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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No.967 of 2004

1. Unique Rolling Mills (Pvt.) Ltd. Now Unique Structure and Tower Ltd. Urla Industrial Area, Raipur, a company registered under the Companies Act having registered office at Raipur: Represented by Rishi Kumar Bansal, Director
2. Vandana Rolling Mill Ltd. Raipur A company registered under the Companies Act having registered office at Raipur : Represented by Subhash Agrawal, Director
3. Rajesh Re-roller Ltd., a company registered under the Companies Act having registered office at Raipur: Represented by Ramanand Agrawal, Director
4. C.M. Re-rollers and Fabricators, Raipur, a registered partnership firm: Represented by Partner Anil Nachrani

---- Petitioners

Versus

1. Board of Revenue, Raipur (Chhattisgarh)
2. The Commissioner, Commercial Tax, Raipur (Chhattisgarh)
3. The Additional Commissioner, Commercial Tax, Indore now at Raipur
4. The Asstt. Commissioner, Commercial Tax, Raipur

---- Respondents

WP No.508 of 2006

M/s. Aashirwad Ispat Udyog a redg. Partnership firm situated at Urla Industrial Area, Raipur (CG) through partner Vijay Raj Bothra S/o Sampat Lal Bothra, aged about 52 years, resident of 3 Central Avenue, Choubey Colony, Raipur (CG)

---- Petitioner

Versus

1. Board of Revenue (Commercial Tax Tribunal) through Secretary Bilaspur (CG)
2. Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines, Raipur (CG)
3. State of Chhattisgarh through Secretary, Department of Commercial Tax DKS Mantralaya Bhavan Raipur (CG)

---- Respondents

And

WP No.1266 of 2006

M/s. A.V. Steels Private Ltd. Urla Industrial Area Raipur (CG) Through Directors Manoj Agrawal, S/o. Lakhiram Agrawal, aged about 38 years, R/o. 1/7, Geeta Nagar, Raipur (CG)

---- Petitioner

Versus

1. Board of Revenue (Commercial Tax Tribunal) through

Secretary Bilaspur (CG)

2. Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines, Raipur (CG)
3. State of Chhattisgarh through Secretary, Department of Commercial Tax DKS Mantralaya Bhavan Raipur (CG)

---- Respondents

For Petitioners	:	Mr.Ashish Shrivastava, Advocate in WP No.967/2004
For Petitioners	:	Mr.Neelab Dubey, Advocate in WP Nos.508/2006 & 1266/2006
For State	:	Mr.Dheeraj Wankhede, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

24/10/2017

1. These batch of writ petitions are directed against the order dated 26.9.2003 and consequential orders passed by the Board of Revenue.

2. Mr.Ashish Shrivastava and Mr.Neelab Dubey, learned counsel appearing for their respective petitioners, would submit that initially the Board of Revenue allowed the appeal filed by the petitioners and held that the petitioners are not liable to sales tax. However, an application was filed by the Department for making reference on the question of law and arguments were heard on the application of the Department. In the meantime, after hearing of the arguments, the Department moved another application for rectification of the order passed by the Board of Revenue in appeal, on that application, the Board of Revenue reviewed the earlier order passed in favour of the petitioners and in fact, allowed the application and held that

the petitioners are exigible to tax. They would further submit that as per the provisions of Section 71 of the Chhattisgarh Commercial Tax Act, 1994 (hereinafter called as 'Act of 1994'), the impugned order passed by the Board of the Revenue on the rectification application moved by the respondents does not come within the purview of rectification and in fact, it amounts to reviewing their earlier order which was not permissible under Section 71 of the Act of 1994. They would also submit that applications for reference filed by the respondents under Section 70 of the Act of 1994 were converted by the Board of Revenue to the applications for rectification of mistakes under Section 71 of the Act of 1994, but no notice in writing was issued and served to the petitioners under second proviso to sub-section (1) of Section 71 of the Act of 1994 and the petitioners have suffered prejudicially for want of notice as applications for rectification filed on 22.9.2003 were barred by limitation under Section 71 (3) (b) (i) of the Act of 1994, therefore, the impugned order is liable to be set aside.

3. On the other hand, Mr.Dheeraj Wankhede, learned Government Advocate appearing for the respondents/State would support the impugned order.

