

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 5766 of 2005**

- M/s Sunil Steels Prop.Sunil Rerollers & Steels Pvt. Ltd. having its works at 560 Urla Industries Complex Raipur and its Registered office at Malviya Road Raipur (C.G.) through its director Anil Nachrani.

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.
3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

---- Respondents**And****WP No. 177 Of 2006**

- M/s Sunil Steels Prop.Sunil Rerollers & Steels Pvt. Ltd. having its works at 560 Urla Industries Complex Raipur and its Registered office at Malviya Road Raipur (C.G.) through its director Anil Nachrani.

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.
3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

---- Respondents

And

WPT No. 551 Of 2008

1. Prime Solvent Extractions Unit No.1, Gandhi Chowk Mahasamund (C.G.) a company incorporated under the provisions of the Companies Act 1956 through its authorised signatory Hemratan Jhabak
2. Hemratan Jhabak S/o Late Sheolal Jhabak, aged about 63 years Resident of College Road, Mahasamund (Cg) Authorised Signatory Of Prime Solvent Extractions.

---- Petitioners

Vs

1. State of Chhattisgarh through:
 - (a) Secretary, Department of Commercial Tax, DKS Mantralaya Bhavan, Raipur C.G.
 - (b) Secretary, Department of Commerce and Industries, DKS Mantralaya Bhavan, Raipur CG.
2. Commissioner Of Commercial Tax, Civil Lines, Raipur (C.G.)
3. Additional Commissioner Of Commercial Tax, Civil Lines Raipur (C.G.)
4. Assistant Commissioner Of Commercial Tax, Civil Lines, Raipur (C.G.)

---- Respondents

And

WPT No. 1710 Of 2009

1. Indian Speciality Fats Limited a Company incorporated under provisions of Indian Companies Act 1956 situate at Mahasamund CG through director Mohanlal Jain
2. Mohanlal Jain S/o Baqtavarmal Jain, aged about 69 years, R/o A-3 Crown Building Ashoka Park Khamardih Road Shankar Nagar, Raipur (Cg)

---- Petitioners

Vs

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.

3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

---- Respondent

And

WPT No. 1713 Of 2009

1. Indian Speciality Fats Limited a Company incorporated under provisions of Indian Companies Act 1956 situate at Mahasamund CG through director Mohanlal Jain
2. Mohanlal Jain S/o Baqtavarmal Jain, aged about 69 years, R/o A-3 Crown Building Ashoka Park Khamardih Road Shankar Nagar, Raipur (Cg)

---- Petitioners

Vs

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.
3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

---- Respondents

And

WPT No. 3927 Of 2011

1. M/s K.N.Oil Industries Ltd., a Company duly registered under The Companies Act, 1956, having its Office and works at College Road, Gandhi Chowk, Mahasamund through its authorized signatory Shri Hemratan Jhabak, S/o Late Shri Sheolal aged about 67 years r/o College Road, Mahasamund.
2. Shri Hemratan Jhabak S/o Late Shri Sheolal aged about 67 years, R/o College Road Mahasamund And Authorized Signature Of M/s K.N. Oil Industries Ltd.

---- Petitioner

Vs

1. State of Chhattisgarh through Secretary Finance, DKS Bhavan Mantralaya Raipur (C.G.)
2. Commissioner Commercial Tax Sales Tax office, Raipur C.G.
3. Assistant Commissioner Commercial Tax Sale Tax Office, Raipur CG.

---- Respondent

And

WP No. 5770 Of 2005

- M/s Sunil Steels Prop.Sunil Rerollers & Steels Pvt. Ltd. having its works at 560 Urla Industries Complex Raipur and its Registered office at Malviya Road Raipur (C.G.) through its director Anil Nachrani.

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.
3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

And

WP No. 5767 Of 2005

- M/s Sunil Steels Prop.Sunil Rerollers & Steels Pvt. Ltd. having its works at 560 Urla Industries Complex Raipur and its Registered office at Malviya Road Raipur (C.G.) through its director Anil Nachrani.

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.

3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

And

WPT No. 7075 Of 2007

1. Indian Speciality Fats Limited a Company incorporated under provisions of Indian Companies Act 1956 situate at Mahasamund CG through director Mohanlal Jain
2. Mohanlal Jain S/o Baqtavarmal Jain, aged about 68 years, R/o A-3 Crown Building Ashoka Park Khamardih Road Shankar Nagar, Raipur (Cg)

---- Petitioners

Vs

1. State of Chhattisgarh through Secretary Department of Commercial Tax DKS Mantralaya Bhavan Raipur (C.G.)
2. Commissioner Department of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur C.G.
3. Additional Commissioner of Commercial Tax Vanijyik kar Bhavan Civil Lines Raipur (C.G.)
4. Assistant Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines Raipur CG.

---- Respondents

For Petitioners	:	Shri Neelabh Dubey, Advocate
For Respondents-State	:	Shri PK Bhaduri, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/02/2017

1. In all the writ petitions, the common issue for consideration is - whether the assessment proceedings in relation to each of the petitioner can be allowed to continue when the notification for extension of period of assessment under Section 27 (9) of the Chhattisgarh Commercial Tax Act, 1994 (for

short 'the Act, 1994') has been issued after expiry of the original period of limitation as provided under Section 27 (8) of the Act, 1994 ?

2. The relevant assessment year for which the extension has been granted by issuance of notification in exercise of powers under Section 27 (9) is 1997-98, 1998-99, 1999-2000. There is no dispute about the fact that for these assessment years, the original period of limitation as prescribed under Section 27 (8) was to expire on 31.12.2000 for the assessment year 1997-98 and so on for two subsequent assessment years. It is also not in dispute that the State Government issued first such notification on 29.12.2000 extending the period to 28.02.2001 which was within time as the same was issued before expiry of original period of limitation i.e. 31.12.2000, however, next notification was not issued before 28.02.2001 but it was issued on 01.03.2001, after the extended period had expired on 28.02.2001. The subsequent notifications were also issued after the expiry of extended period of limitation, however, that may not be significant because the first notification itself was issued at the time when the extended period had already lapsed.
3. Section 27 (8) of the Act, 1994 provides that the assessment shall be made in respect of a registered dealer and a dealer referred to in clause (b) of sub-section (6) within a period of two calendar years from the end of the period for which assessment is to be made; and (ii) in respect of a dealer who has failed to apply for registration, within a period of two calendar years from the commencement of proceedings under sub-section (6).
4. In the cases in hand all the petitioners are registered dealers, therefore, they would be covered under Clause (i) of sub-section (8). Sub-section (9) of Section 27 is relevant for decision making, therefore, it is reproduced

hereunder:-

“(9) Notwithstanding anything contained in sub-section (8), where assessment proceedings in respect of any dealer relating to any year cannot be completed before the expiry of the period specified therefor in the said sub-section, the State Government, may by notification, for reasons to be recorded in writing, extend the period for the completion of the assessment proceedings in respect of such dealers by such further period as may be specified in such notification.”

5. This batch of writ petitions was heard earlier wherein Shri Neelabh Dubey, learned counsel for the petitioners has placed reliance on **State of Punjab and Others Vs. Shreyans Industries Limited and Others**¹ . The matter was again heard today to examine as to whether the matter is covered by the said decision.
6. In **Shreyans** (*supra*), the Supreme Court was dealing with the appeal preferred by the State of Punjab challenging the order passed by the Punjab & Haryana High Court whereby dealing with similar provisions, the High Court had allowed the plea that an assessment proceeding continued on the strength of similar notifications which were issued after the prescribed period of limitation was over, would not revive the assessment proceedings which had already expired by operation of law. Negating the plea of Punjab Government, the Supreme Court reproduced the provision contained in Section 11 (10) of the Punjab General Sales Tax Act, 1948, which provide that the Commissioner, may for reasons to be recorded in writing, extend the period of three years, for passing the order of assessment for such further period as he may deem fit.

7. The Supreme Court then discussed the said provision in para 8 in the

1(2016) 4 SCC769

following manner :

"8. A mere reading of the aforesaid provision would reflect that wherever return is filed by the assessee, assessment is to be made within a period of three years from the last date prescribed for furnishing the return in respect of such period. On the other hand, in those cases where return is not filed or any dealer, who is liable to pay the tax under the Act, does not get himself registered therein, the period of assessment prescribed is five years. We are not concerned with the alternate situation as in the instant appeals not only the assesseees are registered dealers, they had also filed their returns regularly within the prescribed period and, therefore, assessments were to be completed within a period of three years from the last date prescribed for furnishing the returns, which is the normal period prescribed. At the same time, sub-section (10) of Section 11 gives power to the Commissioner to extend a period of three years. Interestingly, there is no upper limit prescribed for which the period can be extended, meaning thereby such an extension can be given, theoretically, for any length of time. This discretion is, however, controlled by obligating the Commissioner to give his reasons for extension, and such reasons are to be recorded in writing. Obviously, the purpose of giving reasons in writing is to ensure that the power to extend the period of limitation is exercised for valid reasons based on material considerations and that power is not abused by exercising it without any application of mind, or mala fide or on irrelevant considerations or for extraneous purposes. Such an order of extension of time, naturally, is open to judicial review, albeit within the confines of law on the basis of which such judicial review is permissible."

Thereafter, the Supreme Court observed that the issue of validity of the notification which was issued after the original time of limitation was over to conclude thus in para 20, 22 & 23:-

"20. We may say at the outset that though

provisions of the Punjab Act are couched in different language from the Karnataka Act or the Gujarat Act, the essence of these provisions is same. As noticed above, insofar as scheme of the Punjab Act is concerned, the assessment order is to be normally passed within a period of three years. At the same time, power is given to the Commissioner under Section 11(10) of the Act to extend the said period of three years. Once such an extension is given, the order is passed even beyond the period of three years. Significantly, no upper limit is fixed while giving such extension which means that the power can be exercised for extending the period for any length of time, subject however to the condition that the Commissioner is bound to record the reasons justifying such an extension. Obviously, when the Commissioner passes such an order and gives reasons, not only he would have to justify his action of extending time but also the period by which the time is extended. In the Karnataka legislation, the power is of "deferment". In that legislation as well, the assessment order is to be passed within three years as sub-section (5) of Section 12 of the Karnataka Sales Tax Act stipulates that no assessment shall be made after a period of three years from the date on which the return under sub-section (1) of that order is submitted by a dealer subject to two provisos mentioned therein. Sub-section (6) of Section 12 mentions as to how the period of limitation is to be computed and reads as under:

"12. (6) In computing the period of limitation for assessment under this section—

(a) the time during which the proceedings for assessment in question have been deferred on account of any stay order granted by any court or any other authority shall be excluded;

(b) the time during which the assessment has been deferred in any case or class of cases by the Joint Commissioner for reasons to be recorded in writing shall be excluded."

22. Even otherwise, it is important to understand the ratio laid down in the judgment of the Karnataka High Court in *BHEL*. The issue in the said case before the Karnataka High Court was as to whether the power to pass a deferment order is to be exercised even after the expiry of the period of limitation which was answered in the negative. The reasons given in support of this conclusion are as follows: (STC pp. 15-16, para 8)

"8. ... *Deferment of assessment has the effect of enlarging the period of limitation which did not expire by the time the deferment*

order is contemplated to be passed. *When once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished.* Resort to deferment provisions does not retrieve the situation. There is no question of deferring assessment which had already become time-barred. The provision for exclusion of time in computing the period of limitation of deferment of assessment is meant to prevent further running of time against the Revenue if the limitation had not expired."

(emphasis supplied)

It was also observed that upon the lapse of the period of limitation prescribed, the right of the Department to assess an assessee gets extinguished and this extension confers a very valuable right on the assessee.

23. If one is to go by the aforesaid dicta, with which we entirely agree, the same shall apply in the instant cases as well. In the context of the Punjab Act, it can be said that extension of time for assessment has the effect of enlarging the period of limitation and, therefore, once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Therefore, there would be no question of extending the time for assessment when the assessment has already become time-barred. A valuable right has also accrued in favour of the assessee when the period of limitation expires. If the Commissioner is permitted to grant the extension even after the expiry of original period of limitation prescribed under the Act, it will give him right to exercise such a power at any time even much after the last date of assessment. In the instant appeals itself, when the last dates of assessment were 30-4-2004, 30-4-2005, 30-4-2006 and 30-4-2007, orders extending the time under Section 11(10) of the Act were passed on 17-8-2007, 17-8-2007, 17-8-2007 and 25-5-2007 respectively. Thus, for Assessment Year 2000-2001, order of extension is passed more than three years after the last date and for Assessment Year 2001-2002, it is more than two years after the last date. Such a situation cannot be countenanced as rightly held by the High Court. When the last date of assessment in respect of these assessment years expired, it vested a valuable right in the assessee which cannot be lightly taken away. As a consequence, sub-section (11) of Section 10 has to be interpreted in the manner which is equitable to both the parties. Therefore, the only way to interpret the same is that by holding that power to extend the time is to be exercised before the normal period of assessment expires. On the

aforesaid interpretation, other arguments of Mr Ganguli lose all significance.

(emphasis supplied)

8. The provision contained in Section 27 (9) of the Chhattisgarh Act is not pari-materia with the provision contained in Section 11 (10) of the Punjab Act yet the essence of these provisions are the same.
9. As a matter of fact, in para 20 of the **Shreyans** (*supra*), the Supreme Court also considered a similar provision of Karnataka Act which was couched in a different language but was essentially in the same terms as in Punjab Act, therefore, the proposition arrived at by the Supreme Court would apply with full force in the present case also because in Chhattisgarh Act also power has been conferred on the State Government to extend the period when assessment proceeding in respect of any dealer relating to any year cannot be completed before the expiry of the period specified therefor and the said notification is also required to record reasons in writing for giving such extension.
10. Since admittedly, the notification in respect of the relevant assessment year has been issued after the expiry of original period of limitation, the assessment proceedings have lapsed and the same cannot be revived by issuing notification after the period of limitation is over.
11. Consequently, all the writ petitions are allowed and the assessment proceedings are quashed.

Sd/-

Judge

Prashant Kumar Mishra