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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 220 of 2016

M/s Kishan & Company, S -1 Shree Complex, T. P. Nagar Stadium Road, Korba (CG) through Proprietor Sushil Kumar Agrawal, aged about 48 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba Chhattisgarh

---- Appellant

Versus

1. Additional Commissioner of Commercial Tax, Bilaspur Vanijyik Kar Bhavan, Near Nehru Chowk, Mungeli Road, Bilaspur, (Chhattisgarh)
2. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur, (Chhattisgarh)

---- Respondents

Writ Appeal No. 221 of 2016

M/s Kishan & Company, S -1 Shree Complex, T. P. Nagar Stadium Road, Korba (CG) through Proprietor Sushil Kumar Agrawal, aged about 48 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba Chhattisgarh

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Versus

1. Additional Commissioner of Commercial Tax, Bilaspur, Vanijyik Kar Bhavan, Near Nehru Chowk, Mungeli Road, Bilaspur, (Chhattisgarh)
2. State of Chhattisgarh through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur, (Chhattisgarh)

---- Respondents

Writ Appeal No. 191 of 2016

M/s Kishan & Company, S -1 Shree Complex, T. P. Nagar Stadium Road, Korba (CG) through Proprietor Sushil Kumar Agrawal, aged about 48 years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil & District Korba Chhattisgarh

---- Appellant

Versus

1. Additional Commissioner of Commercial Tax, Bilaspur, Vanijyik Kar Bhavan, Near Nehru Chowk, Mungeli Road, Bilaspur, (Chhattisgarh)
2. State of Chhattisgarh through Secretary, Department of Commercial Taxes, Mantralaya, Naya Raipur, (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Siddharth Dubey, Advocate
For Respondent/State	:	Shri Prafull N. Bharat Advocate General

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Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

06/04/2017

These writ appeals are against the judgments of learned Single Judge refusing to entertain a challenge levied against initiation of proceedings by issuing a notice under Section 49(3) of the Chhattisgarh Value Added Tax Act, 2005 (hereinafter referred as 'the Act')

2. Annexure P-1, notices in the three different writ petitions related to three consecutive assessment years. All those notices were issued on 14.07.2015 and proposed the exercise of power of revision of the Commissioner in relation to proceedings dated 22.01.2008, 01.05.2009 and 01.05.2010.

3. The learned Single Judge dismissed the writ petition holding that what is impeached is only a show cause notice and therefore, the writ Petitioner-Assessee has to file objection and face the proceedings. This is under challenge on the plea that what was raised is an issue related to jurisdiction and the contention that the time bar proceeding cannot be invoked since that would breach the professed jurisdiction of the Revisional Court ought to have been considered.

4. Learned Additional Advocate General, making reference to the pleadings placed by the respondents in the writ appeals, points out that the original orders have merged in subsequent orders under Section 22 (1) of the Act and therefore initiation of proceeding is well within the time limit in terms of Section 49 (3) of the Act.

5. At the outset we may notice that the respondents did not have an opportunity to respond to the pleadings of the petitioner before the learned Single Judge since the matter was decided in limine. That position notwithstanding, the plea raised by the official respondents in answer to the challenge levied to the proceedings deserves to be considered by the learned Single Judge, because, when if the question of limitation raised, amounts to a question of jurisdiction is, that itself a question which would affect the continuance of proceedings, particularly in the realm of fiscal laws. This is a well settled principle and often recognized, unless of course the question of limitation itself becomes a question saturated with questions of facts, which cannot be answered in writ jurisdiction. In the case in hand, we are of the view that this is apparently a fit case where the impugned judgments are set aside paving way for consideration of writ petition by the learned Single Judge after enabling the State to place its pleadings at the earliest, so that the different aspects that may be raised in answer to the challenge could be thrashed out at that time.

6. In the result, without expressing anything on the merits of the plea of the Appellant in all three writ appeals and the defence that the official respondents may have before the learned Single Judge, the judgments impugned in these appeals are vacated. Resultantly the writ petitions from which these appeals arise are remitted to the learned Single Judge for reconsideration in accordance with law in the light of the above. Any further action on the basis of the notices in the writ petitions shall stand stayed for a period of three weeks within which time, let the writ petition be listed before the learned Single Judge for consideration, including grant of any further interim relief, if found appropriate.

Sd/-	**Sd/-**
(Thottathil B. Radhakrishnan)	**(P. Sam Koshy)**
CHIEF JUSTICE	**JUDGE**

Bhola