

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (T) No.111 of 2013

M/s. Guru Kripa Traders, A proprietorship Firm, at Pandri, Raipur, District Raipur (C.G.), Through its proprietor, Ramesh Chandra Dubey, aged about 58 years, S/o Late Ram Dular Dubey, R/o Pandritarai, Raipur, P.S. Pandritarai, District Raipur (C.G.)

---- Petitioner

Versus

1. Commissioner, Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur, P.S. Civil Lines (C.G.)
2. Divisional Deputy Commissioner of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, P.S. Civil Lines, Raipur (C.G.)
3. State of Chhattisgarh, through the Secretary, Department of Commercial Taxes, Mahanadi Bhawan, New Raipur, P.S. Civil Lines, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mrs. Smiti Sharma, Advocate.

For Respondents/State: Mr. Gary Mukhopadhyay, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/04/2018

1. The petitioner, which is a proprietorship firm engaged in sale and purchase of soya refined and other edible oils, was assessed under Section 28(1) of the Chhattisgarh Commercial Tax Act, 1994 (for short, 'the Act of 1994') on 18-1-2008 for the assessment year 2004-05 and thereafter, the petitioner firm was reassessed on 12-12-2009 and tax was assessed to be of ₹ 17,12,075/- and an equal amount of penalty was imposed, thus, a total demand of ₹ 34,24,150/- was raised which was questioned by the petitioner before the revisional authority. The petitioner remained

unsuccessful in revision leading to filing of this writ petition questioning the order of reassessment affirmed by the revisional authority.

2. Learned counsel for the petitioner would submit that the Act of 1994 was repealed with effect from 1-4-2006 and the Chhattisgarh Value Added Tax Act, 2005 (for short, 'the Act of 2005') came into force with effect from 1-4-2006 and by virtue of Section 72(iii) of the Act of 2005, the reassessment proceedings have not been saved and therefore reassessment for the year 2004-05 could not be done under Section 28 of the Act of 1994 after repeal of the Act of 1994 as such, the entire proceedings of reassessment initiated and the order of reassessment passed are liable to be quashed.
3. On the other hand, learned State counsel would support the impugned order and would submit that the penalty proceedings are saved by the 3rd proviso to Section 72 of the Act of 2005 and the order impugned is strictly in accordance with law.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.
5. It is not in dispute that the Chhattisgarh Commercial Tax Act, 1994 was repealed by Section 72 of the Chhattisgarh Value Added Tax Act, 2005 with effect from 1.4.2006. Section 72 (iii) of the VAT Tax Act, 2005 provides for repeal and savings, which states as under :-

“Section 72 (iii) : Any assessment, appeal, revision or other proceedings arising under the repealed Act and the rules made thereunder and/or pending before an officer or authority duly empowered to make assessment or hear and decide such appeal, revision or other

proceeding immediately preceding the commencement of this Act shall, on the date of such commencement stand transferred to the officer or authority competent to make assessment or to hear and decide appeal or revision or other proceedings under this Act and thereupon such assessment shall be made or such appeal or revision or other proceedings shall be heard and decided within the period, if any, specified therefor, by such officer or authority in accordance with the provisions of the repealed Act or the rules made thereunder as if they were the officer or authority duly empowered for the purpose under the repealed Act.”

6. A careful perusal of the aforesaid provision would show that any assessment, appeal, revision or other proceedings under the repealed Act are saved by repealing Act but the reassessment proceeding is not saved. Non-saving of reassessment proceeding is apparent from the provisions contained in Section 72 of the Act of 2005, which is quoted herein-above.

7. Section 22(1) of the VAT Act, 2005 provides as under:-

“22. Assessment/reassessment of tax in certain circumstances.- (1) Where an assessment or re-assessment of a dealer has been made under this Act or the Act repealed by this Act and for any reason any sale or purchase of goods liable to tax under this Act or the Act repealed by this Act during any period,-

(a) has been under assessed or has escaped assessment; or

(b) has been assessed at a lower rate; or

(c) any wrong deduction has been made while making the assessment; or

(d) a rebate on input tax has incorrectly been allowed while making the assessment; or

(e) is rendered erroneous and prejudicial to the interest of revenue consequent to or in the light of any judgment or order of any Court or Tribunal, which has become final.

the Commissioner may at any time within a period of three calendar years from the date of order of assessment, or from the date of judgment or order of

any Court or Tribunal proceed in such manner as may be prescribed, to assess or re-assess, as the case may be the tax payable by such dealer after making such enquiry as he considers necessary and assess or re-assess to tax.”

8. The assessment done under the Act of 1994 is to be reassessed, reassessment is only permissible to be done under Section 22(1) of the Act of 2005 subject to the existence of the grounds mentioned therein and, therefore, no proceedings for reassessment can be initiated under the Act of 1994 after coming into force of the VAT Tax Act, 2005.
9. Issue raised in this writ petition also come up for consideration before this Court in Writ Appeal No. 235 of 2014 in the matter of **State of Chhattisgarh & another Vs. M/s. Budhia Auto**¹, in which a Division Bench of this Court while upholding the order of learned Single Judge has held as under:-

“5. A bare reading of Section 22 reveals that where an assessment of a dealer had been made under the repealed Act and for any reason goods liable to tax under the repealed Act had been under assessed, had escaped assessment, was assessed at a lower rate, wrong deductions made, rebate incorrectly allowed, or otherwise erroneous and prejudicial to the interest of the revenue, after the promulgation of the new Act, the Commissioner may at any time within a period of three calendar years from the date of order of assessment, which in the present case is 20.9.2004, could proceed to re-assess the tax payable in accordance with law.

6. The statutory provisions is therefore very clear and admits of no ambiguity. An assessment made under the repealed Act on 20.9.2004 was open to re-assessment even after coming into force of the new Act if the Commissioner was satisfied with regard to the existence of any of the grounds mentioned in Section 22(1)(a) to (e), but such re-assessment of a closed assessment done under the repealed Act was to be done within a period of three calendar years from the date of the original assessment.”

1 Decided on 13.08.2015

10. In view of the aforesaid legal position, it is quite vivid that if the dealer has been assessed and liable to pay tax under the repealed Act i.e. the Act of 1994, reassessment is permissible under Section 22(1) of the Act of 2005 and it is impermissible under Section 28(1) of the Act of 1994. Therefore, proceedings initiated by the assessing officer on 12-12-2009 reassessing the petitioner under the Act of 1994 is without jurisdiction and without authority of law, as such, the order dated 12-12-2009 is liable to be and is hereby quashed. However, the said authority is at liberty to proceed in accordance with law.

11. This would bring me to the question of penalty imposed under Section 28(1) of the Act of 1994. Since the order of reassessment itself has been quashed by this Court being untenable, therefore, the order of penalty is also quashed. However, the assessing authority is at liberty to initiate proceeding in accordance with law, if permissible under the provisions of the relevant Act.

12. The writ petition is allowed to the extent indicated herein-above.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge