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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 140 of 2017

M/s Kakkad Auto, a Partnership Firm having its Office at G. E. Road, Rajnandgaon (Chhattisgarh) through its partner Shri Satinder Singh Kakkad, S/o Shri Baldeo Singh Kakkad, aged about 41 years, R/o Kakkad Complex, Anupam Nagar, Rajnandgaon (Chhattisgarh).

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Commercial Taxes, Mahanadi Bhavan, Naya Raipur, Raipur (Chhattisgarh).
2. Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (Chhattisgarh).
3. Assistant Commissioner, Commercial Tax, Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioner : Shri Neelabh Dubey, Advocate
For the Respondent/State : Shri D. R. Minj, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/07/2017

Challenge in the present writ petition is the penalty order-cum-demand notice dated 25.11.2016 whereby the respondents Commercial Tax Department of the State Govt. has imposed penalty of Rs.55,60,836/- upon the petitioner’s establishment against the order of assessment dated 20.01.2016 whereby the tax payable by the petitioner was assessed to be Rs.33,73,642/-.

2. The facts of the case in brief are that the petitioner’s establishment is running a business of sales and services of two wheeler motor vehicles. An ex parte assessment was made against the petitioner for the assessment year 2012-13 assessing the tax liability upon the petitioner at Rs.33,73,642/-. While passing the said ex parte order, the Authority concerned had observed that the penalty proceedings would be initiated separately. The ex parte order dated 20.01.2016 was subjected to challenge by the petitioner before the first Appellate forum i.e. before the Deputy Commissioner Commercial Tax, Durg under Section 48 of the Chhattisgarh Value Added Tax Act, 2005. The said appeal stood rejected on 14.02.2017 and immediately the petitioner had preferred the second appeal before the Chhattisgarh Commercial Tax Tribunal at Raipur which was registered as Appeal No. 126/130/2017/VAT. The said appeal is still pending consideration. Meanwhile, the respondents have issued the impugned order dated 25.11.2016 Annexure P-3 which is an order of penalty-cum-demand notice imposing penalty of Rs.55,60,836/- upon the petitioner. An amount of Rs.27,80,418/- was found to be under assessed and which was ordered to be paid with two times the amount as penalty totalling Rs.55,60,836/-. The respondents have also imposed interest on the said amount totaling Rs.17,51,663/-. Thus, the total amount payable as per the penalty order is Rs.73,12,499/-.

3. It is this penalty order-cum-demand notice which is under challenge in the present writ petition.

4. Counsel for the petitioner submits that once when the appeal of the petitioner is pending for consideration before the appellate forum invoking the statutory remedy of appeal available to the petitioner, the respondents in all fairness should not have proceeded with the penalty proceedings and should have waited for the order of the appellate forum and only thereafter proceeded further. He submits that in the event the appeal of the petitioner is allowed then the entire penalty and the assessment made therein automatically stand nullified. Therefore, no fruitful purpose would be served if the assessing authority is now permitted to get the order executed at this juncture when the appeal is pending consideration. Thus, counsel for the petitioner prayed that the demand notice may be either quashed or kept in abeyance till the appeal is finally decided.

5. State counsel however opposes the petition and submits that since there is already an order of assessment which has been confirmed by the appellate authority, in all fairness the petitioner ought to have deposited the assessed amount and having not done so, it cannot be said that the Authority has acted in an arbitrary manner while issuing the penalty order-cum-demand notice. Thus, prayed for dismissal of the petition.

6. Having considered the rival contentions put forth by the counsel appearing on either side, it would be trite at this juncture to refer the judicial pronouncements which have been passed in the recent past particularly the decision of the Division Bench of Madhya Pradesh High Court in the case of **M/s Ram Kumar and Suresh Kumar Vs. The State of M.P.** passed in WP No. 8772/2014 decided on 20.06.2014 and also the decision of this Court in WPT No. 138 of 2016 decided on 10.11.2016. In addition, there are two more writ petitions i.e. WPT No. 12/2017 and WPT 14/2017 decided by a common order dated 01.02.2017 wherein the earlier decision referred to in the case of Ram Kumar (supra) has been relied upon and the demand notice had been ordered to be kept in abeyance.

7. Considering the series of decisions in this line, this Court has no hesitation in following the same precedent and passing an order. Admittedly the second appeal of the petitioner is pending consideration before the Commercial Tax Tribunal at Raipur. Pending the appeal before the Tribunal, it is ordered that the respondents shall keep the penalty order-cum-demand notice dated 25.11.2016 in abeyance and only consequent to the decision of the appeal, the Authorities would take appropriate steps on the said demand notice.

8. With the aforesaid direction, the present writ petition stands disposed of. Needless to mention that the second appellate Court i.e. the Commercial Tax Tribunal shall make all endeavour for deciding the appeal at the earliest.

Sd/-
(**P. Sam Koshy)**
JUDGE

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