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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 310 of 2017

Arihant Agencies, Proprietorship Firm, through the Proprietor Amit Jain, S/o C.L. Jain, aged about 32 years, Shop No.C-26 Shyam Market, Pandri, Raipur, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)

2. Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)

3. Assistant Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)

4. Commercial Tax Officer, Raipur, Circle-8, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (T) No. 309 of 2017

Anant Agencies, Proprietorship Firm, through the Proprietor Namit Jain, S/o Champa Lal Jain, aged about 31 years, Shop No. C-27 Shyam Market, Saheed Hemu Kalyani Ward, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)

2. Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)

3. Assistant Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)

4. Commercial Tax Officer, Raipur, Circle-8, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (T) No. 312 of 2017

Arnab Enterprises, Proprietorship Firm, through the Proprietor Namit Jain, S/o Champa Lal Jain, aged about 31 years, Lal Ganga Midas, Raipur, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)
3. Assistant Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)
4. Commercial Tax Officer, Raipur, Circle-8, Raipur, District Raipur (C.G.)

---- Respondents

Writ Petition (T) No. 313 of 2017

Aashi Agencies, Proprietorship Firm, through the Proprietor Amit Jain, S/o C.L. Jain, aged about 33 years, Shop No. C-27 First Floor, Shyam Market, Pandri, Raipur, Distt. Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Commercial Tax, Mahanadi Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.)
2. Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)
3. Assistant Commissioner, Department of Commercial Tax, Civil Lines, Raipur (C.G.)
4. Commercial Tax Officer, Raipur, Circle-8, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners : Mr. B.D. Guru, Advocate.
For Respondents/State: Mr. Gary Mukhopadhyaya, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/04/2018

(1) Since common question of law and fact is involved in all the writ petitions, therefore, they are heard analogously and are being decided by this Common Order.

(2) This batch of writ petitions is directed against the order dated 14.06.2017 passed by Commissioner, Department of Commercial Tax, Raipur by which petitioners' application filed under Section 64 -A of the Chhattisgarh Value Added Tax Act, 2005 (henceforth "Act, 2005") has been rejected.

(3) Learned counsel appearing for the petitioners would submit that application for compounding offence under Section 64-A of the Act, 2005 has been rejected solely on the ground that actual amount of tax assessed has not been deposited whereas it is not a condition precedent under Section 64-A of the Act, 2005.

(4) Per contra, learned counsel for the respondent would submit that the petitioners are seeking compounding of penalties imposed under Section 54 (2) of the Act, 2005 and he is avoiding tax assessed.

(5) At this stage, it would be appropriate to notice Section 64-A of the Act, 2005, which states as under:-

> "**Section 64-A** : **Compounding of offences**- Subject to such conditions as may prescribed, the Commissioner may, either before or after the initiation of proceedings under this Act, permit any person charged with an offence under the Act or the rules made thereunder to compound the offence on payment of such sum not exceeding one thousand rupees as the commissioner determine:
>
> Provided that if the offence charged is under clause (b) or

> clause (c) or clause (d) of sub-section (1) of Section 64 and the amount of tax which would have been payable by such person had he complied with the provisions of this Act, is more than five hundred rupees, the commissioner may allow composition or payment of a sum not exceeding twice such amount. After composition said proceedings shall stand terminated."

(6) The aforesaid provision clearly provides only compounding of offences and compounding of penalty is not permissible.

(7) A careful perusal of the impugned order would show that learned Commissioner has rejected the petitioners' application under Section 64-A of the Act, 2005 only on the ground that tax assessed has not been deposited by the petitioners. Since the application was filed prior to 13.03.2016 i.e. on 17.02.2016, this Court by order dated 04.05.2017 has held that the petitioners are not required to deposit the tax assessed by holding as under:-

> "(6) The petitioner's contention is that new Rules would not be applicable in the present case as it has come into force with effect from 31.03.2016 and he has filed an application under Section 64-A of the Act, 2005 on 15.02.2016, that is much prior to the amendment Rule 77-A of the Rules, 2006 and no reasoned and speaking order has been passed by respondent No. 2-Commissioner, Department of Commercial Tax while rejecting the said application filed under Section 64-A of the Act, 2005. The petitioner's application for compounding the offence made by assessee was required to be considered in its proper perspective, particularly the petitioner's submission that amended Rules would not apply and he is not required to make deposit as pre-deposit, was to be considered by the Commissioner, Commercial Tax and speaking and reasoned order should have been passed, which has not been done.

> (7) In view of above, this Court is of the opinion that *prima facie* order dated 22.09.2016 is liable to be and is hereby quashed. The matter is remitted back to the Commissioner, Department of Commercial Tax to consider the application filed by the petitioner under Section 64-A of the Act, 2005 afresh strictly in accordance with law within a period of one month from the date of receipt of copy of this order. The petitioner & respondents are at liberty to file additional submissions and, in that event, the respondent No.2-Commissioner, Department of Commercial Tax would decide the same within a period of one month from the date of receipt of copy of this order."

(8) Thus, in view of above the learned Additional Commissioner should not have insisted for deposit of tax assessed and, therefore, the impugned order is set aside. The matter is remitted to the Commissioner to consider whether the petitioners are seeking compounding of offence under Section 64-A of the Act, 2005 or compounding of penalty imposed under Section 54(2) of the Act, 2005 and if these are the applications for compounding of penalties then decide the same in accordance with law on its own merit expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

(9) Accordingly, the writ petitions are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-