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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.50 of 2017

M/s. Fortune Metaliks Ltd., a company duly incorporated under the Companies Act, 1956 having its registered office at Ferozepur Road, Opposite Circuit House, Ludhiana and having works at 24 Milestone, Raipur-Bilaspur Highway, Village Kapasda, Dharsiwa, Raipur, Chhattisgarh, through its authorized signatory and Director Shri Raghu Nandan Singla, S/o Shri Sohan Lal Singla, aged about 43 years, residing at 205, Sapphire Greens, Vidhan Sabha Road, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Commercial Tax, Mantralaya, Naya Raipur, Chhattisgarh
2. Commissioner, Commercial Tax, Vanijyik Kar Bhawan, Raipur, Chhattisgarh
3. Assistant Commissioner, Commercial Tax, Raipur, Chhattisgarh

---- Respondents

For Petitioner: Mr. Neelabh Dubey, Advocate.

For Respondents/State: Mr. U.N.S. Deo, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/05/2017

1. The petitioner has filed this writ petition calling in question the order dated 9-2-2017 passed by the Assistant Commissioner, Commercial Tax, by which the revisional authority in exercise of power conferred under Section 22 (1) of the Chhattisgarh Value Added Tax Act, 2005 (for short, 'the VAT Act') has passed the order of reassessment against the petitioner.

2. The petitioner has filed the writ petition mainly on the ground that

the petitioner Company submitted its preliminary objection to the show cause notice issued by the respondent authorities, but the respondent authorities without looking to the same and considering the same have passed the impugned order of reassessment which is complete defiance of the order of the Supreme Court in the matter **GKN Driveshafts (India) Ltd. v. Income Tax Officer and others**[1] and therefore the impugned order deserves to be set aside.

3. The State Government has filed its reply before this Court stating inter alia that the order of reassessment is appealable under Section 48 (1) of the VAT Act and further stated that the application for preliminary objection was not filed in the appropriate record, the proceeding was pending before the Assistant Commissioner, Commercial Tax, and the preliminary objection was submitted in the Despatch Section of the Office of the Commissioner, Commercial Tax, therefore, the preliminary objection could not be heard and decided. In view of the remedy of appeal being available to the petitioner, the writ petition deserves to be dismissed.

4. Mr. Neelabh Dubey, learned counsel appearing for the petitioner, would submit that though preliminary objection to the notice reopening the assessment was filed right in time before the Assistant Commissioner, Commercial Tax and reasons to believe were sought from the said authority, but neither the reasons to believe were supplied nor the preliminary objection was decided

1 (2003) 1 SCC 72

and the order of reassessment has been passed which is absolutely illegal and without authority of law.

5. On the other hand, Mr. U.N.S. Deo, learned State Counsel, would support the impugned order.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

7. It is not in dispute that upon receiving notice from the revisional authority, the petitioner filed preliminary objection stating that the notice is without jurisdiction and without authority of law and also stating that the objections raised by the petitioner be decided first before proceeding to assess the Noticee dealer on merits and raised following four preliminary objections: -

    1. Whether the learned assessing authority is right in making the allegation of sales being intra-State sales without having any material on record to establish that the goods sold by the Noticee dealer has been sold within the State of Chhattisgarh. If so, to whom?
    2. Whether the learned assessing authority is able to substantiate its allegation of local sale of goods wherein the Noticee dealer has furnished the sale details along with Form-C provided by the buyer in the transaction under Section 6(2) of the Central Sales Tax Act?
    3. Whether merely on doubt on genuineness of Form-C provided by the buyer of Chhattisgarh, the Inter State transaction under Section 3(b) of the Central Sales Tax Act can be held to be Intra State sales?
    4. Whether by one single notice issued for all the three Acts

can it be said that proper opportunity of hearing has been afforded to the Dealer for reopening of cases under different Acts?

