NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.6182 of 2005

Bhilai Wholesale Consumer Co-operative Stores Limited, Indira Place Bhilai (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 Tax DKS Bhavan, Raipur (CG). **--- Respondents**

For Petitioner : Mr. Neelabh Dubey, Advocate.
For State : Mr. Prasun Bhaduri, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

05/12/2017

(1) Learned counsel appearing for the parties would submit that issue raised in this writ petition is covered by order dated 16.11.2017 passed in Writ Petition (T) No.5933 of 2006 ***(Malik Sales Corporation Vs. Additional Commissioner & Others)*** in which this Court has observed as under in paragraphs No.6, 7 &8:-

> "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]**).**

1 (2011)37VST 472(MP)

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 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 07.02.2005 (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 01.04.1999 and quoted herein-above within a period of three months from the date of receipt of a copy of this order."

(2) Accepting the submission of learned counsel for the parties, this writ petition is disposed of in similar terms of **Malik Sales Corporation** (supra).

Sd/-

(Sanjay K. Agrawal)
Judge