AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 146 of 2016

M/s Aanya Trading Proprietorship Firm, Through The Proprietor Smt. Bimla Jain W/o Champa Lal Jian, Aged About 56 Years, Shop No C 26, First Floor, Shyam Market, Pandri, Raipur, Distirct Raipur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commecial Tax, Mahanadi Mantralaya Naya Raipur, Post Office & Police Staiton Naya Raipur, Distirct Raipur Chhattisgarh
2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur Chhattisgarh
3. Dy. Commissioner, Department Of Commercial Tax, Divsion II, Devendra Nagar, Raipur Chhattisgarh
4. Assistant Commissioner Department Of Commercial Tax, Civil Lines, Raipur Chhattisgarh
5. Commercial Tax Officer, Raipur, Circle 8, Raipur, Distirct Raipur Chhattisgarh
6. Additional Commercial Tax Officer, Devendra Nagar Raipur Chhattisgarh

---- Respondent

And

WPT No. 150 Of 2016

M/s Aanya Trading Proprietorship Firm W/o Champa Lal Jain Aged About 56 Years Proprietor Smt. Bimla Jain, Shop No. C-26, First Floor, Shyam Market, Pandri, Raipur, District- Raipur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Mahanadi Mantralaya, Naya Raipur,

Post Office & Police Station Naya Raipur, District- Raipur, Chhattisgarh

2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, Chhattisgarh.

3. Dy. Commissioner, Department Of Commercial Tax, Division Ii, Devendra Nagar, Raipur, Chhattisgarh

4. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur, Chhattisgarh.

5. Commercial Tax Officer, Raipur, Circle-8, Raipur, Chhattisgarh

6. Additional Commercial Tax Officer, Devendra Nagar, Raipur, Chhattisgarh

---- Respondent

And

WPT No. 144 Of 2016

1. M/s Aanya Trading Proprietorship Firm, Through The Proprietor Smt. Bimla Jain, W/o Champa Lal Jain, Aged About 56 Years, Shop No. C- 26, First Floor, Shyam Market, Pandri, Raipur, Dist. Raipur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (Chhattisgarh)

2. Commissioner, Department Of Commercial Tax, Civil Lines, Raipur (Chhattisgarh)

3. Dy. Commissioner, Department Of Commercial Tax, Division II, Devendra Nagar, Raipur (Chhattisgarh)

4. Assistant Commissioner, Department Of Commercial Tax, Civil Lines, Raipur (Chhattisgarh)

5. Commercial Tax Officer, Raipur, Circle- 8, Raipur (Chhattisgarh)

6. Additional Commercial Tax Officer, Devendra Nagar,

Raipur (Chhattisgarh)

---- Respondents

For Petitioners : Shri B.D. Guru, Advocate.
For Respondents/State : Shri Prasun Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

28/04/2017

(1) These petitions are directed against the order dated 25.10.2016 passed by the Commissioner, Commercial Tax, Raipur, by which the application under Section 49(1) of the Chhattisgarh Value Added Tax Act, 2005 (for short "Act, 2005") filed by the petitioner-Company invoking *suo motu* revision has been rejected finding no ground.

(2) Essential facts necessary for adjudication of these writ petitions are as under:-

(2.1) The petitioner is a dealer under the provisions of the Chhattisgarh VAT Act, 2005 and he has been assessed for the period from 01.04.2015 to 31.03.2016 and the assessment order has been passed by the assessing authority on 13.06.2016. The petitioner did not prefer any appeal against the order of assessment passed by the Assessing Officer and invoked *suo motu* revisional jurisdiction of learned Commissioner under Section 49(1) of the Act, 2005 for calling the record and to make enquiry and passing the assessment order, as the order is prejudicial to the petitioner-dealer.

(2.2) The learned Commissioner, by its order dated 25.10.2016, rejected the application holding that it is not a fit case where *suo motu* jurisdiction can be exercised.

(3) Feeling aggrieved & dissatisfied against that order, instant writ petitions have been filed questioning the same.

(4) Since common question of law & fact is involved in these three writ petitions, they are being disposed of by this common order.

(5) Learned counsel for the petitioner would submit that learned Commissioner is absolutely unjustified in rejecting the application without assigning any reason and without considering the petitioner's application for exercising *suo motu* revisional jurisdiction in its proper perspective. He relied upon the decision of the Supreme Court in the matter of ***Thvl. Bombay Ammonia Pvt. Ltd. Vs. The State of Tamil Nadu***[1] in support of his case.

(6) Per contra, Shri Prasun Bhaduri, learned Govt. Advocate appearing for the respondents would submit that the petitioner had an alternative remedy of filing appeal against the original order of assessment and application invoking *suo motu* revision filed by the petitioner is not maintainable and it has rightly been rejected by learned Commissioner.

1 (1976) 3 SCC 6

(7) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the record with utmost circumspection.

(8) This Court at the time of admission of these writ petitions formulated following two questions for determination :-

> (a) Whether even in the absence of there being any right conferred on the assessee to file revision application, on application being filed by assessee, it was incumbent on the Commissioner to exercise *suo moto* revisional jurisdiction ?
>
> (b) Whether on the face of availability of remedy of statutory appeal, a direction could be issued by this Court to the revisional authority to exercise *suo moto* revisional jurisdiction on the application of an assessee ?

(9) In order to consider the plea raised at the bar to answer the above such questions, it would be profitable to notice Section 49(1) of the Act, 2005, which reads as under:-

> " **Section 49 : Power of revision by Commissioner**
>
> **"(1)** The Commissioner in respect of any order passed by any officer specified in clause (b) to (f) of sub-section (1) of Section 3, may on his own motion call for the record of the proceeding in which such order was passed and on receipt of the record may make such enquiry or cause such enquiry to be made, as he considers necessary and subject to the provisions of this Act may, pass such order thereon, not being an order prejudicial to

the dealer or person as he thinks fit.

Provided that -

(a) the Commissioner shall not revise any order under this sub-section, where an appeal against the order is pending before the appellate deputy commissioner or the Board; or where, it such appeal lies, the time within which it may be filed has not expired;

(b) no revision shall lie,-

(i) against an order determining the liability of a dealer to pay tax or against a notice issued under this Act for assessment except after an assessment order is passed; and

(ii) against an order determining the liability of a dealer to pay tax or against a notice issued under this Act for assessment except after an assessment order is passed; and

Explanation.- An order by the Commissioner, declining interference shall not be deemed to be an order prejudicial to the dealer or person .

(10) A focused study of the aforesaid provision would show that the Commissioner, in exercise of its *suo motu* revisional jurisdiction, can call the record of proceeding and thereafter make such enquiry as he considers necessary and may pass such order thereon, not being prejudicial to the dealer or person as he thinks fit.

(11) The question would be whether such *suo motu*

revisional jurisdiction can be exercised on an application filed by the assessee.

(12) In the matter of **Thvl. Bombay Ammonia Pvt. Ltd.** (supra), their Lordships of the Supreme Court while considering the similar provision under section 32 of the Madras General Sales Tax Act, 1959 (henceforth 'Act, 1959') has held that *suo motu* power conferred on the Deputy Commissioner by Section 32 of the Act, 1959 is very wide and subject to the conditions provided in sub-sections (2) and (3), and it can be exercised even at the instance of assessee for rectifying any illegality or impropriety therein. Paragraph 11 of the report states as under:-

> "**11.** The language of this section makes it clear that the suo motu power conferred on the Deputy Commissioner in regard to the order or proceeding specified therein is quite wide and he can, subject to the conditions laid down in sub-sections (2) and (3), exercise the same even at the instance of an assessee who has not filed an appeal against the order for the purpose of rectifying any illegality or impropriety therein."

(13) The Supreme Court in the matter of **Thvl. Bombay Ammonia Pvt. Ltd.** (supra) has clearly held that *suo moto* revisional jurisdiction can be exercised at the instance of assessee, who has not filed an appeal, which squarely applies to the facts of the present case and thus it is held that

assessee is entitled to make application to the Commissioner for exercising *suo motu* revisional jurisdiction under Section 49(1) of the Act, 2005. The first question is answered accordingly.

(14) This brings me to the next question whether on the face of availability of remedy of statutory appeal, a direction can be issued by this Court to the revisional authority to exercise *suo motu* revisional jurisdiction on the application of an assessee.

(15) The Suprme Court in the matter of **Thvl. Bombay Ammonia Pvt. Ltd.** (supra) has also held that it is the assessee, who can file application for exercise of *suo moto* revisional jurisdiction, though he has not filed any appeal against the order of assessment. Thus, the application for exercise of *suo motu* revisional jurisdiction is maintainable even though order is appealable and appeal has not been filed by assessee.

(16) Thus, I hold that application for invocation of *suo motu* revisional jurisdiction at the instance of assessee before the learned Commissioner is maintainable. Learned Commissioner has neither called for the record nor any enquiry was made and straightway rejected the application without assigning any sufficient reason whereas he was obliged to comply with these conditions in view of the provisions contained in Section 49(1) of the Act, 2005.

(17) As a fall out and consequence of the aforesaid discussion, impugned order is liable to be and is hereby set aside. Application filed by the petitioner invoking *suo motu* revisional jurisdiction is restored to the file of the Commissioner, Commercial Tax for hearing and disposal in accordance with law after calling the record of the proceedings and after making enquiry as contemplated under Section 49(1) of the Act, 2005 and to pass appropriate order in accordance with law expeditiously preferably within a period of four months from the date of receipt of a copy of this order.

(18) Accordingly, the writ petition is allowed to the extent indicated hereinabove leaving the parties to bear their own cost.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-