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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 53 OF 2017

M/s Chhattisgarh State Power Generation Company Limited, duly incorporated under the provisions of the Companies Act, 1956 having its office at Vidyut Sewa Bhawan, Danganiya, P.S. & P.O. Danganiya at Raipur, Chhattisgarh through its Authorized Signatory and Deputy General Manager (Finance), Shri Saumitra Dubey, S/o Late Shri D.P. Dubey, aged about 46 years, R/o Vidyut Sewa Bhawan, Ground Floor, Danganiya, Raipur (C.G.)

… Petitioner

Versus

1. Assistant Commissioner of Income Tax, Central Revenue Building, Circle 4(1), Raipur
2. Joint Commissioner of Income Tax, Range-4, Central Revenue Building, Civil Lines, Raipur (C.G.)
3. Commissioner of Income Tax, Central Revenue Building, Civil Lines, Raipur (C.G.)

… Respondents

For Petitioner	:	Mr. Neelabh Dubey, Advocate.
For Respondents	:	Mr. Amit Choudhary, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/06/2017

1. The present Writ Petition has been filed seeking for a direction to the Respondents not to take any coercive step in the light of the order dated 14.3.2017 (Annexure P-3).

2. Learned Counsel for the Petitioner submits that pursuant to the impugned order dated 14.3.2017 whereby a penalty under Section 271 (1) (C) of the Income Tax Act has been passed, an appeal has been preferred before the Commissioner of Income Tax (Appeals), Raipur, and which is pending consideration till date. He further submits that simultaneously the Respondents in a highhanded manner have issued the notice of demand dated 15.3.2017 (Annexure P-4) to comply with the order dated 14.3.2017. However, while issuance of notice the minimum required period as per the schedule is 30 days, but the Respondents have granted only 10 days time to the Petitioner to comply with the order. It is this order which has been sought to be stayed by the Petitioner through the present writ petition.

3. The present writ petition was filed as early as in April, 2017. The Respondents now having entered appearance submits that the writ petition has become infructuous for the reason that the respondent authorities have already acted upon Annexure P-4 and have adjusted the penalty amount from the refunds that were due to the Petitioner. He submits that now when the entire amount having been adjusted the only recourse that would be available to the Petitioner is to contest the appeal, and in the event if the Petitioner is successful in the appeal the amount could be refunded along with interest.

4. Learned Counsel for the Respondents at this juncture submits that he has no objection even if this Court directs the appellate authority to decide the appeal within a stipulated period.

5. The aforesaid submission of the learned Counsel for the Respondents on facts has not been disputed by the learned Counsel for the Petitioner except for the fact that, the act on the part of the Respondents is highhanded and arbitrary and that they could have waited till the reply is finalised.

6. Given the facts and circumstances of the present case since the petition itself was on the limited question of the demand notice being issued with only 10 days time being granted to the Petitioner, however, now since the entire amount having been adjusted by the respondent authorities, this Court is the opinion that nothing further really remains to be adjudicated upon the issue involved which now has become only academic, by leaving open the right of the Petitioner in pursuing the order of penalty in appeal which is pending, the writ petition in its present form having become infructuous deserves to be and is accordingly dismissed.

7. However, this Court is of the opinion that the ends of justice would meet if the appeal is decided by the Commissioner of Income Tax (Appeals) within a period of 90 days from today.

8. With the aforesaid observations, the writ petition stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

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