**NAFR**

**HIGH COURT of CHHATTISGARH, BILASPUR**

**Writ Petition (T) NO.26 of 2018**

M/s Common Marketing Limited A Company Duly Incorporated Under The Companies Act, 1956 Having Its Office At 1st Floor, Adjacent To Dutta Dry cleaners Malviya Road, Raipur Through Its Authorized Signatory Shri Vinod Ramdas Malkar, S/o Shri Ramdas Malkar Aged About 29 Years, R/o Hatola Ta, Bardhitakali District Akola (Maharashtra).

**----Petitioner**

**Versus**

1. State of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mahanadi Bhavan, Naya Raipur (Chhattisgarh).
2. Commissioner Of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur (Chhattisgarh).

**---- Respondents**

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| For Petitioner | : | Smt. Smiti Sharma, Advocate. |
| For State | : | Shri Anand Dadariya, Dy. G.A. |

**SB: Hon'ble Shri Justice P. Sam Koshy**

**Order on Board**

**31.01.2018**

1. The challenge in the present writ petition is the order of penalty dated 22.12.2017 (Annexure P/3) passed by the Commissioner, Commercial Tax, Raipur.
2. The contention of the petitioner is that, the present petitioner was subjected to assessment for the year 2010-11 for an amount of approximately Rs.68 Lakhs. Against the said order of assessment, the petitioner has preferred an appeal before the Commercial Tax Appellate Tribunal. The said appeal was filed as early as on 23.10.2017. The appeal of the petitioner is still pending consideration before the Tribunal. Meanwhile, the respondent authorities had initiated penalty proceedings against the petitioner. The petitioner

submitted that he has immediately informed the authorities that he has preferred an appeal against the order of assessment, and therefore, till the appeal is not decided finally, the penalty proceedings may be set aside. However, vide the impugned order dated 22.12.2017, the department has issued an order of penalty to the extent of Rs.68 Lakhs.

3. The petitioner submits that once when the appeal against the assessment is pending consideration and in the event if the appeal is allowed, the entire penalty proceedings itself would get automatically nullified, and therefore there was no occasion for the authorities to have proceeded with the penalty proceeding until the appeal is finally decided.
4. The petitioner further drew attention of the court to the order passed by this court in WPT No.283 of 2017, decided on 06.09.2017. So also the order dated 13.07.2017 passed in WPT No.140 of 2017 and the order passed by the Co-ordinate Bench of this Court in a batch of writ petitions decided on 01.02.2017 in WPT No.12 of 2017 and other connected petitions and also on WPT No.176 of 2016, decided on 21.12.2016 wherein this High Court has consistently taken a stand that pending the appeal before the Appellate Tribunal, the penalty proceedings should not have been initiated or the same should have been kept in abeyance.
5. This court has no hesitation in following the aforementioned judgments rendered by this High Court in the present case as well.
6. For the aforesaid reasons, the order of penalty dated 22.12.2017 is

liable to be quashed and is accordingly quashed pending the appeal before the Appellate Tribunal reserving liberty to the State authorities to initiate appropriate proceedings, if need so arises subsequent to the appeal being decided.

7. Accordingly, the present writ petition stands allowed and disposed of.

**Sd/-**
(P.Sam Koshy)
**Judge**

inder