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HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 05.10.2017

Order passed on 03.11.2017

Writ Petition No. 3018 of 2003

1. Raymond Ltd., Having registered office at Plot No.156/H/2 Village Zadgaon Ratnagiri 415612 Maharashtra Represented by Mr. Amin Khan, S/o Mr. Qayoom Khan, aged about 40 years, Accounts Officer

2. Mr. M.L. Bapna, S/o Shankarlal Bapna, Raymond Ltd. Texile division Jaykay gram Pokharan Road 2 Thane (Maharashtra)- 400 606

---- Petitioners

Versus

1. The Additional Commissioner of Commercial Tax, Commercial Tax Office, Near Rest House, Raipur (C.G.)

2. The Assistant Commissioner of Commercial Tax, Vikraya Kar Bhawan, Mungeli Road, Bilaspur 495 -001

3. The Commissioner of Commercial Tax and Secretary to the Department of Finance, Government of Chhattisgarh, State of Chhattisgarh, Secretariate, Raipur (C.G.)

---- Respondents

Writ Petition No. 3019 of 2003

1. Raymond Ltd., Having registered office at Plot No.156/H/2 Village Zadgaon Ratnagiri 415612 Maharashtra Represented by Mr. Amin Khan, S/o Mr. Qayoom Khan, aged about 40 years, Accounts Officer

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Bhawan, Mungeli Road, Bilaspur 495 -001

3. The Commissioner of Commercial Tax and Secretary to the Department of Finance, Government of Chhattisgarh, State of Chhattisgarh, Secretariate, Raipur (C.G.)

---- Respondents

<u>Writ Petition No. 3134 of 2003</u>

3. Raymond Ltd., Having registered office at Plot No.156/H/2 Village Zadgaon Ratnagiri 415612 Maharashtra Represented by Mr. Amin Khan, S/o Mr. Qayoom Khan, aged about 40 years, Accounts Officer

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1. The Additional Commissioner of Commercial Tax, Commercial Tax Office, Near Rest House, Raipur (C.G.)

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3. The Commissioner of Commercial Tax and Secretary to the Department of Finance, Government of Chhattisgarh, State of Chhattisgarh, Secretariate, Raipur (C.G.)

---- Respondents

For Petitioner : Shri Ashish Shrivastava, Advocate
For Respondents/State : Shri Shashank Thakur, Govt. Advocate.

<u>Hon'ble Shri Justice Sanjay K. Agrawal</u>

<u>C A V Order</u>

(1) Since the common question of law and fact is involved in all the three writ petitions, they are being disposed of by this common order.

(2) By way of filing these petitions, the petitioners herein question the order of re-assessment dated 6.10.2001 under Section 28 of the

Chhattisgarh Commercial Tax Act, 1994 (hereinafter referred to as ‘Act, 1994’), levying purchase tax on coal purchased from M/s Vasudev Casting, Bilaspur treating the purchases as from unregistered dealer for the period from 1.4.1995 to 31.3.1996.

(3) Essential facts necessary to adjudicate the question involved in these writ petitions are as under :-

(3.1) The petitioner-Company is registered under the Companies Act, 1956 for the period from 1.4.1995 to 31.3.1996. The petitioner-Company filed all the returns under the Act, 1994. The assessment was completed by respondent No. 2 / Assistant Commissioner, Commercial Tax on 31.12.1998.

(3.2) It is the case of the petitioners that in the said order (31.12.1998), coal purchased from the registered dealers including M/s Vasudeo Casting, Bilaspur was accepted as per the list filed and no purchase tax was levied. Thereafter, respondent No. 2 / Assistant Commissioner, Commercial Tax served a notice of re-assessment dated 19.8.2000 under Section 28 (1) of the Act, 1994 proposing levy of tax on purchases of coal from M/s Vasudev Casting, Bilaspur.

(3.3) The petitioners submitted their objection to the proposed re-assessment stating *inter - alia* that the selling dealer- M/s Vasudev Casting had issued bills as registered dealer and also furnished prescribed declaration under the Entry Tax Act giving its registration certificate number and on the basis of which claim of deduction of tax paid goods was made. The information of the cancellation of the registration certificate was not published and it was not within the knowledge of the petitioners at the time of purchase of goods from time to time that the registration certificate of the selling dealer – M/s Vasudev Casting had been cancelled. It was also submitted that the bills of purchases and also the declaration form issued by him in form II under Rule 4(2)(iv)(c) of the Entry Tax Act were also produced in respect of all the sales.

