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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 126 of 2018

1. M/s Rahul Chemicals A Partnership Firm Duly Registered Under The Indian Partnership Act, 1932 (and 2013) Having Its Registered Office At Tendua Road, Hirapur, Raipur Through One Of Its Partners And Authorized Signatory Shri Deepak Rijhwani, S/o Shri Parasram Rijhwani Aged About 49 Years, R/o 278, A/b Narmada Road, Jabalpur (Madhya Pradesh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mahanadi Bhavan, Naya Raipur, District Raipur Chhattisgarh.
2. Commissioner Of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
3. Assistant Commissioner, Commercial Tax, Division II, Raipur

---- Respondent

For Petitioner	Ms. Smiti Sharma, Advocate
For Respondent/State	Shri Anand Dadariya, Dy. Govt. Adv.

Order On Board

By

Prashant Kumar Mishra, J.

10/10/2018

1. Indisputably the petitioner's appeal challenging assessment order is pending consideration before the Tribunal and yet before attainment of finality of the assessment proceeding, order of penalty has been passed by the Assistant Commissioner, Commercial Tax on 1.12.2017 vide Annexure-P/4.
2. In several orders, one such order being passed in WPT No.138/2016 (M/s S.K. Sarawagi & Co. Pvt. Ltd. Vs. State of CG & Ors), this Court vide order dated 10.11.2016 has held that as long as the order of

assessment has not attained finality, order of penalty and the proceeding for recovery of the same should not be initiated before finalization of original proceeding.

3. Similar order has been passed by this Court in WPT No.176/2016 (M/s Lal Medicine Centre Vs. State of CG & Ors) vide order dated 21.12.2016; WPT No.12/2017 (M/s Anaal Automobiles Vs. State of CG & Ors) decided on 1.2.2017 and WPT No.283/2017 (M/s Tata Sky Limited Vs. State of CG & Ors) decided on 6.9.2017.

4. In view of the above, the present Writ Petition is also allowed to the extent that there shall be no recovery of penalty amount from the petitioner during the pendency of the appellate proceeding before the Tribunal. Depending upon the outcome of the appeal preferred by the petitioner, the authority would be at liberty to proceed with the order of penalty, if the original assessment order remains in tact or to draw fresh proceeding for imposing penalty, if the order is varied but still the petitioner is held liable to make payment of tax.

Sd/-
Judge
(Prashant Kumar Mishra)

Gowri