AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 7669 of 2010

M/s. Jyoti Trading Company, a proprietary concern through proprietor Sitaram Agrawal S/o Late Dwaraka Prasad Agrawal, aged about 59 years resident of Sainath Provision Stores Dwaraka Kutir New Shanti Nagar, Raipur (CG)

---- Petitioner

Versus

1. Additional Commissioner, Commercial Tax Vanijyik Kar Bhawan, Civil Lines, Raipur, CG
2. Assistant Commissioner Commercial Tax Vanijyik Kar Bhawan, Civil Lines, Raipur, CG

---- Respondents

For Petitioner	:	Ms. Smiti Sharma, Advocate
For State	:	Shri Anand Dadariya, Govt. Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/08/2018

1. This petition is directed against order dated 29.12.2009 passed by the Revisional Authority/Additional Commissioner, Commercial Tax, Raipur, whereby petitioner's revision petition, in the matter of assessment of commercial tax, has been rejected.

2. Relevant facts giving rise to this petition are that the petitioner, who is a proprietary concern and registered with the Commercial Tax Department as Dealer and assessed to tax on the rolls of the Assistant Commissioner, Commercial Tax, Raipur, was assessed to tax in respect of the period from 1.04.2000 to 31.03.2001. As against the declared turnover of Rs.1,12,10,851/-, the Assessing Authority assessed Rs.2 crores as the total

sale amount and determined tax liability. Aggrieved by the order passed by the Assessing Authority on 28.2.2004, a revision was filed before the Revenue Authority/Commissioner. Vide order dated 14th December 2004, the Revisional Authority set aside the demand and remanded the matter for proper enquiry. An order of assessment after remand was made on 11.10.2006 maintaining earlier assessment and demand which led to filing of revision in second round by the assessee. The revision petition having been dismissed, the assessee is before the Court in this petition.

3. Assailing correctness and validity of the assessment order, passed on 11.10.2006 after remand and the revisional order passed on 29.12.2009, learned counsel for the petitioner raised following submissions:-

(A) It should be presumed, in the absence of any explanation for delay, that the order of assessment dated 11.10.2006, is an antedated one because the order was served on the assessee only on 29.3.2007 much beyond two years' period of limitation of passing the order upon remand under the statutory mandate of Section 78 (8) proviso (a) of the Chhattisgarh Commercial Tax Act. In support of this submission, learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of **State of Andhra Pradesh Vs. M. Ramakishtaiah & Co.**(1994) Vol. 93 STC 406 and judgments passed by the High Court of Kerala in the cases of **Commissioner of Agricultural Income-Tax Vs. Kappumalai Estate** (1998) Vol. 234 ITR 187 Ker. & **Government Wood Works Vs. State of Kerala** (1988) Vol. 69 STC 62 Ker.

(B) The Assessing Authority mechanically passed the order of re-assessment after remand, without complying with the direction issued by the Revisional Authority in its earlier order dated 14th December 2004 inasmuch as, neither the enquiry as directed by the Revisional Authority was made nor any material was disclosed with regard to the details of so called supplies made by dealers of other States. The burden of proof has been wrongly placed upon the assessee to prove that no purchase was made rather than requiring the Department to come out with clinching evidence of such purchase made from outside the State.

4. On the other hand, learned counsel for the State submits that as far as allegation of antedating the order is concerned, in the absence of there being any challenge, supported by an affidavit of the counsel, the fact that the order contained signature of the counsel itself, is proof of communication of the order.

On the merits of the case, learned counsel for the State submits that after the case was remanded, the Assessing Authority made due enquiry and after having been duly satisfied with the material available with him, with regard to details of purchase, the order was passed and revision has been rightly dismissed.

5. The first submission that the order of re-assessment was antedated is based on following factual averments made in the writ petition:

> **"**9.3. The limitation for making fresh assessment after first revisional order was till 31.12.2006. Since the orders were served on 29.3.2007 although dated 11.10.2006 there is a strong presumption that they were passed after limitation which expired on 31.12.2006. This is borne out from the fact firstly that no signatures were taken of the assessee or his counsel in the order sheet relating to Entry Tax case. All cases under the three enactments that is Entry Tax, State sales Tax and Central Sale Tax are taken up together. This implies that even in the other two cases, the petitioner or his counsel were not present or that signatures were obtained on blank order sheet.
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> 9.4. That even after asking for information under Right to Information Act 2006, the petitioner was not supplied

> with any information as to why order passed on 11.10.2006 was served after five and a half months on 29.3.2007 and as to why no action was taken against departmental staff for such delayed service. Copies of applications of petitioner and replies received are annexed as Annexure "P-5".
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> 9.5. That the diary of orders closed for assessment by assessing officers has to reach the Commissioner of Commercial Tax within a month. Surprisingly in the instant case the diary as per Annexure P-6 was submitted not in November 2006 but in March 2007.**"**

6. Learned counsel for the petitioner fervently urged this Court to draw presumption on antedating, by relying upon the decision of the Supreme Court in the case of **M. Ramakishtaiah & Co.** (supra).

