AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No.5933 of 2006

Malik Sales Corporation a proprietorship concern through proprietor Smt. Amina Hirani W/o Mohd. Hirani, aged about 46 years, Shop No.17 Vyapar Parisar Dhamdha Road, Village Chikhali, Durg (CG) resident of HIG-14, Padmanabhpur, Durg (CG)

---- Petitioner

Versus

1. Additional Commissioner of Commercial Tax Vanijyik Kar Bhavan Civil Lines, Raipur (CG)
2. Assistant Commissioner of Commercial Tax Patel Complex, Durg (CG)
3. State of Chhattisgarh through Secretary, Department of Commercial Taxes D.K.S.Mantralaya Bhavan Raipur (CG)

---- Respondents

For Petitioner	:	Ms Smiti Sharma, Advocate
For Respondents	:	Mr.P.K.Bhaduri, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/11/2017

1. This writ petition under Article 226/227 of the Constitution of India is directed against the order dated 7.2.2005 (Annexure P/2) passed by the Appellate Authority, order dated 12.12.2004 (Assessment order for 1998-99) and orders dated 19.12.2005 (for 1997-98 and 1998-99) (Annexure P/3) passed by the Revisional Authority holding the petitioner to be liable for levy of tax under Section 9-B of the C.G. Commercial Tax Act, 1994 (hereinafter called as "the Act of 1994").

2. Ms Smiti Sharma, learned counsel for the petitioner, would submit that the Appellate and the Revisional Authority both have committed gross error by applying Section 9-B of the Act of 1994 as assessment of the petitioner in this case relates to assessment years 1997-98 and 1998-99 i.e. prior to 1.4.1999, as on that day

Section 9-B was not amended and was amended only w.e.f. 1.4.1999. She would further submit that for applicability of unamended Section 9-B of the Act of 1994 would require two ingredients to be fulfilled that the dealer must be liable to pay tax under Section 9 and whose turnover exceeds rupees one crore. She would also submit that in the present case, turnover of the petitioner exceeds rupees one crore, but it is not a taxable turnover as required under Section 9(1) of the Act of 1994. Besides it is also not covered under Section 9(2) or 9(3). Thus, in effect Section 9 not being applicable on the petitioner. Therefore, he is not liable to levy of tax under Section 9 of the Act of 1994 in view of the finding recorded by the Assessing Officer while making assessment on 11.12.2000. Thus, the impugned order passed by the Appellate Authority as affirmed by the Revisional Authority deserves to be quashed.

3. On the other hand, Mr.P.K.Bhaduri, learned Government Advocate appearing for the respondents/State, would oppose the submission and would submit that the Appellate and the Revisional Authority both are absolutely justified in invoking Section 9-B of the Act of 1994 as amended on 1.4.1999.

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

5. It is not in dispute that in the instant case, assessment dispute relates to 1997-98 and 1998-99 i.e. prior to 1.4.1999, therefore, unamended Section 9-B of the Act of 1994 would be applicable to decide levy of tax which provides as under:-

> “Sub-section (1) substituted by MPCT (Amendment) Act,

1998 w.e.f. 1.4.99. Earlier to substitution sub-section (1) read as under:

"notwithstanding anything contained in clause (x) of Section 2 and sub-section (1) of Section 9, every such dealer liable to pay tax under Section 9 whose turnover in the year preceding the commencement of the Madhya Pradesh Vanijyik Kar (Sanshodhan) Adhiniyam, 1997 exceeds rupees one crore and every other dealer whose turnover in a year first exceeds rupees one crore shall, from the date of such commencement or from the date on which the turnover exceeds rupees one crore, as the case may be, be liable to pay tax on the resale of any goods specified in Part II to VII of Schedule II and such tax shall be payable on such part of his turnover in respect of the said goods at the rate specified in column (3) of the said Schedule which remains after deducting thereform -

(i) sale price of declared goods;

(ii) sale price of such goods at the hands of the registered dealer from whom they have been preceding the commencement of the Madhya Pradesh Vanijyik Kar (Sanshodhan) Adhiniyam, 1998 exceeds rupees fifty lacs and every other dealer whose turnover in a year first exceeds rupees fifty lacs shall, from the commencement of the aforesaid Act or from the date on which the turnover exceeds rupees fifty lacs, as the case may be, be liable to pay tax on the resale of any goods specified in Part II to VI of Schedule II at the rate of 8% on such part of his turnover in respect of the said goods which remains after deducting therefrom."

6. A bare perusal of the aforesaid provision would show that for applicability of unamended Section 9-B of the Act of 1994 which carves out a separate class of dealers is only on dealers who are liable to pay tax under Section 9 and whose turnover exceeds rupees one crore. (See **Ghanshyamdas and Co. Vs. Commissioner of Commercial Tax, Madhya Pradesh and Others**[1]).

7. In the light of unamended Section 9-B of the Act of 1994 and following the principle of law laid down by the High Court of Madhya Pradesh in **Ghanshyamdas** (supra), if the facts of the case in hand are examined, it would appear that the Assessing

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Officer in its order dated 11.12.2000 has not found taxable turnover under Section 9 of the Act of 1994, yet, Section 9-B of the Act of 1994 has been applied, which has been affirmed by the Appellate and the Revisional Authority. The Appellate and Revisional Authority did not look into the fact that Section 9-B as unamended prior to 1.4.1999 is applicable to the present case, in which twin requirements are to be fulfilled i.e. dealers are liable to pay tax under Section 9 and whose turnover exceeds rupees one crore and passed the impugned orders, which are liable to be set aside.

8. Accordingly, order dated 7.2.2005 (Annexure P/2) passed by the Appellate Authority, order dated 12.12.2004 (Assessment order for 1998-99) and orders dated 19.12.2005 (for 1997-98 and 1998-99) (Annexure P/3) passed by the Revisional Authority are set aside. Matter is remanded back to the Additional Commissioner, Commercial Tax, Raipur for hearing and disposal afresh in accordance with law considering the provisions contained in Section 9-B of the Act of 1994 as existed prior to 1.4.1999 and quoted herein-above within a period of three months from the date of receipt of a copy of this order.

9. The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-