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

5. At this stage, it would be appropriate to notice Section 71 of the Act of 1994 which reads as under:-

“**Sec. 71 RECTIFICATION OF MISTAKES**

(1) The Commissioner may -

(i) On his own motion at any time within one calendar year from the date of any order passed by him; or

(ii) On an application made by a dealer within one calendar year from the date of receipt of such application, rectify such order for correcting any clerical or arithmetical mistake or any error arising therein from any accidental slip or omission:

Provided that the Commissioner shall not entertain any application by the dealer unless it is made within one year from the date of the order sought to be rectified:

Provided further that no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund unless the Commissioner has given notice in writing to the dealer of his intention so to do and has allowed the dealer a reasonable opportunity of being heard.

(2) Where on an application made by a dealer for the rectification of any order, the order is not rectified within the period specified in sub-section (1), the applicant shall be entitled to have the order rectified in accordance with his application and accordingly the Commissioner shall rectify the order, and where in proceedings initiated *suo motu* the order is not passed within the time specified in sub-section (1), the proceedings shall stand abated:

Provided that nothing herein shall preclude the Commissioner from exercising powers under any other provisions of this Act.

(3) (a) The provisions of sub-section (1) and sub-section (2) shall apply to the rectification of a mistake in any order -

(i) passed by the Tribunal, or

(ii) passed by the appellate authority as they apply to the rectification of a mistake by the Commissioner.

(b) The Tribunal may rectify any order passed by it -

(i) On its own motion at any time within one calendar year from the date of passing of such order; and

(ii) On an application made by the dealer or the Commissioner, at any time within one calendar year from the date of receipt of such application.

(4) Where any such rectification has the effect of reducing the amount of tax, the Commissioner shall in the prescribed manner refund any amount due to the dealer.

(5) Where any such rectification has the effect of enhancing the amount of the tax or reducing the amount of the refund, the Commissioner shall recover the amount due from the dealer in the manner provided in Section 32. ”

6. The Board of Revenue by its order dated 27.1.2000 granted claim for set off in favour of the respective writ petitioners. Thereafter, the Commissioner, Commercial Tax, Raipur (CG) filed applications in all three cases under Section 70(1) of the Act of 1994/under Section 44 (1) of the Madhya Pradesh General Sales Tax Act, 1958 before the Board of Revenue for referring the question of law to this Court. Reference applications of these cases were heard by the Board of Revenue on 27.8.2003 and cases were closed for order by the Board of Revenue on 29.9.2003, but thereafter the order was not passed and again date was fixed for 26th September, 2003. In the meanwhile, on 22.9.2003 the respondents preferred applications for conversion of reference into rectification applications and thereafter on 26.9.2003 the Board of Revenue converted the reference applications into rectification applications under Section 71 of the Act of 1994 and passed the impugned order holding that the petitioners are not entitled for set off, thereby reviewed its earlier order dated 27.1.2000.

7. The application was made under Section 70 (1) of the Act of 1994 before the Board of Revenue for making reference to this Court for consideration on the question of law, but that was not done and reference application has been allowed to be converted into rectification application under Section 71 of the Act of 1994 immediately and without notice in writing as required under second proviso to sub-section (1) of Section 71 of the Act of 1994. The course adopted by the Board of Revenue was not permissible for two reasons, firstly, the original application was for making reference to this Court for answering the question of law and secondly, conversion application was filed on 22.9.2003 and final order was passed on 26.9.2003 as no notice in writing was served to the petitioners except copy of rectification application was served to them, by which they are prejudiced as they could have been shown that application for rectification filed before the Board of Revenue under Section 71 (3) (a) and (b) of the Act of 1994 was barred by limitation. Even otherwise, original application was filed for making reference to this Court, in that event, application for rectification ought not to have been entertained by the Board of Revenue that too without statutory notice prescribed under the Act of 1994 to the petitioners.

8. For the foregoing reasons, the impugned order dated 26.9.2003 and consequential orders passed by the Board of Revenue qua the petitioners herein are hereby set aside. In view of subsequent development, instead of Board of Revenue, the matter is remitted to the Commercial Tax Tribunal, who shall hear the parties and consider the application under Section 71 (1) of the Act of 1994 expeditiously in view of the fact that matter is old one.

9. The writ petitions are allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-