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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.55 of 2017

Order reserved on: 13-4-2017

Order delivered on: 5-5-2017

M/s. Ganpati Motors, a partnership firm through its partner Shri Khemamal Madhyani, S/o Late Shri Teomal Madhyani, aged about 63 years, R/o Sawarkar Market, Opp. Basant Talkies, G.E. Road, Supela, Durg-Bhilai (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mahanadi Bhavan, Naya Raipur, Raipur (C.G.)

2. Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (C.G.)

3. Deputy Commissioner (Appellate), Commercial Tax, Raipur.

---- Respondents

For Petitioner: Mr. B.P. Sharma and Mr. Neelabh Dubey, Advocates.

For Respondents / State: -
Mr. U.NS. Deo, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The petitioner herein calls in question legality and validity of the notice Annexure P-3 dated 26-12-2016 issued by the Commissioner, Commercial Tax, Raipur, by which in exercise of power conferred under Section 49 (3) of the Chhattisgarh Value Added Tax Act, 2005 (for short, 'the Act, 2005'), a notice / order has been issued to the petitioner for appearing before the

Commissioner, Commercial Tax on 22-2-2017. The order of assessment was passed against the petitioner by the Deputy Commissioner on 23-1-2013 raising a demand of ₹ 1,04,28,346/-. Thereafter, order dated 29-7-2013 was passed declining to impose penalty under Section 54 of the Act, 2005. Thereafter, on 26-12-2016, the Commissioner, Commercial Tax issued notice to the petitioner under Section 49 (3) of the Act, 2005 exercising *suo motu* revisional jurisdiction to impose penalty against the petitioner under Section 49 (3) of the Act, 2005. The petitioner herein claiming that the notice dated 26-12-2016 issued by the Commissioner, Commercial Tax is in teeth of proviso to Section 49 (3) of the Act, 2005, has filed this petition stating inter alia that such a proceeding is barred, as proviso (a) to Section 49 (3) provides that no proceeding shall be initiated under Section 49 (3) after the expiry of three calendar years from the date of the order sought to be revised. Therefore, the impugned notice deserves to be quashed.

2. Mr. B.P. Sharma and Mr. Neelabh Dubey, learned counsel appearing for the writ petitioner, would submit that the order imposing penalty in a proceeding under Section 54 of the Act, 2005 was passed on 29-7-2013 and under proviso (a) to Section 49 (3), proceeding can be initiated only within a period of three years from the date of order i.e. 29-7-2013. In the instant case, three calendar years have been expired on 31-12-2016 and the petitioner having been served with notice dated 26-12-2016 (Annexure P-3) only in the month of January, 2017, cannot said to

have been served within three calendar years from the date of passing the order i.e. 29-7-2013. The impugned notice is without jurisdiction and without authority of law and, therefore, it be quashed by issuing appropriate writ.

3. I have heard learned counsel for the petitioner on the question of admission and perused the impugned notice and copies of other documents.

4. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice Section 49 (3) of the Act, 2005. which reads as under: -

> "**Section 49 : Power of revision by Commissioner**
>
> (3) The commissioner may on his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person appointed under section 3 to assist him including any officer to whom he has delegated his powers under subsection (1) is erroneous in so far as it is prejudicial to the interest of the revenue, and he may, after giving the dealer or person a reasonable opportunity of being heard, and after making or causing to be made such enquiry as he deems necessary, pass within one calendar year from the date of initiation of proceeding such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment:
>
> Provided that-
>
> (a) no proceeding shall be initiated under this sub-section after the expiry of three calendar years from the date of the order sought to be revised;
>
> (b) no order shall be revised by the commissioner under this sub-section where a second appeal against such order is pending before the Tribunal or such appeal has been decided by the Tribunal on merits."

5. A focused study of proviso (a) to Section 49 (3) of the Act, 2005 would show that the legislature has prescribed condition precedent for invoking the revisional power by the Commissioner by stating that proceeding for revision shall not be initiated after the expiry of three calendar years from the date of the order sought to be revised.

6. The first and foremost question for consideration is, when the proceeding is deemed to have been initiated under Section 49 (3) of the Act, 2005.

7. The word “initiate” or “initiation” has not been defined in the Act, 2005. Since it has not been defined in the Act, it would be appropriate to refer the dictionary meaning of the word “initiate”. In Webster's Third New International Dictionary, the word “initiate” has been defined as to begin or set going; make a beginning of; perform or facilitate the first actions, steps or stages of. Likewise, in Shorter Oxford English Dictionary, the word “initiate” has been defined as to begin, commence, enter upon; to introduce, set going, originate.

8. Black's Law Dictionary, 6th Edition, defines the words “initiate” and “initiative” as under: -

> “**Initiate**: Commence; start; originate; introduce; inchoate. Curtesy initiate is the interest which a husband has in the wife's lands after a child is born who may inherit, but before the wife dies. To propose for approval – as schedule of rates. Idaho Power Co. v. Thompson, D.C. Idaho, 19 F. 2d 547, 579.
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> **Initiative**: An electoral process whereby designated percentages of the electorate may initiate legislative or constitutional changes through the filing of formal

> petitions to be acted on by the legislature or the total electorate. The power of the people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly. Hughes v. Bryan, Okl., 425 P. 2d 952, 954. Not all state constitutions provide for initiative."

