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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 350 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, Chhattisgarh. Respondent No. 1, Chhattisgarh

- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, Sourth Civil Lines, Raipur, Chhattisgarh. Respondent No. 2

- The Additional Commissioner, Division - II, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh. Respondent No. 3

- The Assistant Commissioner, Commercial Tax Department, Division I, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh. Respondent No. 4

---- Appellants

Versus

- M/s Hardeo Chemicals Proprietor Sunil Tayal, S/o Shri Shambhuram Tayal, Aged About 47 Years, R/o Christal Orchade, Shankar Nagar, Raipur, Chhattisgarh. Petitioner

---- Respondent

WA No. 352 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya Naya Raipur, Chhattisgarh,

- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

- Commercial Tax Officer Circle-4, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, Jail Road Durg, Chhattisgarh

- The Deputy Commissioner, Commercial Tax Durg, Government Of Chhattisgarh, Vanijya Kar Bhawan, Jail Road Durg, Chhattisgarh

---- Appellants

Versus

- M/s K.M.Enterprises Proprietor Pravesh Shah, S/o Shri K.L.Shah, Aged About 44 Years, R/o M.I.G.137, Padmanabhpur, Durg, Chhattisgarh

---- Respondent

WA No. 353 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya Naya Raipur, Chhattisgarh.,

- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

- The Additional Commissioner, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

- The Assistant Commissioner, Commercial Tax Department, Division 1, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

---- Appellants

Versus

- M/s Hardeo Chemicals Proprietor Sunil Tayal, S/o Shri Satyanarayan Tayal, Aged About 47 Years, R/o Christal Orchade, Shankar Nagar, Raipur, Chhattisgarh.

---- Respondent

WA No. 354 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department Mantralaya, Mahanadi Bhawan Capital Complex Naya Raipur Chhattisgarh.

- The Commissioner, Commercial Tax Department Government Of Chhagttisgarh Vanijya Kar Bhawan , South Civil Line Raipur Chhattisagarh.

- Assistant Commissioner, Commercial Tax Headquarter Government Of Chhagttisgarh Vanijya Kar Bhawan , South Civil Line Raipur Chhattisagarh.

---- Appellants

Versus

- M/s Piramal Petroleum Pvt. Ltd. Through Its Director, Vaibhav Agrawal . S/o Nand Kishore Agrawal , A / A 30 Year R/o House No. 7 Sector 1 Gitanjali Nagar, Police Station Civil Lines Raipur Chhattisgarh.

---- Respondent

WA No. 355 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya Naya Raipur, Chhattisgarh.,
- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh
- The Additional Commissioner Division- II, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh
- The Assistant Commissioner, Commercial Tax Department, Division 1, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh.

---- Appellants

Versus

- M/s Hardeo Chemicals Proprietor Sunil Tayal, S/o Shri Satyanarayan Tayal, Aged About 47 Years, R/o Christal Orchade, Shankar Nagar, Raipur, Chhattisgarh.,

---- Respondent

WA No. 357 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mantralaya Mahanadi Bhawan, Naya Raipur, Chhattisgarh. Respondent No. 1, Chhattisgarh
- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh. Respondent No. 2
- The Commercial Tax Officer, Circle 4, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, Jail Road, Durg, Chhattisgarh. Respondent No. 3

---- Appellants

Versus

- M/s K.M. Enterprises Proprietor Pravesh Shah, S/o Shri K.L. Shah, Aged About 44 Years, R/o M.I.G. 137, Padmanabhpur, Durg, Chhattisgarh. Petitioner,

---- Respondent

WA No. 358 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finace And Planning Commercial Tax Department Mahanadi Bhawan Capital Complex, Mantralaya Naya Raipur Chhattisgarh. Respondent No. 1 ,

- The Commissioner Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Line Raipur Chhattisgarh. Repondent No. 2

- The Additional Commissioner, Division - I I , Commercial Tax Department Government Of Chhattisgarh. Vanijya Kar Bhawan South Civil Lines Raipur Chhattisgarh. Respondent No. 3

- The Assistant Commissioner , Commercial Tax Department Division - I , Government Of Chhattisgarh. Vanijya Kar Bhawan South Civil Lines Raipur Chhattisgarh. Respondent No. 4

---- Appellants

Versus

- M/s Hardeo Chemicals Proprietor Sunil Tayal, S/o Shri Shambhuram Tayal Aged About 47 Years, R/o Christal Orchade, Shankar Nagar Raipur Chhattisgarh.

---- Respondent

WA No. 359 of 2017

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya Naya Raipur Chhattisgarh.................Respondent No. 1,

- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur Chhattisgarh.................Respondent No. 2

- The Additional Commissioner Division I I, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur Chhattisgarh.................Respondent No. 3

- The Assistant Commissioner Division - I I, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur Chhattisgarh.................Respondent No. 4

- The Commercial Tax Officer, Circle -7, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur Chhattisgarh................. Respondent No. 5

---- Appellants

Versus

- M/s Hardeo Traders Pvt. Ltd. Through Its Director Arjun Tayal, S/o Shri Shambhuram Tayal, R/o Christal Orchade, Shankar Nagar, Raipur Chhattisgarh.............Petitioner,

---- Respondent

<u>WA No. 361 of 2017</u>

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya Naya Raipur, Chhattisgarh,

- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

- The Additional Commissioner Division-I I, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

- The Assistant Commissioner Division-I I, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

- The Commercial Tax Officer, Circle-7, Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh

---- Appellants

Versus

- M/s Hardeo Traders Pvt. Ltd. Through Its Director Arjun Tayal, S/o Shri Shambhuram Tayal, Aged About 42 Years, R/o Christal Orchade, Shankar Nagar, Raipur, Chhattisgarh,

---- Respondent

<u>WA No. 362 of 2017</u>

- State Of Chhattisgarh Through The Secretary Department Of Finance And Planning Commercial Tax Department, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, Chhattisgarh. Respondent No. 1, Chhattisgarh

- The Commissioner, Commercial Tax Department, Government Of Chhattisgarh, Vanijya Kar Bhawan, South Civil Lines, Raipur, Chhattisgarh Respondent No. 2

- The Deputy Commissioner, Commercial Tax Department, Vanijyik Kar Bhawan, Malviya Nagar Chowk, Durg, Chhattisgarh Resp. No. 3

- The Commerical Tax Officer, Durg, Circle-2, Commerical Tax, Vanijyik Kar Bhawan, Malviya Nagar Chowk, Durg, Chhattisgarh Respondent No. 4

---- Appellants

Versus

- M/s Neha Chemicals And Company Through Its Proprietor Santosh Gupta S/o Shri Shivnandasan Prasad Gupta, Aged About 34 Years, Address Near Teen Darshan Mandir, Road No. 18, Camp 1, Post Charoda, Thana Bhilai, Bhilai, Durg, Chhattisgarh. Petitioner,

---- Respondent

For Appelants/State	:	Shri J.K.Gilda, Advocate General & Shri Manish Nigam, Dy.G.A.
For Respondent	:	Shri Ashok Patil, Shri Moolchand Jain, Shri Saurabh S.Sinha & Shri Anumeh Shrivastava, Advocates.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Order on Board by Manindra Mohan Shrivastava,J.

24/07/2018

Heard.

These writ appeals arise out of common order dated 22nd August 2017 passed by the Learned Single Judge by which preliminary objection to the maintainability of the writ petition on the ground of existence of alternative remedy has been rejected and the learned single Judge exercising its discretion, has taken up the matter for hearing on merits.

Referring to plethora of decisions of the Apex Court, learned Advocate General urged before this court that in tax matters, where the governing legislation provides for a complete machinery for adjudication and redressal of the grievances of the parties by way of appeals, writ petitions cannot be resorted to as a matter of practice by the assessee against the order of assessment. He would submit that the practice as developed by the assessee to take recourse to the revisional remedy under Section 49 of the VAT Act is only to avoid pre-deposit requirements before the appellate jurisdiction could be invoked. His next submission is that the learned single judge has wrongly construed the scheme of revision and appeal under the

VAT Act to hold that even though no appeal was preferred, revision was maintainable and on that premise the objection to maintainability of the writ petition has been overruled.

Learned counsel for the respondents on the other hand submits that the learned single Judge has only examined the issue of maintainability on the ground of existence of alternative remedy considering that there is an order against the assessee passed by the revisional authority, It has exercised its discretion to entertain the writ petition despite availability of alternative remedy to which no exception can be taken. Counsel for the respondents also placed reliance on series of decisions of the Apex court.

After going through the order passed by the single Judge, particularly the observations made by the single judge in para 24 to 27, we find that the learned single Judge had an occasion to touch upon the scheme of the Act with regard to the existence and availability of remedy of revision and appeal, though for limited purposes of deciding objection regarding maintainability. State's predicament that what has been held by the single judge besides the issue which is yet to be decided in the writ petition in view of the state's objection, needs to be taken care of.

We find that the learned single judge was occasioned to look into the provision of the Act while deciding the issue of maintainability on the ground of alternative remedy. Learned single judge had sought to exercise discretion in favour of the writ petition.

We also find that in para 28 of the order learned single judge has also taken into consideration that certain provisions involved interpretation and therefore the objection to the maintainability on the ground of existence of alternative remedy, if any, has been overruled. We find that in all the cases, assessee has travelled up to the high court in writ petitions under Article 226 of th Constitution of India aggreived by the order passed by the revisional authority. Even if the arguments raised by the learned Advocate General were to be accepted, the other party (assessee) at this stage, may not take recourse of any other remedy, even if available under the law, as long as the order passed in revision stands.

Counsel for the parties are agreeable to the proposition that the parties would be at liberty to raise detailed submission before the learned single Judge during the course of hearing in the writ petition on the aspect relating to statutory scheme of availability of remedy of appeal and revision and/or revision and all other connected issues.

We also clearly express liberty to all the parties to make a detailed submission with regard to the statutory scheme of the VAT available for the remedy of revision on the face of provisions relating to appeal as contained under Section 40 of the Act subject to the observations that having taken into consideration that the learned single judge, for various reasons, has exercised the discretion to entertain the writ petition, we are not inclined to interfere with the order.

All the appeals are accordingly dismissed.

Sd/-	Sd/-
(Manindra Mohan Shrivastava) Judge	(Rajani Dubey) Judge

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