8. Undisputedly, the preliminary objection was filed after receipt of notice from the Commissioner, Commercial Tax, before the authorities but, according to the State, it was not filed in the appropriate proceeding and it was filed in the Office of the Commissioner, Commercial Tax, whereas, the proceeding was taking place and is pending in the Court of the Assistant Commissioner, Commercial Tax. Therefore, the preliminary objection cannot be taken care of and the impugned order of reassessment came to be passed by the Assistant Commissioner and preliminary objection was not considered and decided.

9. The fact remains that the Commissioner is appropriate authority to make reassessment under Section 22 of the VAT Act and power has been delegated by the Commissioner to the Assistant Commissioner to exercise the power contained in Section 22 (1) of the VAT Act. Once preliminary objection is filed well within the time before the Commissioner, the Commissioner was obliged to refer the preliminary objection to the appropriate authority to whom the power to exercise the revisional jurisdiction under Section 22 (1) of the VAT Act has been delegated for consideration and needful action. But in this case, the learned Commissioner, it appears, on account of the reason best known to him, could not refer the preliminary objection filed by the petitioner to the Assistant Commissioner, Commercial Tax, before

whom the matter was pending consideration and before the objection could be sent to the Assistant Commissioner, Commercial Tax, the impugned order of reassessment came to be passed ignoring the preliminary objection so filed.

10. At this stage, it would be appropriate to consider the preliminary objection raised by the State / respondents that the order is appealable and therefore the writ petition would not be maintainable.

11. In the matter of **Calcutta Discount Co. Ltd. v. ITO**[2], the Supreme Court has negated such plea and held as under: -

> "That though the writ of prohibition or certiorari would not issue against an executive authority, the High Courts had power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority, acting without jurisdiction subjected, or was likely to subject, a person to lengthy proceedings and unnecessary harassment, the High Courts would issue appropriate orders or directions to prevent such consequences. The existence of such alternative remedies as appeals and reference to the High Court was not, however, always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. When the Constitution conferred on the High Courts the power to give relief, it became the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief were refused without adequate reasons."

12. It is not in dispute that this law laid down by the Supreme Court in **Calcutta Discount Co. Ltd.** (supra) is still holding the field and as such, it cannot be held that merely on the ground of alternative remedy of appeal being available to the petitioner, the writ petition

2 [1961] 41 ITR 191

against the order of reassessment is not maintainable.

13. Now, the question is whether the revisional authority is justified in ignoring / overlooking the preliminary objection filed in reply to the issuance of notice and passing the reassessment order without disposing of the said preliminary objection first, as the law with regard to disposal of preliminary objection to the reassessment proceeding is very well settled.

14. In **GKN Driveshafts (India) Ltd.** (supra), the Supreme Court while considering the notice under Sections 147 and 148 of the Income Tax Act, 1961, has held that on receipt of reasons from the revising authority, the noticee is entitled to file objections to issuance of notice and the assessing authority is bound to dispose of the same by passing a reasoned order and observed in paragraph 5 as under: -

> "5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

15. The decisions of the Supreme Court in **Calcutta Discount Co. Ltd.** (supra) and **GKN Driveshafts (India) Ltd.** (supra) have been followed by the Gujarat High Court in the matter of **Garden**

<u>Finance Ltd. v. Assistant Commissioner of Income-Tax</u>[3] in which it has been held that the assessing authority is required to decide the preliminary objection with reference to notice under Section 148 of the Income Tax Act, 1961 by passing a speaking order and further granted liberty to the assessee to challenge that order of preliminary objection by filing a writ petition.

16. Similarly, in the matter of **<u>MGM Exports v. Deputy Commissioner of Income-Tax</u>**[4], the Gujarat High Court has again held that the assessing authority is required to decide the preliminary objections and pass a speaking order disposing of the objections raised by the assessee and until such a speaking order is passed, the Assessing Officer cannot undertake reassessment.

17. In the matter of **<u>Allana Cold Storage Ltd. v. Income-Tax Officer and others</u>**[5], similar proposition has been struck by the Bombay High Court in paragraphs 6 and 7 which read as under: -

> "6. We have noted the submissions of both counsel. The law as laid down by the apex court is binding on this court as well as on the authorities functioning under the statute. This being the position, we fail to understand as to why the first respondent did not decide the objections separately which he is duty bound to decide. The whole idea in laying down the law in the abovereferred judgment of the apex court is to give an opportunity to the assessee to know as to what is the decision on his objections, which decision has also to be arrived at after giving an opportunity to the assessee. In the present case, the assessee has been denied this opportunity. Not only that but in the first three writ petitions what we find is that a common order has been passed on the objections as well as for the reassessment. In the fourth matter, the assessment order does not disclose

3 [2004] 268 ITR 48 (Guj)
4 [2010] 323 ITR 331 (Guj)
5 [2006] 287 ITR 1 (Bom)

> any decision on the objections at all and undoubtedly no such decision has been given separately on the objections.
>
> 7. Having noted this scenario, in our view the proper course will be to interfere with the assessment orders passed in all four matters by the concerned officer. We are aware that when an alternative remedy is resorted to, the writ jurisdiction is not to be exercised, but that is a rule of self-limitation. The orders challenged in the present matter are clearly against the law laid down by the apex court and, therefore, the exercise of writ jurisdiction is called for. That being so, we allow all these petitions and quash and set aside the orders of assessment passed in all these four petitions. Inasmuch as the assessment orders are set aside, the appeals filed by the petitioners no longer require to be prosecuted. The same will stand disposed of. Now that the impugned orders are set aside, the first respondent, after hearing the petitioners, will pass separate speaking orders on the objections which the petitioners have filed. We further add that in the event the objections are rejected, the assessment order will not be passed for a period of four weeks thereafter."

18. Similar is the decision held by the Delhi High Court in the matter of **Sita World Travels (India) Ltd. v. Commissioner of Income-Tax and another**[6] following the decision of the Supreme Court in **GKN Driveshafts (India) Ltd.** (supra) to dispose of the objections filed by the petitioner with regard to his jurisdiction to reopen the assessment under Section 147/148 of the Income Tax Act, 1961, by a speaking order, before proceeding with the reassessment proceedings.

19. Though the judgment of the Supreme Court in **GKN Driveshafts (India) Ltd.** (supra) relates to reassessment of income under the provisions of the Income Tax Act, yet drawing analogy and deducing the principles of law laid down therein, the said

6 [2005] 274 ITR 186 (Delhi)

principles are applied to the facts of the present case which relates to reopening of reassessment under the provisions of the Chhattisgarh VAT Act, 2005.

20. Following the principles of law laid down by the Supreme Court and the High Courts noticed herein-above in the afore-cited cases, it is quite vivid that in the instant case, notice was issued by the revisional authority proposing to reopen the assessment, the petitioner filed application for supplying reasons as well as made preliminary objections thereafter, but neither the reasons were supplied nor the substantive preliminary objections filed by the petitioner were considered before proceeding with the reassessment proceedings and the order of reassessment came to be passed ignoring / overlooking the preliminary objections and without supplying the reasons as required under the law which is in teeth of the decision of the Supreme Court in **GKN Driveshafts (India) Ltd.** (supra).

21. As a fallout and consequence of aforesaid discussion, the impugned order of reassessment is hereby quashed and the matter is restored to the file of the Assistant Commissioner, Commercial Tax to furnish reasons within reasonable time to the petitioner. On receipt of reasons, the petitioner will be entitled to file additional objections, if any, to the issuance of notice reopening the assessment and the assessing officer will consider and dispose of the same by passing a speaking and reasoned order as held by the Supreme Court in **GKN Driveshafts (India)**

<u>Ltd.</u> (supra). It is further directed that if the objections are rejected, the revisional authority may before proceeding with the reassessment, consider and grant further period of two weeks to enable the petitioner/assessee to challenge the order rejecting preliminary objection, in accordance with law.

22. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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