9. Thus, the word "initiation" of *suo motu* revision as stated in proviso (a) to Section 49 (3) of the Act, 2005 has a definite connotation. Initiation of revisional proceeding is the time when the revisional authority applies its mind to the facts / materials on record and decides to direct issuance of notice in accordance with Rule 61 of the Chhattisgarh Valued Added Tax Rules, 2006 proposing the proposed order and intimating the assessee his intention to take the proceeding in *suo motu* revisional proceeding. Proviso (a) to Section 49 (3) of the Act, 2005, is the condition precedent to exercise the power of revisional authority under that procedure. It merely contemplates initiation of proceeding by the revisional authority on its own or otherwise. The proceeding can be said to be initiated only when the revisional authority on its own motion or on the motion made otherwise decides to issue notice to the other side.

10. The word "initiate" has been used in Section 20 of the Contempt of Courts Act, 1971. Section 20 of the Contempt of Courts Act, 1971 provides that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

11. The aforesaid provision came up for consideration before the

Supreme Court in the matter of **Pallav Sheth v. Custodian and others**[1] and Their Lordships while considering the scope and meaning of the word "initiate" under Section 20 of the Contempt of Courts Act, 1971 have held that in the case of *suo motu* proceedings, contempt proceeding must be initiated by the court by issuing a notice and in other cases initiation can only be by a party filing an application. Further, the Supreme Court clearly held that under Section 20 of the Contempt of Courts Act, 1971, action can be initiated, either by filing an application or by the court issuing notice *suo motu*, within a period of one year from the date on which the contempt is alleged to have been committed, and observed in its report as under: -

> "44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

12. Likewise, in the matter of **Advocate General, A.P., Hyderabad v. A.V. Koteswara Rao**[2], the Andhra Pradesh High Court after referring to the decisions of the Supreme Court in the matters of **Baradakanta Mishra v. Justice Gatikrushna Misra, CJ**[3] and

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1 (2001) 7 SCC 549
2 1984 Cri.L.J. 1171
3 AIR 1974 SC 2255

Purshotam Das Goel v. Hon'ble Mr. Justice B.S. Dhillon[4] held that the word 'initiation' of contempt proceedings as stated in Section 20 of the Contempt of Courts Act, 1971 has a definite connotation and cannot be equated with the mere presentation of the petition. It has been observed that “initiation of the contempt proceeding is the time when the Court applies its mind to the allegations in the petition and decides to direct, under Section 17 the alleged contemner to show cause why he should not be punished”.

13. Therefore, in the considered opinion of the Court what is required and condition precedent for initiation of proceeding by invoking Section 49 (3) of the Chhattisgarh Value Added Tax, 2005, would be initiation of proceeding under Section 49 (3) of the Act, 2005 and initiation can be done only when the revisional authority applies its mind to the facts of the case of his own motion or on the information received. Once there is application of mind by the revisional authority for exercise of *suo motu* proceeding on the basis of the information received and he decides to issue notice as contemplated in Rule 61 of the Chhattisgarh Valued Added Tax Rules, 2006, then the exercise of initiation is complete and initiation cannot be said to be done only when the notice is received under Rule 61 by the assessee. Service of notice to the assessee is a further step after initiation of *suo motu* proceeding by the revisional authority to complete and conclude the exercise of *suo motu* revisional jurisdiction. Further words used in Section

4 AIR 1978 SC 1014

49 (3) of the Act, 2005 are “three calendar years”. “Calendar year” has been defined in Black's Law Dictionary (sixth Edition) in following words: -

> “Calendar year”.—The period from January 1 to December 31 inclusive. Ordinarily calendar year means 365 days except leap year, and is composed of twelve months varying in length.

14. Now, the next question would be, whether the revisional authority has initiated proceeding under sub-section (3) of Section 49 of the Act, 2005 well within the period prescribed.

15. Applying the principle of law to the facts of the present case and what has been discussed herein-above, it would be apparent that the penalty proceeding has been closed against the petitioner by order dated 29-7-2013 (Annexure P-2) and three calendar years would expire on 31-12-2016, and in the instant case, the Commissioner, Commercial Tax in exercise of *suo motu* jurisdiction applied its mind to the facts of the case, it appears, on or before 26-12-2016 and issued notices to the petitioner on 26-12-2016. Therefore, the proceeding is deemed to have been initiated on or before 26-12-2016 before completion of three calendar years from the date of imposing penalty i.e. 29-7-2013. Alleged receipt of notice by the petitioner would not amount to initiation of proceeding, as the proceeding under Section 49 (3) of the Act, 2005 has already been initiated on or before 26-12-2016 well within the time prescribed in the statute. In the circumstances, the contention of the petitioner that the notice dated 26-12-2016 issued by the revisional authority is without

jurisdiction and without authority of law sans merit. The judgments cited by Mr. Sharma, learned counsel appearing for the petitioner, viz., **State of Punjab and others v. Bhatinda District Cooperative Milk Producers Union Ltd.**[5], **Joseph Jacob v. Agricultural I.T.O.**[6] and **Commissioner of Agricultural Income-Tax v. Kappumalai Estate**[7], are not applicable to the facts of the case and are clearly distinguishable in view of elaborate reasons recorded in the foregoing paragraphs.

16. Consequently, the writ petition is dismissed, at the admission stage itself without notice to the other side. There shall be no order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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5 (2007) 11 SCC 363
6 1990 SCC OnLine Ker 482
7 (1998) 234 ITR 187 (Ker)