(3.4) The objections raised by the petitioners were not accepted by respondent No. 2/Assistant Commissioner, Commercial Tax and it was held that purchases have been made after the cancellation of the registration certificate of selling dealer-M/s Vasudeo Casting and purchase tax was levied by the respondent No.1 -Assessing Officer upon the petitioners.

(3.5) The petitiones preferred revision before the Respondent No.1– Additional Commissioner of Commercial Tax / Revisional Authority thereagainst. The respondent No.1 also rejected the revision preferred by the petitioners and affirmed the order of reassessment passed by respondent No.1 by the impugned order.

(3.6) Feeling aggrieved and dissatisfied with that order, instant writ petitions have been filed questioning the same.

(4) Shri Ashish Shrivastava, learned counsel appearing for the petitioners would submit that impugned order passed by the revisional authority affirming the order passed by the assessing authority is unsustainable and bad in law as the selling dealer, M/s Vasudeo Casting has already been assessed to tax vide order dated 26.12.2000 for the period from 1.4.1995 to 31.3.1999 on the sale made to the petitioner. He would further submit that the petitioners did not have any information that the registration certificate of M/s Vasudeo Casting,

Bilaspur has been cancelled and, therefore, the impugned order is liable to be set aside.

(5) On the other hand, learned counsel for the State would submit that M/s Vasudev Casting, Bilaspur submitted an application for cancellation of his registration on the ground that he has closed his business from 1.4.1995 and, thereafter, the Commercial Tax Officer, Bilaspur cancelled the registration of M/s Vasudeo Casting, Bilaspur, as dealer on 31.07.1995 with effect from 1.4.1995 i.e. on the date when the business was said to be closed by M/s. Vasudeo Casting, Bilaspur and it was duly communicated to M/s Vasudeo Casting, Bilaspur on 8.8.1995 whereas as per declaration under Rule 4(2)(iv)(c) of the Entry Tax Act, the sale was made on 09.08.1995, 19.4.1996 & 8.4.1996, respectively i.e. after cancellation of his registration and it was communicated to him, therefore, it is a case where the sale has been made by M/s Vasudev Casting after cancellation of his registration and purchase has been made from un-registered dealer, therefore, the purchase tax has rightly been levied upon the petitioners and the writ petition is liable to be dismissed.

(6) I have heard learned counsel appearing for the parties, and considered the rival submissions made hereinabove, and gone through the record with utmost circumspection.

(7) It is not in dispute that that the coal is a goods specified in Schedule II of Act, 1994. Section 9 of Act, 1994 relates to levy of tax.

(8) If the Section 9 and Section 10 are read together, the net conclusion would be as under:-

> “(a) That if a person purchases a goods specified in

> Schedule II of the Act, from a registered dealer and the registered dealer has already paid the commercial tax, then the purchase would be exempted from the payment of purchase tax.
>
> (b) That if a person purchases goods specified in Schedule II of the Act from a registered dealer and the registered dealer is exempted from payment of commercial tax, then the purchaser is required to pay the purchase tax.
>
> (c) That if a person purchases goods as specified in Schedule II, from a person other than registered dealer, and then the purchaser is required to pay purchase tax @ 4%. Other person includes unregistered dealers."

(9) As per petitioners' own document i.e. declaration under Rule 4(2)(iv)(c) of the Entry Tax Act, the date of sale is shown as 9.8.1995 whereas Commissioner, Commercial Tax, Bilaspur has cancelled the registration of M/s Vasudev Casting , Bilaspur as dealer on 31.07.1995 with effect from 1.4.1995 and it has been communicated to the petitioner on 8.8.1995 and, thereafter, on 09.08.1995, 19.4.1996 & 8.4.1996, respectively, the petitioners have purchased the coal from said M/s Vasudeo Casting. Thus, the petitioners have purchased the coal from an un-registered dealer after cancellation of registration of M/s. Vasudeo Casting, and therefore, by virtue of Section 10 of the Chhattisgarh Commercial Tax Act @ 4% on his taxable turn-over has been levied. Thus, admittedly, petitioners' as per their own showing, have purchased the coal after cancellation of registration as a dealer. The Assessing Authority i.e. respondent No. 2 – Assistant Commissioner of Commercial Tax has rightly levied the purchase tax on the petitioner and the revisional authority has not affirmed that order. Therefore, it cannot be

held that the order of assessing authority as upheld by revisional authrotiy suffers from perversity and it is contrary to the record.

(11) In view of the aforesaid discussion, I do not find any merit in these writ petitions, the writ petitions are liable to be and are hereby dismissed leaving the parties to bear their own cost.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-