

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 524 of 2018

- M/s Avinash Traders Raigarh Through Its Proprietor, Sanjay Rateria S/o Late Shri Sant Lal Rateria, Aged About 50 Years. R/o Subhash Chowk, Police Station City Kotwali Raigarh, Tahsil And District Raigarh, Chhattisgarh.Petitioner

---- Appellant

Versus

1. State Of Chhattisgarh Through Its Secretary, Finance And Planning Department, (Commercial Tax Department), Mantralaya, D. K. S. Bhawan, Raipur, Chhattisgarh.
2. Commissioner, Commercial Tax Department, Government Of Chhattisgarh. (Vanijyik Kar Bhawan), South Civil Lines, Raipur, Chhattisgarh
3. Additional Commissioner, Commercial Tax, (Vanijyik Kar Bhawan), Raipur Chhattisgarh
4. Divisional Deputy Commissioner, Commercial Tax, (Vanijyik Kar Bhawan) Bilaspur, Chhattisgarh

---- Respondents

For Appellant	: Shri Anumeh Shrivastava, Advocate
For Respondents/ State	: Shri Gary Mukhopadhyay, Government Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

14.09.2018

1. Heard learned counsel for the parties.
2. Writ Application of the appellant was dismissed by the learned Single Judge vide his order dated 23.03.2018. The challenge before the writ court was the order passed by the Additional Commissioner, Commercial Tax, Raipur on 05.03.2013 imposing certain tax as well as penalty and the order passed by the

Revisional Forum vide its order dated 25.09.2012 where part of the order passed by the Additional Commissioner was partly modified.

3. The origin of the present litigation relates to the assessment year 2004-05. The appellant is said to be a dealer engaged in business of Cycle and Cycle parts. Allegation was made against him that he had availed concessional rate of tax by using a forged and fake C-Form. The detection was made by the department at a later stage and therefore, the Sale Tax authorities decided to re-open the assessment. The tax liability was assessed to be Rs.10,58,660/- and a penalty of Rs.21,17,320/- was imposed.

4. This order was assailed in the revision. The revisional authority did not interfere with the assessment. However, the amount of penalty was reduced to Rs.10,58,660/-.

5. Not being satisfied with the decision of the assessing authority or the revisional authority, writ application was filed.

6. After all the arguments which were made before the learned Single Judge, the learned Single Judge did not find any ground to interfere with the two impugned orders. Not only that, learned Single Judge also took note that the appellant had confined his petition to the issue of imposition of penalty, meaning thereby that the issue of re-assessment was given up.

7. Similar arguments with regard to the penalty was pressed into service before the learned Single Judge but at the cost of repetition, learned counsel representing the appellant tried to impress upon the Division Bench that a case against non-imposition of penalty would be made out if the ratio of certain decisions were taken into consideration.

8. The first judgment on which reliance has been placed by learned counsel for the appellant is **The State of Madras Vs Radio and Electricals Limited etc.**, reported in AIR 1967 SC 234. The ratio on which reliance has been placed from the said judgment is that for any infraction of law, committed by a purchasing dealer, by mis-application of the goods after he has purchased them or for any fraudulent mis-representation by him, penalty may be visited upon the selling dealer.

9. Taking cue from the said ratio of the Hon'ble Supreme Court, submission of the counsel for the appellant is that some other courts have also taken similar view which is the case of **Milk Food Limited Vs Commissioner Vat and others** reported in (2013) 59VST1 (Delhi). Yet another case is **TVL Sastha Enterprises rep. by its partner Mrs.V Unnamalai Vs The Appellate Authority Commissioner** reported in (2011) 37VST94 (Madras) and case of **Bell Ceramics Limited Gs Deputy Commissioner of Commercial Taxes (Transition-3), Bangalore** reported in (2011) 38VST388 (Karnataka).

10. Learned counsel for the respondents/State authorities representing Revenue department submits that the underlying fact behind all these decisions which the appellant wants to use to his advantage is that there has to be an undisputed existence of a purchasing dealer. In none of the cases so relied, it is a case where there is no purchasing dealer in existence and even effort made at tracing them on behalf of the State authorities proved to be futile as they do not exist either in the State of Orissa or in the State of Andhra Pradesh. In all the decisions, there was a purchasing dealer who may have committed some omission or commission for which liability cannot be saddled upon the seller. Counsel for the State points out that the Hon'ble Supreme Court itself in its decision rendered in the case of **State of Madras (supra)** has held that even though there cannot be any control over a purchaser in the transactions and he

has to rely on the representation made to him, he must satisfy himself that the purchaser is a registered dealer and that the goods purchased are specified in his certificates.

11. Coming to the present case, the facts are that Form-Cs were produced by the appellant, before the assessing authority. Those Form-Cs are fraudulent and fake. On a defence being put up that they were provided by the purchasers, the assessing authority tried to locate them but then admittedly, even the appellant is neither in a position to identify the dealer or the purchaser, who had supplied him with Form-C. Therefore, it becomes a case where Form-C was not tendered to the seller by any legal entity but by some elusive source which is unidentifiable.

12. This is why the learned Single Judge had this to say in paragraph-17 of the judgment:

"17. So far as the judgments referred to by the petitioner is concerned, the same would not come to the rescue of the petitioner for the simple reason that in none of those cases the existence of purchasing dealer was doubted, whereas, in the instant case the purchasing dealers themselves were not traceable, coupled to the fact that TIN numbers were also found to be incorrect. Thus, those judgments are distinguishable on its facts itself. This fact stood established from the fact that the petitioner, for this reason, had restricted his challenge to the order of reassessment to the extent of only penalty imposed. This court does not find any strong case made out by the petitioner warranting interference with the impugned orders."

13. We are in agreement with the view taken by learned Single Judge. None of the judgments cited by the appellant as noted above can come to the rescue of the appellant as those judgments are distinguishable on facts and to add further, if a fake or a fraudulent Form-C is produced by an Assessee and if it is

found to be so, it will be as good as non production of Form-C and no advantage thereof can be taken therefrom by trying to shift the onus on anybody else.

14. In fact, we are of the opinion that if such lee-way, concession or immunity is granted to such selling dealers, it will open a flood gate where large scale fraudulent forms seeking concessional rates of assessment will be used to avoid payment of taxes by putting the onus on non-existent purchasing dealers, who will only exist for argument or defence but not in reality.

15. In totality, therefore, we do not find any infirmity with the view taken by the learned Single Judge which is required to be set aside or interfered in appeal.

16. We further take note that in the facts and circumstances, the revisional authority has already reduced the element of penalty from twice the assessed amount to as much as the assessed amount which is the least which could be done under Section 28 (1) of Chhattisgarh Commercial Taxes Act, 1994.

17. The appeal stands dismissed for the reasons indicated above.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge