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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 283 of 2017

M/s Tata Sky Limited A Company Duly Incorporated Under The Companies Act, 1956 (And 2013) Having Its Registered Office At 3rd Floor, C-1, Wadia International Center (Bombay Dyeing), Pandurang Budhkar Marg, Worli, Mumbai 400025, India and its office at G.E. Road, Tatibandh, Raipur Chhattisgarh Through Its Chief Financial Officer And Authorized Signatory Shri Sambasivan Ganesan, S/o Shri Ganesan Tirunelveli Aged About 50 Years, R/o 1502 Palmgrove Housing Society, CF Barfiwala Street, Juhu Lane, New India Assurance Colony Mumbai 400058.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Commercial Taxes, Mahanadi Bhavan, Naya Raipur, Chhattisgarh.
2. Commissioner Of Commercial Tax, Vanijyikkar Bhavan, Civil Lines, Raipur Chhattisgarh.
3. Assistant Commissioner, Commercial Tax, Division I, Raipur.

---- Respondents

For Petitioner	:	Ms. Smiti Sharma, Advocate
For State	:	Mr. D.R. Minj, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/09/2017

1. The limited prayer which the petitioner has sought in the writ petition is for the stay of the effect and operation of the impugned order dated 19.12.2016 on the ground that the appeal against the original assessment order dated 28.12.2015 is already pending consideration before the Chhattisgarh Commercial Tax Tribunal, where the matter has been registered as Appeal No. A/41/72/2017/State. The appeal has been admitted and pending final consideration and the application for interim order was also decided in favour of the petitioner vide order dated 05.05.2017 passed by the Tribunal where there is stay of the effect and operation of the original assessment order.

2. The counsel for the petitioner submits that pending the appeal and also the interim order in favour of the petitioner, the respondents may not act upon the order Annexure P/2 dated 19.12.2016, which is an order passed in a penalty proceedings. The counsel for the petitioner submits that in the event of the petitioner's appeal is decided in favour of the petitioner, the entire penalty proceedings may also get nullified therefore pending the appeal and the interim order, the respondents may be restrained from taking further action on the order dated 19.12.2016.

3. The State counsel however opposes the petitioner on the ground that the order of penalty was passed much before the interim order was passed before the Tribunal on 05.05.2017 and therefore, they could not be said to be illegal and therefore prayed for dismissal of the petition.

4. Having considered the facts and circumstances of the case and taking into consideration the fact that the appeal preferred against the original order of assessment dated 28.12.2015 is pending consideration before the State Appellate Tribunal and the Appellate Tribunal had admitted the appeal and also granted an interim protection, this Court is of the opinion that ends of justice would meet if the respondents are restrained from initiating further action on the order of penalty dated 19.12.2016 till the appeal is finally decided.

5. Reserving the liberty of the State to proceed further as per the order passed by the Appellate Authority, the present writ petition stands disposed of.

6. Considering the fact that the order passed by the First Appellate Authority dated 16.11.2016 was received by the petitioner only on 27.12.2016 i.e. much after the order of penalty dated 19.12.2016 was passed. Further, the petitioner having immediately preferred an appeal before the Chhattisgarh Commercial Tax Tribunal and the matter is pending consideration with an interim protection in favour

of the petitioner, this Court is of the opinion that the order of penalty as on date is totally uncalled for. What is all the more pertinent is the fact in the event if the appeal of the petitioner is decided in their in favour of the penalty order and the proceedings would be of no consequences and on the contrary if the appeal is decided against the petitioner the department can still initiate the penalty proceedings. What also cannot be lost sight of, is the fact that the penalty proceeding and the penalty order have been passed even before the service of the original order of assessment upon the petitioner. For the aforesaid reasons, the order of penalty is liable to be quashed and is accordingly quashed, reserving the liberty to the State Government to take appropriate proceedings if need so arises subsequent to the disposal of the appeal of the petitioner pending before the Commercial Tax Tribunal. The writ petition is accordingly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved