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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 19 OF 2016

M/s Bilaspur Varites & Chemicals, through its Director Sheeravsh Ghosh, aged about 61 years, S/o Shri Subhash Ghosh, M/s Bilaspur Varites & Chemicals, Sirgitti Area, Tehsil & District Bilaspur (C.G.)

… Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Commercial Tax Department, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. Additional Commissioner, Commercial Tax Department, Bilaspur (C.G.)

… Respondents

For Petitioner	:	Mr. Anoop Majumdar, Advocate.
For Respondents	:	Mr. S.P. Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

05/07/2017

1. The present writ petition has been filed by the Petitioner being aggrieved by the order of the Additional Commissioner, Commercial Tax, Bilaspur, dated 15.7.2015 (Annexure P-1).

2. Learned Counsel for the Petitioner submits that it is a case where the assessment was made for the period from 1.4.2004 to 31.3.2005 and vide order dated 19.12.2014, the Assistant Commissioner-II, Commercial Tax, Bilaspur has assessed the liability of Rs.30,89,884/- and after adjustment of the amount deposited, had issued an order for payment of the balance amount of Rs.23,65,511/-.

3. The said order dated 19.12.2014 was put to challenge under Section 9(2) read with Section 61(4) Rule 78(1) of the Commercial Tax Act, before the Additional Commercial who vide its order dated 6.7.2015 had issued a notice to the Petitioner seeking explanation as to why the appeal should not be rejected for non-compliance of the mandatory provision as is required under Section 9(2) read with Section 61(4) Rule 78(1) of the Commercial Tax Act.

4. The default pointed out by the Additional Commissioner in the appeal was that the entire amount assessed was not deposited and the appeal also has been filed at a belated stage after about 5 months delay.

5. Learned Counsel for the Petitioner submits that the notice dated 6.7.2015 could not be served upon the Petitioner effectively as the petitioner-company has already been closed and is under BIFR. It is also the contention of the learned Counsel for the Petitioner that since the industry at Bilaspur is lying closed, the officials taking care of the company are placed at Kolkata and it is only at a very belated stage that they have come to know about the rejection of the appeal.

6. Learned Counsel for the Petitioner makes a submission that let the Petitioner be given an opportunity for curing the defaults pointed out by the Additional Commissioner, within a stipulated time and the appeal may be heard on merits. He submits that the entire assessment which has been done by the Assistant Commissioner is not proper, legal and justified and is not based upon any substantive proof.

7. Learned Deputy Advocate General appearing for the Respondents however submits that since the Petitioner did not fulfill the mandatory requirement of law as is required while preferring the appeal, the Additional Commercial had no option but to dismiss the appeal. He however submits that in the event if the appeal is to be remitted back, the Petitioner should be saddled with heavy cost.

8. Considering the total facts and circumstances of the case, particularly taking into consideration the fact that the petitioner-company has gone in before BIFR and is a closed unit for a considerable period of time and also accepting the submission of learned Counsel for the Petitioner that the concerned officials manning the industry are placed at Kolkata, this Court is of the opinion that ends of justice would meet if the

Petitioner is granted one more opportunity to appear before the Additional Commissioner and satisfy the Additional Commissioner in appeal which is pending before the Additional Commissioner pertaining to Annexure P-1, subject to the Petitioner being penalized by paying a cost of Rs. 10,000/- to be deposited in the office of the Commercial Tax Department. It is ordered accordingly.

9. Let the Petitioner appear before the Additional Commissioner within a period of 30 days from today. In the event, if the Petitioner appears before the Additional Commissioner within a period of 30 days by moving appropriate application seeking curing of the defaults pointed out in the appeal, the Additional Commissioner may proceed further and decide the case in accordance with law. It is further observed that the Petitioner shall not try the linger on with the proceedings on lame excuses. It shall render full cooperation to the authority concerned for an expeditious disposal.

10. With the aforesaid observation/direction, the writ petition is finally disposed of.

Sd/-
(P. Sam Koshy)
Judge

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