

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (T) No.4162 of 2007

(Notification dated 31-10-2006 bearing No.F-10/101/2006/CT/V(92) issued by the Joint Secretary, Government of Chhattisgarh, Finance and Planning Department (Commercial Tax Department), Raipur)

Prime Ispat Limited, Village Bana, Via Hirapur, Tendua, Raipur (C.G.) having its registered office at Pyarelal Agrawal Marg, through its Director Mr. Ashok Agrawal

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Finance and Planning Department (Commercial Tax Department), Mantralaya, D.K.S. Bhavan, Raipur (C.G.)
2. Commissioner, Commercial Tax Department, Government of Chhattisgarh, (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

---- Respondents

ANDWrit Petition (T) No.703 of 2008

(Notification dated 31-10-2006 bearing No.F-10/101/2006/CT/V(92) issued by the Joint Secretary, Government of Chhattisgarh, Finance and Planning Department (Commercial Tax Department), Raipur)

Nandan Steels & Power Limited, Siltara Industrial Area, Sondra, Raipur (C.G.) having its registered office at 199/C, Ground Floor, Main Road, Samta Colony, Raipur (C.G.) through its Director Manish Kumar Agrawal

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Finance and Planning Department (Commercial Tax Department), Mantralaya, D.K.S. Bhavan, Raipur (C.G.)
2. Commissioner, Commercial Tax Department, Government of Chhattisgarh, (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

---- Respondents

For Petitioners: Miss Medha Shrivastava, Advocate.

For Respondents / State: -

Mr. Gary Mukhopadhyay, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/04/2018

1. Since common question of law and fact is involved in both the writ petitions, they are heard together and are being disposed of by this common order.
2. The petitioners herein are registered companies registered under the Indian Companies Act, 1956 and are engaged in the business of manufacturing, producing, altering, converting, rolling, re-rolling etc. of iron and steel products including bars, rods, pipes, sheets, wires, rolling metals, channels etc. and deals in goods and articles or things incidental to the attainment of the above objects. Being registered dealers by the District Industries and Trade Centre, the petitioners were granted exemption from payment of sales tax under the Chhattisgarh Commercial Tax Act, 1994 (for short, 'the Act of 1994') and the Central Sales Tax Act.
3. The Act of 1994 was repealed on coming into force of the Chhattisgarh Value Added Tax Act, 2005 (for short, 'the Act of 2005') with effect from 1-4-2006. Since the petitioners were earlier availing the benefit of exemption, the competent authority exercising the power under Section 15-B read with Section 72(i)(b) of the Act of 2005 extended the benefit of exemption to the petitioners by its notification dated 28-4-2006 bringing the same into force with effect from 1-4-2006, but later on by order dated 31-10-2006, the Commercial Tax Department had subsequently issued the impugned notification amending its previous notification dated 28-4-2006 and it has been held that "the assessing officer at the time of

making assessment shall remit the tax liability shown by such dealer after verification” shall be omitted. Accordingly, the aforesaid paragraph has been directed to be deleted with effect from 1-4-2006 by way of amendment and thereby the said notification had the effect of cancelling the exemption of tax remittance which was provided to the petitioners.

4. Feeling aggrieved and dissatisfied with the notification dated 31-10-2006, the petitioners have filed these writ petitions stating inter alia that the impugned notification dated 31-10-2006 is illegal, arbitrary and violative of the provisions contained in Section 15-B read with Section 72(i)(b) of the Act of 2005, as the notification dated 31-10-2006 cannot have retrospective effect in rescinding of the earlier notification.
5. Return has been filed opposing the writ petitions and supporting the notification dated 31-10-2006.
6. No rejoinder has been filed.
7. Miss Medha Shrivastava, learned counsel appearing for the petitioners, would vehemently submit that the petitioners were granted exemption under the Act of 1994 which has been extended by the notification dated 28-4-2006 by virtue of the provisions contained in Section 15-B read with Section 72(i)(b) of the Act of 2005 and by virtue of the provisions contained in Section 15-B(2) of the Act of 2005, a notification rescinding an earlier notification shall only have prospective effect. Thus, the impugned notification rescinding the earlier notification with retrospective effect is in teeth of the provisions contained in Section 15-B(2) of the Act of 2005.

8. Mr. Gary Mukhopadhyay, learned Government Advocate appearing on behalf of the State/respondents, would submit that it is only the earlier notification that has been amended with retrospective effect and it will not have the effect of rescinding the earlier notification and therefore that has been given retrospective effect.
9. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
10. It is not in dispute that the petitioners, who are registered dealers, were granted exemption under the Act of 1994 by notification No.A-3-12-95-ST-V(96) dated 7-11-1997 and after repeal of the Act of 1994 it was extended by the statutory notification dated 28-4-2006 with effect from 1-4-2006, but later on, the operative portion holding that “the assessing officer at the time of making assessment shall remit the tax liability shown by such dealer after verification” has been deleted with retrospective effect from 1-4-2006 by notification dated 31-10-2006.
11. The question would be, whether such a rescinding with retrospective effect is permissible?
12. To unlock the question so posed for consideration, it would be appropriate to notice Section 15-B(1) and (2) of the Act of 2005 which read as under: -

“Section 15-B : Saving

(1) The State Government may, by notification and subject to such restrictions and conditions as may be specified therein, exempt whether prospectively or retrospectively,-

- (i) (a) any class of dealers; or

(b) any goods or class of goods, in whole or in part, from the payment of tax under this Act for such period as may be specified in the notifications;

(ii) any dealer or class of dealers from any provision of this Act or any provision of a rule made under section 71 for such period as may be specified in the notification.

(2) Any notification issued under this section may be rescinded before the expiry of the period for which it was to have remained in force and on such rescission such notification shall cease to be in force. A notification rescinding an earlier notification shall have prospective effect.”

13. A careful perusal of the aforesaid provision would show that any notification issued under Section 15-B(1) of the Act of 2005 exempting any dealer or class of dealers may be rescinded before the expiry of the period for which it was to have remained in force and on such rescission such notification shall cease to be in force. It clearly mandates that a notification rescinding an earlier notification shall have prospective effect. Thus, there is a legislative mandate that a notification rescinded the earlier notification can have prospective effect whereas, grant of exemption under Section 15-B(1) of the Act of 2005 can either be prospective or retrospective.

14. The Supreme Court in the matter of **State of Madhya Pradesh and another v. M/s G.S. Dall and Flour Mills**¹, while considering the pari materia provision contained in Section 12 of the M.P. Sales Tax Act has clearly held that taking away the exemption can only be prospective, and observed as under: -

“21. ... Section 12 is clear that, while a notification under it can be prospective or retrospective, only prospective operation can be given to a notification rescinding an exemption granted earlier. In the interpretation we have placed on the notification, the July

1 1992 Supp (1) SCC 150

3, 1987 notification cannot be treated as one merely clarifying an ambiguity in the earlier one and hence capable of being retrospective; it enacts the rescission of the earlier exemption and, hence, can operate only prospectively. It cannot take away the exemption conferred by the earlier notification.”

15. Reverting to the facts of the present case by virtue of the statutory mandate contained in Section 15-B(2) of the Act of 2005 and following the principle of laid down by the Supreme Court in **M/s G.S. Dall and Flour Mills's** case (supra), I have no hesitation to hold that the impugned notification rescinding the earlier notification shall only have prospective effect i.e. from the date of withdrawing the notification and it cannot have the retrospective effect. Consequently, the impugned notification issued by the respondents / State withdrawing / rescinding the earlier notification granting exemption from prospective effect has to be struck down.
16. The argument of Mr. Mukhopadhyay that the impugned notification is only an amendment to the earlier notification and it has not been rescinded, deserves to be rejected, as the effect of the amendment will be taking away the exemption conferred by the earlier notification.
17. As a fallout and consequence of the aforesaid discussion, the notification dated 31-10-2006 to the extent of the petitioners giving the notification the prospective effect rescinding the earlier notification deserves to be and is accordingly quashed.
18. The writ petitions are allowed to the extent indicated herein-above.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge