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HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition (T) No.118 of 2015

Ultra Tech Cement Ltd. A Company Incorporated Under The Companies Act, 1956, Having Registered Office At B Wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri East, Mumbai 400093 And Factory At Hirmi, Teh, Simga, District Baloda Bazar- Bhatapara, Through Its Authorised Signatory Anil Purohit, Aged 33 Years, S/o Shri Suraj Prakash Purohit.

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Commissioner, Commercial Tax, Chhattisgarh Raipur Chhattisgarh
3. Additional Commissioner, (Appeals), Commercial Tax, Raipur Chhattisgarh.
4. Deputy Commissioner, Commercial Tax, Division - I, Raipur Chhattisgarh.

---- Respondents

Writ Petition (T) No.119 of 2015

Ultra Tech Cement Ltd. Incorporated Under Companies Act Having Registered Office At B Wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri East, Mumbai 400093 And Factory At Hirmi Cement Works, Teh, Simga, District Baloda Bazar Bhatapara And Rawan Cement Works At P O Grasim Vihar, Rawan, District Baloda Bazar Bhatapara Through Its Authorised Signatory Anil Purohit Aged 33 Yrs. S/o Shri Suraj Prakash Purohit.

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Commissioner, Commercial Tax, Chhattisgarh Raipur Chhattisgarh
3. Additional Commissioner, (Appeals), Commercial Tax, Raipur Chhattisgarh.
4. Deputy Commissioner, Commercial Tax, Division - I, Raipur Chhattisgarh.

---- Respondents

Writ Petition (T) No.121 of 2015

Ultra Tech Cement Ltd. Incorporated Under Companies Act Having Registered Office At B Wing, Ahura Centre, 2nd Floor, Mahakali, Caves Road, Andheri-East, Mumbai - 400093 And Factory At Hirmi Cement Works, Teh, Simga, District Baloda Bazar - Bhatapara And Rawan Cement Works At Po Grasim Vihar, Rawan, District Baloda Bazar - Bhatapara Through Its Authorised Signatory Anil Purohit Aged - 33 Yrs. S/o Shri Suraj Prakash Purohit.

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Commissioner, Commercial Tax, Chhattisgarh Raipur Chhattisgarh

3. Additional Commissioner, (Appeals), Commercial Tax, Raipur Chhattisgarh.
4. Deputy Commissioner, Commercial Tax, Division - I, Raipur Chhattisgarh.

---- Respondents

<u>Writ Petition (T) No.122 of 2015</u>

Ultra Tech Cement Ltd. Incorporated Under Companies Act Having Registered Office At B Wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri East, Mumbai 400093 And Factory At Hirmi Cement Works, Teh, Simga, District Baloda Bazar Bhatapara And Rawan Cement Works At P O Grasim Vihar, Rawan, District Baloda Bazar Bhatapara Through Its Authorised Signatory Anil Purohit Aged 33 Years, S/o Shri Suraj Prakash Purohit.

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Commissioner, Commercial Tax, Chhattisgarh Raipur Chhattisgarh
3. Additional Commissioner, (Appeals), Commercial Tax, Raipur Chhattisgarh.
4. Deputy Commissioner, Commercial Tax, Division - I, Raipur Chhattisgarh.

---- Respondents

<u>Writ Petition (T) No.126 of 2015</u>

Ultra Tech Cement Ltd. (Earlier Known As M/s Grasim Cement M/s Grasim Industries Limited) A Company Incorporated Under The Comapnies Act, 1956, Having Its Registered Office At Mumbai, And Factory At Rawan, District Balodabazar Bhatapara Through Its Manager Sunanda Basu Age 47 Yrs, S/o Late Sanat Kumar Basu.

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Commissioner, Commercial Tax, Chhattisgarh Raipur Chhattisgarh
3. Deputy Commissioner, Commercial Tax, Division - I, Raipur Chhattisgarh.

---- Respondents

&

<u>Writ Petition (T) No.155 of 2016</u>

Ultra Tech Cement Limited A Company Incroprated Under Companies Act 1956, Having Its Registered Office At B Wing, Ahura Centre, 2nd Floor Mahakali, Caves Road Andheri, East Mumbai 400093 And Factories At Harmi Cement Works Hirmi Disitrct Baloda Bazar Bhatapara Chhattisgarh Thorug Its Authorised Signatory Shri S.S. K.V.D. Parsada Rao, Vice President (Finance & Commercial).

----Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Commercial Tax Department, Mantralaya, Mahandi Bhawan, Naya Raipur Chhattisgarh
2. Commissioner, Commercial Tax, Chhattisgarh Raipur Chhattisgarh
3. Additional Commissioner, Commercial Tax, Divsion-1, Raipur (CG).
4. Assistant Commissioner, Commercial Tax, H/Q Raipur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri M.P. Devnath, Shri Ashish Shrivastava, Shri Raja Sharma and Shri Afroz Khan, Advocates.
For Respondent No.3:		Shri B.Gopa Kumar, Deputy Advocate General.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

09/08/2017

1. These are connected writ petitions challenging the circular dated 16.06.2014 and the subsequent notifications dated 01.07.2014 and 05.07.2014.
2. Since the facts involved in these petitions are common, this court proceeds to decide all the writ petitions together by passing a common order.
3. The broad facts which have been put forth before this court is that the State Government had issued a circular dated 16.06.2014 giving a new definition to "market value" as has been inserted as Section 2(fff) with effect from 01.04.2014 under the Chhattisgarh Entry Tax (Amendment Act), 2014. The assessment years in all the writ petitions are in respect of periods prior to the issuance of circular giving new definition to market value which has been brought into force from 01.04.2014. In all these writ petitions, the assessment for the year under dispute had not been assessed previously i.e. to say it is a fresh assessment for the respective years in each of the writ petitions.
4. The only issue which has been raised by the petitioners in this batch of petitions is that whether for the assessment years prior to coming into force of new amended definition of market value, the calculation of entry tax would be applying the new definition or it would be the law as it stood prior to the enforcement of the new circular.
5. The counsel on either side fairly submits that the issue involved in these cases so far as whether the provisions of law would be retrospective or

prospective has already been dealt with by the co-ordinate Bench of this High Court in case of Ambuja Cement Limited Vs. State of Chhattisgarh & Ors. (WPT No.157 of 2014, decided on 17.07.2017) wherein the same circular was under challenge and same provisions of law was discussed elaborately and it has been authoritatively held that the circular and the notification would only be prospective and it would not be retrospective.

6. The State counsel also on going through the judgment of co-ordinate Bench submits that the issue involved in the present batch of petitions are squarely covered in the light of aforesaid judgment passed in WPT No. 157 of 2014.

7. The only difference in the present set of writ petitions are that in the earlier petition there was a direction to the authorities for re-opening and for re-assessment of the assessment already made, whereas, in these petitions no assessment has been made and it is a fresh assessment which are being made. The question which arises for consideration in these petitions are as to whether for the assessment year prior to coming into force of newly amended definition of market value, the calculation would be made on the basis of rates which were in force till 31.03.2014 or whether it would be the rates as per new amended provisions of market value which has come into force from 01.04.2014.

8. Having gone through the decision passed by the co-ordinate Bench of this High Court in WPT No.157 of 2014, this issue earlier has been discussed from paragraphs 32 to 36 wherein relying upon the decision of Supreme Court more particularly in case of M/s Reliance Jute and Industries Ltd. Vs. C.I.T. West Bengal, Calcutta,1980 (1) SCC 139, it has been observed as under:

> "32. The amendment was made in the year 2014, on the face of it, clearly states that it shall come into force with effect from 1-4-2014 and on the basis of said amendment, circular dated 16-6-

2014 has been issued which directs reopening of the concluded assessment based on the said prospective amendment.

33.In M/s. Aryaverth Chawl Udyoug 's case (supra), in similar fact situation, Their Lordships of the Supreme Court have clearly held that subsequent change in law according to which the assessment was conducted cannot constitute change in opinion for reopening the concluded assessment. It is impermissible in law when the Act does not specify the operation of law as retrospective. Their Lordships further held that discovery of an inadvertent mistake or non-application of mind during assessment would not be a justified ground to re-initiate proceedings.

34. Further, in the matter of M/s. Reliance Jute and Industries Ltd. v. C.I.T., West Bengal, Calcutta19, Their Lordships of the Supreme Court have held that it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication.

35. Thus, it is crystal clear that in the instant case, assessment has been made as per law in force and after the definition of “market value” is amended with effect from 1-4-2014, and on that basis, circular has been issued by the State Government, the proceeding for reassessment of concluded assessment was initiated and it was concluded making reassessment and taking the amended definition of “market value” into account, and except the circular of the Commissioner directing opening of reassessment even of concluded assessment on the basis of amendment brought into force from 1-4-2014, there is no fresh/additional material brought on record which can be made basis for reopening the concluded assessment by the assessing officer. Thus, in my considered opinion, the assessing authority has sought to reopen the assessment and made reassessment only on the basis of change of opinion and on the basis of the circular issued by the State Government by which the Commissioner, Commercial Tax has directed to take into account the amount of royalty in calculating the entry tax without being any additional/fresh material brought on record. The circular of the State Government is based on change in law in the definition of “market value” which is only prospective in nature.

36. In view of the decision of the Supreme Court in M/s. Aryaverth Chawl Udyoug's case (supra), subsequent change in law cannot constitute “change of opinion” by the assessing authority to reopen the concluded assessment particularly, when the amendment made in definition of “market value” by Section 2 (fff) is prospective in nature applicable from 1-4-2014, as the law in force at the time of assessment would apply to make an assessment which has already been made for the respective years i.e. 2007-08, 2008-09 and 2009-10 as held in M/s. Reliance Jute and Industries Ltd. (supra). The assessing authority in the order of reassessment has not indicated any reason much less the reason over any other reason and on the

> basis of only above-stated change of opinion that royalty aspect has not been included while making payment of entry tax, the concluded proceedings have been reopened."

9. In view of the law discussed in the aforesaid paragraphs of the judgment passed by co-ordinate Bench in WPT No.157 of 2014, nothing further remains to be adjudicated upon in these petitions also and this court has no hesitation in reaching to the conclusion that so far as assessment year which are prior to the issuance of the circular, the law as it stood prior to coming into force of amended definition of market value would be applicable.
10. As as consequence of which the impugned assessment orders as well as orders passed by the revisional authority would stand quashed and consequently the demand notices so far as royalty part is concerned, the same shall also stand quashed.
11. Accordingly, all these writ petitions are allowed.

Sd/-
(P. Sam Koshy)
Judge

inder