NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

Writ Petition (T)No.351 of 2017

M/s Ultra Tech Cement Limited A Company Duly Incorporated Under The Companies Act, 1956 Having Its Registered Office at and Office at Ravinagar Raipur 492001 Chhattisgarh Through Its Authorized Signatory Of The Company Shri S. S. K. V. D. Prasada Rao, S/o Shri Satzoda Surya Rao, Aged About 56 Years, R/o Hirmi Cement Works (Township) Hirmi, District Baloda Bazar Bhatapara, Chhattisgarh.

----Petitioner

Versus

1. State of Chhattisgarh Through Secretary Department of Commercial Taxes Mahanadi Bhavan Mantralaya, Naya Raipur Chhattisgarh.
2. Commissioner of Commercial Tax , Vanijyik Kar Bhavan Civil Lines Raipur Chhattisgarh.
3. Additional Commissioner, Commercial Tax Raipur Chhattisgarh.
4. Divisional Deputy Commissioner of Commercial Tax Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Neelabh Dubey, Advocate.
For respondents/State	:	Shri B.Gopa Kumar, Dy. A.G.

SB: Hon'ble Shri Justice P. Sam Koshy

Order On Board

13.12.2017

1. The challenge in the present writ petition is the order dated 20.04.2017 passed by the Chhattisgarh Commercial Tax Tribunal, Raipur, in Case No. A/46/03/Entry Tax/2014.
2. The assessment year involved in the present case is 2008-09. The issue relates to the assessment of entry tax being made. The dispute which has been raised is whether the royalty paid by the petitioner would be inclusive while assessing the market value of the limestone procured for the production of cement for the purpose of assessing entry tax.
3. Learned counsel for the petitioner, at the outset, submits that the

issue involved in the present case is squarely covered by the two decisions of this court one in Writ Petition (T) No.157 of 2014, decided on 17.07.2017 and the other being batch of writ petitions leading case of which was Writ Petition (T) No.118 of 2015, decided on 09.08.2017.

4. The contention of learned counsel for the petitioner was that the definition of market value was brought for the first time by amending the Chhattisgarh Entry Act, 2014 w.e.f. 01.04.2014 and adding definition of market value under section 2(fff) in the said Act. In two decisions referred to above it has been categorically held that the said notification would only be prospective and it cannot be retrospective and in the instant case the assessment year being 2008-09, the said notification or amendment could not have been made applicable while assessing the entry tax of the petitioner.

5. The State counsel opposing the petition submits that it is a case where the royalty was already inclusive in the market value and that it is a case of fresh assessment which is involved in the instant case unlike the two disputes which have been decided by this court, and therefore, the decision of the Commercial Tax Tribunal is justified and the two decisions of this court are distinguishable in the facts of the present case. According to State counsel, in the instant case the assessment has already been made much prior to the two decisions rendered by this court and therefore also the ratio laid down in those cases would not be applicable in the given facts of the present case.

6. Given the facts and circumstances of the case, once when there are

two authoritative decisions which have been passed on the basis of decision of the Supreme Court in case of State of Himachal Pradesh and Ors. Vs. Gujrat Ambuja Cement Ltd. and Anr., AIR 2005 SC 3936, and where it has been very specifically held that the amendment to the definition of market value which has been made effective from 01.04.2014 shall have a prospective effect that is to say that the market value inclusive of royalty can be recovered from the assessee for the assessment years which falls subsequent to 01.04.2014 and not for any of the previous assessment years inclusive of period in the present petition i.e. year 2008-09.

7. In view of above, this court does not want to keep this petition pending any further. Accordingly, in the light of the aforesaid two decisions rendered by this court in WPT Nos. 157 of 2014 and 118 of 2015, the present petition also deserves to be and is allowed. The order impugned dated 20.04.2017 stands quashed.

Sd/-
(P. Sam Koshy)
Judge

inder