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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 129 of 2016

Aashi Agencies Proprietorship Firm, through the Proprietor Amit Jain, S/o C. L. Jain, Aged About 32 Years, Shop No. C- 26/ C-27, First Floor, Shyam Market, Pandri, Raipur, Distt. Raipur, (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur, (Chhattisgarh)

2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, (Chhattisgarh)

3. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, (Chhattisgarh)

4. Commercial Tax Officer, Raipur, Circle- 8, Raipur, District Raipur, (Chhattisgarh)

---- Respondent

And

WPT No. 132 Of 2016

Arnab Enterprises Proprietorship Firm, Through The Proprietor Namit Jain, S/o Champa Lal Jain, Aged About 31 Years, Lal Ganga Midas, Raipur, District Raipur, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur, (Chhattisgarh)

2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, (Chhattisgarh)

3. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, (Chhattisgarh)

4. Commercial Tax Officer, Raipur Circle-8, Raipur, District Raipur, (Chhattisgarh)

---- Respondents

And

<u>WPT No. 130 Of 2016</u>

Anant Agencies Proprietorship Firm, Through The Proprietor Namit Jain, S/o Champa Lal Jain, Aged About 31 Eyars Shop No C 27 Shyam Market, Saheed Hemu Kalyani Ward, Raipur District Raipur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax Mahandi Mantralaya Naya Raipur, Post Office & Police Staiton Naya Raipur District Raipur Chhattisgarh

2. Commissioner, Departent Of Commercial Tax Civil Lines, Raipur, Chhattisgarh

3. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur Chhattisgarh

4. Commercial Tax Officer, Raipur, Circle 8, Raipur District Raipur Chhattisgarh

---- Respondents

And

<u>WPT No. 131 Of 2016</u>

Arihant Agencies Proprietorship Firm, Through The Projpretor Amit Jian S/o C.L. Jain, Aged About 32 Years, Shop No. C 26 Shyam Market, Pandri, Raipur District Raipur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax Mahandi Mantralaya Naya Raipur, Post Office & Police Staiton Naya Raipur District Raipur Chhattisgarh

2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, Chhattisgarh

3. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur Chhattisgarh

4. Commercial Tax Officer, Raipur, Circle 8, Raipur District Raipur Chhattisgarh

---- Respondents

For Petitioners : Shri B.D. Guru, Advocate.
For Respondents : Shri U.N.S. Deo, GA & Shri Gary Mukhopadhyay, Dy. GA

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/05/2017

(1) These writ petitions are directed against the communication/letter dated 06.9.2016 and order dated 22.09.2016 passed by Commissioner, Department Of Commercial Tax, Raipur by which the petitioners' application filed under Section 64-A of the Chhattisgarh Value Added Tax Act, 2005 (henceforth 'Act, 2005') for compounding the offence has been rejected holding that the petitioner is required to deposit the amount assessed by the assessment authority as a pre-deposit as required under Section 64-A read with Rule 77-A of the C.G. Valed Added Tax Rule, 2006 (henceforth “Rule, 2006”), against which, instant writ petitions have been filed questioning the same.

(2) Learned counsel for the petitioners would submit that the petitioners have made an application under Section 64-A of the Act, 2005 for compounding the offence on 15.02.2016 under the un-amended Act, 2005 whereas the provision of Rule 77-A of the Rule, 2006 inserted by an amendment, which came into force on 31.03.2016 and effective from 1.4.2016 and, therefore, the provision of pre-deposit

cannot be applicable in petitioners' case as the application under Section 64-A of the Act, 2005 has been filed much prior to the amendment in Rule 77-A of Rules, 2006. He placed reliance upon the judgment of the Supreme Court in the matter of ***Hoosein Kasam Dada (India) Ltd. V. State of Madhya Pradesh***[1] in support of his submissions.

(3) On the other hand, learned counsel appearing for the respondents would submit that since the petitioner has submitted an application under Section 64-A of the Act, 2005 for compounding the offence on 15.02.2016, he is required to make pre-deposit in terms of newly amended Rule 77-A of the Rules, 2006 and, therefore, the application under Section 64-A of the Act, 2005 has rightly been rejected by the respondent No. 2-Commissioner, Income Tax Department.

(4) I have heard learned counsel appearing for the parties and perused the record with utmost circumspection.

(5) The petitioner's application under Section 64-A of the Act, 2005 for compounding the offence was filed prior to insertion of Rule 77-A of the Rules, 2006. The order rejecting application for compounding the offence dated 22.09.2016 only indicates that the petitioner has not made deposit in terms of amended Section 64-A of the Act, 2005 read with Rule 77-A of the VAT Rules, 2006 and, therefore, application for compounding the offence is not admissible.

(6) The petitioner's contention is that new Rules would not be

1 AIR 1953 SC 221

applicable in the present case as it has come into force with effect from 31. 03.2016 and he has filed an application under Section 64-A of the Act, 2005 on 15.02.2016, that is much prior to the amendment Rule 77-A of the Rules, 2006 and no reasoned and speaking order has been passed by respondent No. 2-Commissioner, Department of Commercial Tax while rejecting the said application filed under Section 64-A of the Act, 2005. The petitioner' application for compounding the offence made by assesee was required to be considered in its proper perspective, particularly the petitioner's submission that amended Rules would not apply and he is not required to make deposit as pre-deposit, was to be considered by the Commissioner, Commercial Tax and speaking and reasoned order should have been passed, which has not been done.

(7) In view of above, this Court is of the opinion that *prima facie* order dated 22.09.2016 is liable to be and is hereby quashed. The matter is remitted back to the Commissioner, Department of Commercial Tax to consider the application filed by the petitioner under Section 64-A of the Act, 2005 afresh strictly in accordance with law within a period of one month from the date of receipt of copy of this order. The petitioner & respondents are at liberty to file additional submissions and, in that event, the respondent No. 2- Commissioner, Department of Commercial Tax would decide the same within a period of one month from the date of receipt of copy of this order.

(8) Since the inteirm relief in is operation since 29.11.2016, the same would remain in operative for a period of one month.

(9) Thus, the writ petitions are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-