

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (T) No. 86 of 2016**

Akhilesh Agrawal S/o Shri Ram Narayan Agrawal, aged about 38 years,
 Proprietor M/s. Goel Jute Udyog, 268, Santa Colony, Raipur
 (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Commercial Tax, New Mantralaya, Mahanadi Bhawan, Raipur (Chhattisgarh)
2. Asst. Commissioner, Department of Commercial Tax, HQ, Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Malay Kumar Bhaduri, Advocate
For Respondent/State	:	Shri D. R. Minj, G.A, for the state.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/07/2017**

The challenge in the present writ petition is an order dated 29.02.2016 passed by the Assistant Commissioner, Commercial Tax Department, State of Chhattisgarh, Raipur in the capacity of Assessment Officer. Vide the said impugned award the Assessing Officer has assessed an amount of Rs. 27,23,876/- towards default in payment of Value Added Tax and Entry Tax inclusive of interest and penalty.

2. The contention of the counsel for the petitioner is that the Department has proceeded ex-parte against the petitioner in contravention to the settled principle of natural justice. According to the petitioner, the contention of the Assessing Officer of a default in appearance on the part of the petitioner on the date of hearing i.e. 15.02.2016 is per se illegal as it is reflected from Annexure P-3 which is a document dated 15.02.2016 that the representative of the petitioner

was present before the Assessing Officer and had submitted an application for providing certain documents which were in the custody of the Assessing Officer so that the petitioner could file detailed reply on merits. On the basis of this Ex. P-3, counsel for the petitioner tried to emphasize on the fact that the petitioner could not represent effectively before the Authority and the Assessing Officer has wrongly held that there was no representation on behalf of the petitioner during the hearing on 15.02.2016. Hence, prayed for remand of the case to the Assessing Authority for re-determination of the assessment after providing proper opportunity of hearing to the petitioner.

3. The State counsel however, opposes the petition on the ground that when the initial assessment notice was issued to the petitioner, the petitioner had filed a petition i.e. WPT No. 62 of 2014 assailing the notice issued and this Court vide its order dated 14.01.2016 dismissed the same. Thereafter the present final assessment order was made. According to the State counsel, there is a statutory remedy of appeal under Section 48 of the Act available to the petitioner and having not availed the same and rushing to the High Court straightaway, the petition deserves to be dismissed on the availability of alternative remedy. He further submits that a perusal of the impugned order would also reveal that sufficient opportunity was granted to the petitioner and in spite of that, the petitioner deliberately tried to avoid appearing or cooperated with the Officers and it is only thereafter that the Authorities have passed the impugned order. Thus, there is no scope of Judicial review by this Court in exercise of its writ jurisdiction.

4. Having considered the contentions put forth on either side and on perusal of the record what clearly reflects from the proceedings drawn is that the order dated 14.01.2016 passed by this court in WPT No. 62 of 2014 itself bears an endorsement of the stand of the State Government that they have not seized any document pertaining to the petitioner rather they have only called upon the

petitioner to explain their stand for the assessment in default of payment of Value Added Tax and Entry Tax is concerned. This order of the High Court dated 14.01.2016 also bears reflection in the impugned order dated 29.02.2016. Further, in the impugned order it reflects that the Authorities have mentioned different dates on which the petitioner was called to submit his reply i.e. on 27.04.2015, 29.05.2015, 10.08.2015, 22.12.2015 and 28.01.2016. But, on each of the date, on some pretext or the other, the petitioner has been avoiding to submit his reply/ explanation or to produce the record and it is only thereafter the Authorities proceeded to decide the matter on merits.

5. From the record it is also reflected that even on 28.01.2016 the petitioner was called upon by the authorities to submit his explanation/record/reply on 15th of February 2016 on which date as per the Assessing Officer there was no representation on behalf of the petitioner. But this contention has been disputed by the petitioner relying upon Ex. P-3 dated 15.02.2016 a document which has been presented before the dispatch Clerk of the Department by the representative of the petitioner.

6. From the aforesaid factual matrix of the case what apparently reveals is that the impugned order Annexure P-1 dated 29.02.2016 is an ex-parte order. Now if we look in to the provisions under Section 36 of the Chhattisgarh Value Added Tax Act, it envisages a provision where the power has been conferred upon the Assessing Officer that in a given case if he is convinced on an application moved by the assessee for setting aside of an ex-parte order, he can set aside the order and reopen the case and decide the same on its merit afresh.

7. On a query being put to the counsel for the petitioner he admits that no such application has been made to the appropriate authority seeking for setting aside of the ex-parte order. He further makes a submission that it would be a

futile exercise as from the impugned order it appears that the Authorities are pre-determined.

8. Having considered the contentions on either side, this Court is of the opinion that since the statute itself provides for a provision or remedy or mechanism to an assessee in the event of an ex parte order being passed, the assessee is duty bound to avail the remedy so provided under the law. Just because the High Court may have the power to exercise the extraordinary powers under Article 226 of the Constitution of India for a judicial review of an order by itself cannot be a ground for skipping the Statutory remedy or mechanism prescribed under the law for ventilating the grievance of the assessee.

9. The petitioner in the given factual matrix of the case is directed, if he so chooses, may approach the Assessing Officer by moving an appropriate application under Section 36 of the Chhattisgarh Value Added Tax Act giving justifications for his non-appearance or in respect of his contention regarding his appearance on 15.02.2016 within a period of 21 days from the date of receipt of the certified copy of this order. The Assessing Officer shall in turn also take note of the alleged application dated 15.02.2016 which according to the petitioner is the document to show his presence before the authority concerned. The petitioner shall also move an application for grant of appropriate interim protection pending the application for setting aside the ex parte order. If such applications are filed, it is expected that the Assessing Officer shall consider and decide the same, purely in accordance with law which is applicable within a further period of 4 weeks from the date of receipt of the said application. In the event of an application under Section 36 of the CG Value Added Tax Act is filed by the petitioner within 21 days, the period of limitation in filing the application under Section 36 of the Act shall not come in the way of deciding the case on its merits. It is expected that till such

application if so filed by the petitioner is decided, the State Authorities will not take any coercive step so far as the recovery order dated 29.02.2016 which is under challenge in this petition. It is further held that in the event the Assessing officer passes an order against the petitioner, it shall be open for the petitioner to avail the remedy of appeal that is available to him under the law.

10. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
JUDGE