree Complex, T.P. Nagar, Stadium Road, Korba (C.G.), through proprietor Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)
2. Sushil Kumar Agrawal, aged about 49 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba (C.G.)

---- Petitioners

Versus

1. Additional Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur (C.G.)

---- Respondents

For Petitioners: Mr. Siddharth Dubey, Advocate.

For Respondents / State: -

Mr. Prasun Kumar Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of fact and law is involved in these writ

petitions, they are being decided by this common order.

2. At the outset, counsel for the parties submit that in W.P.(T) Nos.18/2017, 19/2017 and 46/2017, similar question is involved, only assessment orders are different. Therefore, this order will govern the disposal of W.P.(T) Nos.18/2017, 19/2017 and 46/2017.
3. Similarly, W.P.(T)Nos.24/2017, 25/2017 and 26/2017 relate to entry tax, but by virtue of the provisions contained in Section 13 of the Entry Tax Act, 1976, the provisions of Section 49 of the Chhattisgarh Value Added Tax Act, 2005 would apply. Therefore, this order will govern the disposal of W.P.(T)Nos.24/2017, 25/2017 and 26/2017 also.
4. M/s. Kishan Lal and Company, petitioner No.1 herein, is a proprietorship firm. The Assistant Commissioner, Commercial Tax passed an order of assessment for the period from 1-4-2006 to 31-3-2007 under the provisions of the Chhattisgarh Value Added Tax Act, 2005 (for short 'the Chhattisgarh VAT Act') by order dated 22-1-2008 and that order was reassessed under Section 22 (1) of the Chhattisgarh VAT Act by the Additional Commissioner by order dated 7-1-2013. Thereafter, revision petition was preferred by the petitioners under Section 49 (1) of the Chhattisgarh VAT Act and the liability was partly reduced by order dated 25-9-2013. Thereafter, under Section 49 (3) of the Chhattisgarh VAT Act, *suo motu* revision case was registered against the petitioners on 14-7-2015 and notices were issued to

the petitioners for his appearance on 18-8-2015. Thereafter, again notice was issued under Rule 61 of the Chhattisgarh Value Added Tax Rules, 2006 for his appearance on 17-11-2016. The second pre-revision notice was challenged in W.P.(T)No.17/2017 but that writ petition was withdrawn on 8-2-2017, as, in between, on 28-11-2016, final order was passed in the revision under Section 49 (3) of the Chhattisgarh VAT Act. Finally, the petitioners have filed these writ petitions calling in question the order dated 28-11-2016 passed by the Additional Commissioner, Commercial Tax, Raipur as well as the notices issued for that revision (undated).

5. Mr. Siddharth Dubey, learned counsel appearing for the petitioners, would submit that the first pre-revision notice was issued on 14-7-2015 (Annexure P-4). As the case was accepted as *suo motu* revision under Section 49 (3) of the Chhattisgarh VAT Act and the date was fixed for 18-8-2015, therefore, by virtue of the provisions contained in Section 49 (3) of the Chhattisgarh VAT Act, order in that revision proceeding ought to have been passed within one year from 14-7-2015, but the impugned order has been passed on 28-11-2016 i.e. beyond the period of one year from the date of initiation of the proceeding and, therefore, the order dated 28-11-2016 deserves to be quashed being in teeth of the provisions contained in Section 49 (3) of the Chhattisgarh VAT Act.

6. On the other hand, Mr. Prasun Kumar Bhaduri, learned Govt.

Advocate appearing for the State/respondents, would submit that the provisions contained in Section 49 (3) of the Chhattisgarh VAT Act are directory in nature and no consequences have been made for not passing the order within one year from the date of initiation of the proceeding under Section 49 (3) of the Chhattisgarh VAT Act. Elaborating his submission, he would further submit that proviso (a) to Section 49 (3) of the Chhattisgarh VAT Act provides that no proceeding shall be initiated under this sub-section after the expiry of three calendar years from the date of the order sought to be revised, but there is no legislative injunction that no order shall be passed after expiry of one year from the date of initiation of the proceeding. Therefore, the legislative intention is clear and explicit and the provisions contained in Section 49 (3) of the Chhattisgarh VAT Act of passing the order within one calendar year from the date of initiation of the proceeding is only an enabling provision and in absence of consequences having been provided by the legislature, no such proceeding can be deemed to have been lapsed after the expiry of one year. He would lastly submit that the order passed on 28-11-2016 is an appealable order under Section 49 (4) of the Chhattisgarh VAT Act and the petitioners having not raised all such plea before the Additional Commissioner cannot be permitted to raise this plea before this Court for the first time. Therefore, the writ petitions deserve to be dismissed.

7. I have heard learned counsel for the parties and also considered

their rival submissions and gone through the record with utmost circumspection.

8. In order to appreciate the arguments advanced by counsel for the parties, it would be appropriate to refer Section 49 (3) of the Chhattisgarh VAT Act which reads as under: -

“Section 49 : Power of revision by Commissioner

(3) The commissioner may on his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person appointed under section 3 to assist him including any officer to whom he has delegated his powers under subsection (1) is erroneous in so far as it is prejudicial to the interest of the revenue, and he may, after giving the dealer or person a reasonable opportunity of being heard, and after making or causing to be made such enquiry as he deems necessary, pass within one calendar year from the date of initiation of proceeding such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment:

Provided that-

(a) no proceeding shall be initiated under this sub-section after the expiry of three calendar years from the date of the order sought to be revised;

(b) no order shall be revised by the commissioner under this sub-section where a second appeal against such order is pending before the Tribunal or such appeal has been decided by the Tribunal on merits.”

9. A focused study of the aforesaid provision would show that the Commissioner may call for the record on his own motion or on information received and examine that record and after examination if he finds that the order passed therein by any authority appointed by him under Section 3 or by any officer to

whom he has delegated his powers under sub-section (1) is firstly erroneous and it is prejudicial to the interest of the revenue, he is empowered after giving opportunity of being heard to the dealer and after making enquiry as he deems it fit, to pass order within one calender year from the date of initiation of the proceeding such order as the circumstances of the case justify, including the order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.

10. Thus, it is quite vivid that the Commissioner, who is a revisional authority, either may act *suo motu* or on the information received and he is empowered to pass order exercising, modifying, cancelling or directing fresh assessment, but he must pas that order within one calendar year from the date of initiation of the proceeding.

11. The word “initiate” or “initiation” has not been defined in the Act, 2005. Since it has not been defined in the Act, it would be appropriate to refer the dictionary meaning of the word “initiate”. In Webster's Third New International Dictionary, the word “initiate” has been defined as to begin or set going; make a beginning of; perform or facilitate the first actions, steps or stages of. Likewise, in Shorter Oxford English Dictionary, the word “initiate” has been defined as to begin, commence, enter upon; to introduce, set going, originate.

12. Black's Law Dictionary, 6th Edition, defines the words “initiate” and “initiative” as under: -

“**Initiate**: Commence; start; originate; introduce;

inchoate. Curtesy initiate is the interest which a husband has in the wife's lands after a child is born who may inherit, but before the wife dies. To propose for approval – as schedule of rates. Idaho Power Co. v. Thompson, D.C. Idaho, 19 F. 2d 547, 579.

Initiative: An electoral process whereby designated percentages of the electorate may initiate legislative or constitutional changes through the filing of formal petitions to be acted on by the legislature or the total electorate. The power of the people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly. Hughes v. Bryan, Okl., 425 P. 2d 952, 954. Not all state constitutions provide for initiative.”

13. Thus, the word “initiation” of *suo motu* revision as stated in proviso (a) to Section 49 (3) of the Act, 2005 has a definite connotation. Initiation of revisional proceeding is the time when the revisional authority applies its mind to the facts / materials on record and decides to direct issuance of notice in accordance with Rule 61 of the Chhattisgarh Valued Added Tax Rules, 2006 proposing the proposed order and intimating the assessee his intention to take the proceeding in *suo motu* revisional proceeding. Proviso (a) to Section 49 (3) of the Act, 2005, is the condition precedent to exercise the power of revisional authority under that procedure. It merely contemplates initiation of proceeding by the revisional authority on its own or otherwise. The proceeding can be said to be initiated only when the revisional authority on its own motion or on the motion made otherwise decides to issue notice to the other side.
14. The word “initiate” has been employed in Section 20 of the Contempt of Courts Act, 1971. Section 20 of the Contempt of

Courts Act, 1971 provides that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

15. The aforesaid provision came up for consideration before the Supreme Court in the matter of **Pallav Sheth v. Custodian and others**¹ and Their Lordships while considering the scope and meaning of the word “initiate” under Section 20 of the Contempt of Courts Act, 1971 have held that in the case of *suo motu* proceedings, contempt proceeding must be initiated by the court by issuing a notice and in other cases initiation can only be by a party filing an application. Further, the Supreme Court clearly held that under Section 20 of the Contempt of Courts Act, 1971, action can be initiated, either by filing an application or by the court issuing notice *suo motu*, within a period of one year from the date on which the contempt is alleged to have been committed, and observed in its report as under: -

“44. Action for contempt is divisible into two categories, namely, that initiated *suo motu* by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of *suo motu* proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on [Section 20](#) must be that action must be initiated, either by filing of an application or by the court issuing notice *suo motu*, within a period of one year from the date on which the contempt is alleged to have been committed.”

1 (2001) 7 SCC 549

16. Therefore, in the considered opinion of the Court what is required and condition precedent for initiation of proceeding by invoking Section 49 (3) of the Chhattisgarh Value Added Tax, 2005, would be initiation of proceeding under Section 49 (3) of the Act, 2005 and initiation can be done only when the revisional authority applies its mind to the facts of the case of his own motion or on the information received. Once there is application of mind by the revisional authority for suo motu proceeding or on the basis of the information received and he decides to issue notice as contemplated in Rule 61 of the Chhattisgarh Valued Added Tax Rules, 2006, then the exercise of initiation is complete and initiation cannot be said to be made only when the notice is received under Rule 61 by the assessee.
17. Once the proceeding is initiated by the revisional authority / Commissioner under Section 49 (3) of the Chhattisgarh VAT Act by applying its mind and he directs issuance of notice, then further duty imposed by the legislature under Section 49 (3) is to pass the order enhancing, modifying or cancelling the order of assessment within “one calendar year” from the date of initiation of the proceeding.
18. It is settled law that if the statutory provision as to time is a condition for exercise of a statutory power as distinguished from a duty, the prescription as to time will be construed as mandatory. (See Supdt. of Taxes, Dhubri and others v. M/s. Onkarmal

Nathmal Trust².)

19. Section 49 (3) of the Chhattisgarh VAT Act confers *suo motu* revisional power to the Commissioner and the period of condition precedent for exercise of such power has also been prescribed within one calendar year from the date of initiation of the proceeding. Since the period during which the proceeding has to be completed is prescribed by the legislature, in all fairness that proceeding has to be completed and the order has to be passed within one calendar year from the date of initiation of the proceeding.

20. In **M/s. Onkarmal Nathmal Trust's case** (supra), the Supreme Court while considering the provisions of the Assam Taxation (on Goods carried by Road or on Inland Waterways) Act, 1961 held that revenue statutes are based on public policy. Revenue statutes protect the public on the one hand and confer power on the State on the other. Justice M.H. Beg in his concurring opinion, considering Section 11 of the said Act, held as under: -

“42. If this provision imposes a limitation upon the power of the Commissioner to assess in every case of escaped assessment, whatever may be the reason for the escape, the best judgment proceedings against the respondents would be barred by the passage of two years after the return period. This result must, on the language of Section 11, flow from it, and not from mere failure of the Commissioner to issue a notice under Section 7(2) of the Act, which the Commissioner “may” only serve within two years of the expiry of the return period.”

21. Similar is the proposition laid down by Their Lordships of the

2 (1976) 1 SCC 766

Supreme Court in the matter of **Collector of Central Excise, Madras v. M/s. M.M. Rubber and Co., Tamilnadu**³. Their Lordships while considering the provisions contained in Section 35E (3) of the Central Excises and Salt Act, 1944, which prescribes one year period of limitation for exercise of power under sub-sections (1) and (2) of the said Act by providing that “no order shall be made under sub-section (1) or sub-section (2) after the expiry of one year from the date of the decision or order of the adjudicating authority”, held that if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor and observed thereunder in paragraphs 12 and 13 as under: -

“12. It may be seen, therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus panetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore Courts have uniformly laid down as

3 AIR 1991 SC 2141

a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him on the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set. This is based upon, as observed by Rajamanner, CJ in [Muthia Chettiar v. CIT](#) (AIR 1951 Mad 204) (supra) "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law."

22. The principle of law laid down in **M/s. M.M. Rubber and Co.** (supra) has been followed with approval recently by the Supreme Court in the matter of **Commissioner of Central Excise, Commissioner, Delhi-III, Gurgaon v. KAP Cones, Udyog Vihar, Phase-V, Gurgaon**⁴.
23. In the matter of **Balasinor Nagrik Cooperative Bank Ltd. v. Babubhai Shankerlal Pandya and others**⁵ the question before the Supreme Court was, whether the failure of the Registrar to communicate his disapproval of a resolution passed by a society expelling a member under sub-section (1) of Section 36 of the Gujarat Cooperative Societies Act, 1961 within the period of three months as specified therein, entails in the consequence of rendering the Registrar *functus officio*. Their Lordships while answering the aforesaid issue has held that failure of Registrar to

4 (2015) 9 SCC 373

5 (1987) 1 SCC 606

exercise his power within the stipulated 3 months renders him *functus officio*. Relevant portion of paragraph 5 of the report states as under: -

“5. ... According to its plain terms, the second proviso places a limitation on the powers of the Registrar. It appears to us that the obvious intention of the legislature was that once the period of three months stipulated expires, the Registrar becomes *functus officio* and his power to accord approval or disapproval to the resolution passed by the society for expulsion of a member under sub-section (1) of Section 36 of the Act lapses. The District Registrar therefore had no jurisdiction to set aside the resolution passed by the appellant-society under sub-section (1) of Section 36 for the expulsion of respondent 1 from the primary membership of the society after the expiry of a period of three months from October 6, 1982 i.e. the date of submission of the resolution. ...”

24. A Division Bench of the Gujarat High Court in the matter of **M/s. S.K. Industries v. State of Gujarat**⁶ while considering the provisions of Section 67 of the Gujarat Sales Tax Act, which provides revision by the Commissioner of his own motion within three years or on application made to him within one year, and considering the revisional provision in which the Commissioner may pass an order within twelve months from the date of service of notice for revision has held that such a provision has been made by the Legislature in order to obviate the difficulties of the assessee and further, that such a provision has inserted that such order would have to be passed within 12 months from the date of service of notice of revision. It was further held that such a provision has been made in order to ensure exercise of *suo motu*

6 Special Civil Application No.8270/2015 decided on 2-9-2016

revisional powers by the Commissioner, does not remain open ended and there is finality of a pending issue, and to bring about an early end to uncertainty.

25. The expression “calendar year” as employed in Section 49 (3) of the Chhattisgarh VAT Act, 2005 has been neither defined in the Act of 2005 nor in the General Clauses Act. Therefore, it would be profitable to take the assistance of dictionary meaning of the term “calendar year”. The term “calendar year” has been defined in the Black's Law Dictionary, 6th Edition, as under: -

“Calendar year. The period from January 1 to December 31 inclusive. Ordinarily calendar year means 365 days except leap year, and is composed of 12 months varying in length.”

26. The expression 'three calendar years' as used in the C.P. and Berar Sales Tax Act, 1947, came-up for consideration before a Full Bench of the Madhya Pradesh High Court and on the point of difference as to when the calendar year would commence, the Full Bench resolved two conflicting opinions of the Benches and the Full Bench ultimately, in the matter of **Kanhayyalal Shivasahay Sharma v. Deputy Commissioner of Sales Tax, Madhya Pradesh and others**⁷ answered the question holding that the expression 'three calendar years' must be taken to mean three calendar years calculated from the first of January immediately following the calendar year in which the assessment period expired. It was further held that a calendar year should not be construed to mean a period of 365 days calculated from any

7 AIR 1958 MP 211

day within the calendar. It was succinctly held as under: -

“12. Having considered all the material that was placed before us, including dictionaries, we are of the opinion that “three calendar years' must be taken to mean three calendar years calculated from the 1st of January immediately succeeding the calendar year in which the assessment period expired. If this is taken into account, then the notice which was served upon the petitioner in Form No. XII on 29-10-1952 was within three 'calendar years' from the date of the expiry of the assessment order. ...”