7. To appreciate the submission, it is necessary to dwell into the factual premises in which the order was passed. That was a case where the assessment order was said to have been passed on January 6, 1973, but order served on the assessee only on November 21, 1973. The assessee raised contention that the order was, in fact, made after the expiry of four years but was antedated. Moreover, in that case, no explanation was offered with regard to delay in service, of the order on the assessee. In this factual backdrop, obtaining on the record of that case, their Lordships formed an opinion that failure to explain delay in service of order and it being delayed by 10 ½ months, a presumption is required to be drawn that the order was not made on the date it purports to have been made.

8. In the present case, the allegation of antedating is based on three circumstances. *Firstly,* that though the order is purported to have been passed on 11.10.2006, it was served on the assessee on 29.3.2007 i.e. after about 5 ½ months. *Secondly,* that even when information under Right to Information Act was sought, no information was supplied as to why the order passed on 11.10.2006 was served after 5 ½ months and why no

action was taken against departmental staff for such delayed service. *Thirdly,* the diary of orders closed for assessment by the Assessing Officers, which are required to reach the Commercial office within a month, reached only in the month of March 2007.

9. In so far as legal position is concerned, the Supreme Court's verdict in the case of **M. Ramakishtaiah & Co.** (supra) clearly lays down that a presumption of fact may be drawn where there is delay in service of order and no explanation is offered for that delay. But this presumption is not a statutory presumption, but a presumption of fact and will therefore depend on the facts and circumstance of every case.

10. In the present case, but for admitted position that the order sheets were signed by the counsel for the assessee on the date of passing of the order, the three suspicious circumstances would have definitely tilted the case in favour of the assessee. The three suspicious circumstances definitely cast cloud. However, in the petition itself, it has been stated that the signature of the counsel were taken in the order passed in the case on 11.10.2006, though, it is doubted by saying that signature on other connected cases of entry tax and central sales tax were not taken. Therefore, it is argued that by way of implication, it should be held that either the counsel was not present or that his signature were obtained on blank order sheet. This Court would have dwelt into this aspect further more, had there been an affidavit of the counsel, who signed the order sheet, casting any aspersion on the sanctity of proceedings. This having not been done, this Court has to proceed on an admitted position of fact that order sheet was signed by the counsel on 11.10.2006 itself, therefore, once the counsel signs the order, cloud, if any, on account of three stated circumstances noted above, is cleared and therefore, this Court is not inclined to draw a presumption that the order was antedated. The decision of the Supreme Court in the case of **M. Ramakishtaiah** (supra) is therefore distinguishable on facts, as in that case there was no situation like the present case where the counsel had signed the order on the date on which it was passed.

11. The other decisions in the cases of **Commissioner of Agricultural Income Tax** (supra) and **Government Wood Works** (supra) would also have no application and are distinguishable for the reason stated herein-above which are peculiar to the present case.

12. On merits, however, this Court finds that the Assessing Officer as well as Revisional Authority both have failed to appreciate that after remand under the first order of revision passed by the Revisional Authority on 14th December 2004, the Assessing Authority did not hold an enquiry and failed to make assessment in accordance with those directions.

13. A perusal of order dated 14th December 2004, shows that the assessee had disclosed sale amount of Rs.1,12,10,851/- in his books of account which was not accepted and Assessing Authority arrived at the sale amount of Rs.2 crores which was made a basis to assess tax. The assessee's contention before the Revisional Authority was that only on the basis of bare information received from Ms. Crystal Clear Vegetable Refinery Pvt. Ltd., Ms. Bhuvneshwar Refinery Pvt. Ltd. and Ms. Apoorva Oil Industries Pvt. Ltd., the Assessing Authority was not justified in making addition in sales turn over. The revisional authority categorically held that no details of sale day-wise and bill-wise were found nor mentioned by the Assessing Authority in its order and that it was obligatory to disclose the complete information regarding receipt of case day-wise, bill-wise, obtained from the traders and disclosed to the assessee and then carry out assessment. In the re-assessment order, which was passed on 11.10.2006, all that has been stated is that a fresh notice was given and on the basis of information obtained from the Traders, affidavit of the assessee cannot be accepted. The order does not refer to the material, if any, collected by the Assessing Authority, much less those material disclosed to the assessee, as directed by the revisional authority earlier. In the sum and substance, the Assessing Authority mechanically repeated its earlier order without undertaking the exercise which it was obliged to take under the direction given by the Revisional Authority.

14. To make it worse, in the second round of revision, Revisional Authority adopted a completely different approach by holding that the burden was on the Assessee to prove that he did not purchase those items. Therefore, both the orders are unsustainable in law and are liable to be set aside on the merits of the case even if it is held that the assessment order was passed within the stipulated period of two years.

15. In the result, impugned orders passed by the Assessing Authority and Revisional Authority are set aside and the matter is remitted to the Assessing Authority with clear direction that every material collected by the Assessing Authority with regard to sale and purchase made from the concerned three traders namely Ms. Crystal Clear Vegetable Refinery Pvt. Ltd., Ms. Bhuvneshwar Refinery Pvt. Ltd. and Ms. Apoorva Oil Industries Pvt. Ltd. , shall be disclosed in full to the petitioner. The petitioner would have an opportunity to file its own affidavit if it wishes to dispute those material. It is also made clear that the direction issued earlier by the Revisional Authority on 14th December 2004 that for the purpose of including disputed sales, the complete details of the supply day-wise and bill-wise will be required to be obtained, will also be required to be complied with.

16. The petition is accordingly allowed in the manner and to the extent indicated above.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen