NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 90 of 2016

Akhilesh Agrawal S/o Shri Ram Narayan Agrawal, aged about 38 Years, Proprietor M/s Goel Jute Udyog, 268, Samta Colony, Raipur (Chhattisgarh).

---- Petitioner

Versus

1. The State of Chhattisgarh through the Secretary, Department of Commercial Tax, New Mantralaya, Mahandi Bhawan, Raipur (Chhattigarh).
2. Asst. Commissioner, Department of Commercial Tax, H.Q. Raipur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Malay Kumar Bhaduri, Advocate
For Respondent/State	:	Shri D. R. Minj, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

28/07/2017

1. Challenge in the present Writ Petition is the order dated 30/12/2015 were by the Assistant Commissioner, Commercial Tax Department, Raipur has assessed an amount of Rs.27,30,099/- against the Petitioner for default in payment of Value Added Tax and entry tax for the assessment year 01/04/2010 to 31/03/2011.

2. The sole contention of the Petitioner in the present Writ Petition is that the said assessment order is an ex parte order and that he has not been grated sufficient opportunities to defend his case before the Authorities. Counsel for the Petitioner submits that the Petitioner had appeared in the office of the Assistant Commissioner on 28/12/2015 and filed an application Annexure-P2 for ascertaining the date of appearance before the Authorities so that he can participate. However, without granting him proper notice of appearance before the Authorities, the Assistant Commissioner proceeded ex parte and passed the impugned order only after 2 days on 30.12.2015.

3. Counsel for the petitioner makes a limited prayer that the petitioner may be permitted to move an application under section 36 of the Value Added Tax Act for setting aside of the ex parte order passed by the Assessing Officer and the Authority may be directed to consider his application and pass an appropriate order. He further submits that till the Authority decides his application for setting aside of the ex parte order, the impugned order may not be enforced by the Department.

4. The state Counsel, however, opposes the petition and submits that the petitioner has not moved to the concerned Authorities under section 36 of the Value Added Tax Act (for short 'the Act") till now and at this belated stage, he may not be permitted to do so. He further submits that the petitioner has a statutory alternative remedy of preferring an appeal which he has not done and therefore, this petition deserves to be rejected.

5. Considering the fact that this Court has already in respect of assessment year 2009-10 permitted the petitioner to move an application for setting aside of the ex parte order under 36 of the Act, the present petition is also disposed of in similar terms directing the petitioner to move an appropriate application within 3 weeks from today seeking for setting aside of the ex parte order along with an application for grant of Interim Stay. In the event of such application being filed, the Authority concerned, ignoring the period of limitation for filing the application for condonation of delay, may consider the application on merits and decide the same within a further period of 4 weeks. It is directed that during the said period, no coercive step shall be taken by the respondents pursuant to the impugned order dated 30/12/2015.

6. The writ petition thus stands finally disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Bhola