Bhutt, J, in his separate but concurring opinion observed as under: -

“18. In 1956-7 STC 623 (Nag) (A), to which I was a party, it was not disputed that a calendar year only meant 12 calendar months. As the term 'calendar year' has not been defined either in the Sales Tax Act or the General Clauses Act, it is to be understood in its ordinary, dictionary meaning. It is, therefore, a period of 365 or 366 days, as the case may be, which begins from the 1st day of January and ends on the 31st day of December.

The question, however, is how a calendar year should be computed from a day other than the 1st day of January. There is no prescribed method of calculating it in such a case. Therefore, the dictionary meaning has to be wholly incorporated in S. 11 (5) of the Sales Tax Act to determine the date when the three calendar years would expire. In this manner, the notice in question would be found to be within time under the amended section.”

27. However, learned counsel for the petitioners would rely upon the Division Bench decision of the Orissa High Court in the matter of **Kabita Barik v. State of Orissa and others**⁸ in which the Orissa High Court relying upon the Concise Oxford English Dictionary has held that “calendar year” means year is completed of 365 days and the same may be from the 1st of January or the period of

the same length, starting at a different point. It was observed as under in paragraph 17: -

“17. In Concise Oxford English Dictionary, Tenth Edition Revised, while explaining the meaning of the word “Calendar Year” reference has been made to the word “year” and it has been explained as a period of 365 days (or 366 days in leap year). The same may be from the 1st of January or the period of the same length, starting at a different point. This Court accepts the said meaning of the expression “calendar year” in Section 54(1)(ii).”

28. The judgment rendered in **Kanhayyalal Shivasahay Sharma** (supra) is a Full Bench decision of the Madhya Pradesh High Court resolving the conflict and laying down the law with regard to date of commencement of “calendar year” and it is neither in dispute nor in doubt that the judgment(s) rendered by the M.P. High Court prior to 1-11-2000 is binding on this Court on the principle of judicial comity. On the other hand, the decision rendered by the Orissa High Court is a Division Bench decision and only has a persuasive value to this Court. Therefore, the petitioners' contention that the calendar year can only mean the period of 12 months and it can commence at a different point other than 1st of January within the calendar, cannot be accepted. The legislature has designedly and consciously used the words “calendar year” in Section 49 (3) of the Chhattisgarh VAT Act, it has not used the word “year” and “year” can be of 365 days and it can be reckoned beginning on a day other than 1st of January within the year.

29. This determination would bring me to the facts of the present

case. In the present case, it has already been held that the date of initiation of the proceeding would be the date on which the revisional authority applies its mind to the facts and circumstances of the case which in this case, the 14th of July, 2015 (in all the six writ petitions herein), the date on which the notice was issued to the petitioners after applying its mind. Thus, computing one calendar year as employed in Section 49 (3) of the Chhattisgarh VAT Act from the date of initiation of proceeding, one calendar year would end on 31st of December, 2016, whereas the impugned order was passed on 28-11-2016 prior to completion of one calendar year i.e 31-12-2016. Thus, the notice in question would be found to be within the time stipulated under the above-stated provision and it is held that the revisional authority has passed order under Section 49 (3) of the Chhattisgarh VAT Act on 28-11-2016 (in all the six writ petitions herein) within one calendar year from the date of initiation of the proceeding. Therefore, it cannot be said that the exercise of jurisdiction by the learned revisional authority under Section 49 (3) of the Chhattisgarh VAT Act is beyond jurisdiction and the order has not been passed within one calendar year.

30. As a fallout and consequence of aforesaid discussion, I am of the considered opinion that the revisional authority has exercised the revisional jurisdiction within one calendar year from the date of initiation of the proceeding i.e. 14th of July, 2015 and therefore there is no jurisdictional error in the orders of the learned

Additional Commissioner, Commercial Tax. The orders passed by the Additional Commissioner are absolutely within the jurisdiction of that authority. The writ petitions are dismissed accordingly, leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma