NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No.6295 of 2010

1. M/s Sunil Re-Rollers And Steel Pvt. Ltd., having its works at 560 Urla Industrial Complex, Raipur having its registered office at H. No.11, Jal Vihar Colony, Raipur Through its Director, Anil Nachrani

2. Shri Anil Nachrani, S/o Late Mohan Lal Nachrani, aged about 40 years, R/o 4, Panchsheel Nagar, Civil Lines Raipur, Director M/s. Sunil Rerollers and Steel Pvt. Ltd., having its work at 560 Urla Industrial Complex, Raipur and having its registered office at H. No.11, Jal Vihar Colony, Raipur CG **---- Petitioners**

Versus

1. State Of Chhattisgarh, through Secretary Department of Commercial Tax, D.K.S. Mantralaya Bhavan, Raipur (CG)

2. State of Chhattisgarh, Through Secretary, Department of Industries and Commerce, D.K.S. Mantralaya Bhawan, Raipur (CG)

3. Commissioner, Department of Commercial Tax, Vanijya Kar Bhawan, Civil Lines, Raipur (CG)

4. Additional Commissioner, Commercial Tax, Vanijya Kar Bhawan, Civil Lines, Raipur (CG)

5. State Appellate Form (for exemption) through Secretary, Department of Commerce and Industries, Directorate of Industries, Raipur (CG)

--- Respondents

For Petitioners	:	Mr. Neelabh Dubey, Advocate
For Respondents	:	Mr. Alok Bakshi, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

12/12/2019

Heard.

1. The short issue arising for consideration in this writ petition is as to whether, the power of extension of period for carrying out assessment as conferred under Section 27(9) of the Chhattisgarh Vanijyik Kar Adhiniyam, 1994 (for short 'the Act of 1994') could be exercised after expiry of the period.

2. The petitioner is a Company and proprietor of Industrial Unit engaged in the business of manufacturing various kind of re-roll product as per the

certificate of registration granted by the Sales Tax Department. The petitioner is subject to the provision of periodical assessment under the provision of the Act of 1994. The competent authority in exercise of their power, authority of assessment in respect of the petitioner, initiated assessment proceeding and order of assessment was passed vide order dated 31.03.2004 (Annexure P/1) in respect of assessment year 1997-98. The petitioner challenged the order by filing a revision on the ground that assessment order was passed beyond the period of limitation which had already expired on 30^{th} of June, 2003. The petition was, however, dismissed giving rise to this petition.

3. Short and pointed submission of learned counsel for the petitioner is that in the case of the petitioner, in view of provision contained in Section 27 of the Act of 1994, assessment was required to be made and order to be passed on or before 31^{st} December, 2003. It is submitted that, though, under Section 27(9) of the Act of 1994, the authority has power to extend the period under which assessment could be made, that power could be exercised within the four corners of the provision and provision, rationally contrued, required extension order, if any, to be passed before expiry of the period of assessment i.e. on or before 31^{st} of December, 2003. In support of this submission, reliance has been placed on the judgment of the Supreme Court in the case of **State of Punjab and others Vs. Shreyans Industries Limited and others, 2016 (4) SCC 769**. Learned counsel for the petitioner further submits that relying upon the aforesaid decision, learned Single Judge of this Court in a batch of petitions **(M/s. Sunil Steels Vs. State of Chhattisgarh and others) in WP No.5766 of 2005)** has also held that the power of extension could be exercised before expiry of period within which, assessment could be carried out.

4. Therefore, prayer is made for setting aside the impugned order.

5. Per contra, learned State counsel would submit that the reliance has been placed on the decisions of the Supreme Court in the case of *Shreyans (supra),* wherein, the Supreme Court had considered peculiar provisions under the State Sales Tax of other State and not that of the Chhattisgarh. He would submit that as the provisions are not *pari-materia*, the conclusion drawn by the Supreme Court upon consideration of provisions in the Karnataka Sales Tax Act, would have no application.

6. Having considered the submission of learned counsel for the parties and having gone through the judgment of the Supreme Court in the case of

Shreyans (supra) and also of this Court in the case of M/s. Sunil Steels, the submission of learned counsel for the petitioner deserves acceptance and that of the State is to be rejected.

7. In the case of *Shreyans (supra),* the Supreme Court was dealing with a case of similar nature, though, arising from the State of Punjab and Haryana and State of Karnataka, which was noted by this Court while deciding similar issue in the case of M/s. Sunil Steels (supra). In the aforesaid decision of learned Single Judge, it was held as below :

> "**6**. In ***Shreyans*** *(supra)*, the Supreme Court was dealing with the appeal preferred by the State of Punjab challenging the order passed by the Punjab & Haryana High Court whereby dealing with similar provisions, the High Court had allowed the plea that an assessment proceeding continued on the strength of similar notifications which were issued after the prescribed period of limitation was over, would not revive the assessment proceedings which had already expired by operation of law. Negativing the plea of Punjab Government, the Supreme Court reproduced the provision contained in Section 11 (10) of the Punjab General Sales Tax Act, 1948, which provide that the Commissioner, may for reasons to be recorded in writing, extend the period of three years, for passing the order of assessment for such further period as he may deem fit.
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> **7**. The Supreme Court then discussed the said provision in para 8 in the following manner :
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>> "**8**. A mere reading of the aforesaid provision would reflect that wherever return is filed by the assessee, assessment is to be made within a period of three years from the last date prescribed for furnishing the return in respect of such period. On the other hand, in those cases where return is not filed or any dealer, who is liable to pay the tax under the Act, does not get himself registered therein, the period of assessment prescribed is five years. We are not concerned with the alternate situation as in the instant appeals not only the assessees are registered dealers, they had also filed their returns regularly within the prescribed period and, therefore, assessments were to be completed within a period of three years from the last date prescribed for furnishing the returns, which is the normal period prescribed. At the same time, sub-section (10) of Section 11 gives power to the Commissioner to extend a period of three years. Interestingly, there is no upper limit prescribed for which the period can be extended, meaning thereby such an extension can be given, theoretically, for any length of time. This discretion is, however, controlled by obligating the Commissioner to give his reasons for extension, and such reasons are to be recorded in writing. Obviously, the purpose of giving reasons in writing

is to ensure that the power to extend the period of limitation is exercised for valid reasons based on material considerations and that power is not abused by exercising it without any application of mind, or mala fide or on irrelevant considerations or for extraneous purposes. Such an order of extension of time, naturally, is open to judicial review, albeit within the confines of law on the basis of which such judicial review is permissible."

Thereafter, the Supreme Court observed that the issue of validity of the notification which was issued after the original time of limitation was over to conclude thus in para 20, 22 & 23:-

"20. We may say at the outset that though provisions of the Punjab Act are couched in different language from the Karnataka Act or the Gujarat Act, the essence of these provisions is same. As noticed above, insofar as scheme of the Punjab Act is concerned, the assessment order is to be normally passed within a period of three years. At the same time, power is given to the Commissioner under Section 11(10) of the Act to extend the said period of three years. Once such an extension is given, the order is passed even beyond the period of three years. Significantly, no upper limit is fixed while giving such extension which means that the power can be exercised for extending the period for any length of time, subject however to the condition that the Commissioner is bound to record the reasons justifying such an extension. Obviously, when the Commissioner passes such an order and gives reasons, not only he would have to justify his action of extending time but also the period by which the time is extended. In the Karnataka legislation, the power is of "deferment". In that legislation as well, the assessment order is to be passed within three years as sub-section (5) of Section 12 of the Karnataka Sales Tax Act stipulates that no assessment shall be made after a period of three years from the date on which the return under sub-section (1) of that order is submitted by a dealer subject to two provisos mentioned therein. Sub-section (6) of Section 12 mentions as to how the period of limitation is to be computed and reads as under:

"12.(6) In computing the period of limitation for assessment under this section—
(a) the time during which the proceedings for assessment in question have been deferred on account of any stay order granted by any court or any other authority shall be excluded;
(b) the time during which the assessment has been deferred in any case or class of cases by the Joint Commissioner for reasons to be recorded in writing shall be excluded."

22. Even otherwise, it is important to understand the ratio laid down in the judgment of the Karnataka High Court in BHEL. The issue in the said case before the Karnataka High Court was as to whether the power to pass a deferment order is to be exercised even after the expiry of the period of limitation which was answered in the negative. The reasons given in support of this conclusion are as follows: (STC pp. 15- 16, para 8)

"8. … Deferment of assessment has the effect of enlarging the period of limitation which did not expire by the time the deferment order is contemplated to be passed. When once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Resort to deferment provisions does not retrieve the situation. There is no question of deferring assessment which had already become time-barred. The provision for exclusion of time in computing the period of limitation of deferment of assessment is meant to prevent further running of time against the Revenue if the limitation had not expired."

(emphasis supplied)

It was also observed that upon the lapse of the period of limitation prescribed, the right of the Department to assess an assessee gets extinguished and this extension confers a very valuable right on the assessee.

23. If one is to go by the aforesaid dicta, with which we entirely agree, the same shall apply in the instant cases as well. In the context of the Punjab Act, it can be said that extension of time for assessment has the effect of enlarging the period of limitation and, therefore, once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Therefore, there would be no question of extending the time for assessment when the assessment has already become time-barred. A valuable right has also accrued in favour of the assessee when the period of limitation expires. If the Commissioner is permitted to grant the extension even after the expiry of original period of limitation prescribed under the Act, it will give him right to exercise such a power at any time even much after the last date of assessment. In the instant appeals itself, when the last dates of assessment were 30-4-2004, 30-4-2005, 30-4- 2006 and 30-4-2007, orders extending the time under Section 11(10) of the Act were passed on 17-8-2007, 17-8-2007, 17-8-2007 and 25-5-2007 respectively. Thus, for Assessment Year 2000-2001, order of extension is passed more than three years after the last date and for Assessment Year 2001-2002, it is more than two years after the last date. Such a situation cannot be countenanced as rightly held by the High Court. When the last date of assessment in respect of these assessment years expired, it vested a valuable right in the assessee which cannot be lightly taken away. As a consequence, sub-section (11) of Section 10 has to be interpreted in the manner which is equitable to both the parties. Therefore, the only way to interpret the same is that by holding that power to extend the time is to be exercised before the normal period of assessment expires. On the aforesaid interpretation, other arguments of Mr Ganguli lose all significance.

(emphasis supplied)

8. The provision contained in Section 27 (9) of the Chhattisgarh Act is not pari-materia with the provision contained in Section 11 (10) of the Punjab Act yet the essence of these provisions are the same.

9. As a matter of fact, in para 20 of the **Shreyans**

> (supra), the Supreme Court also considered a similar provision of Karnataka Act which was couched in a different language but was essentially in the same terms as in Punjab Act, therefore, the proposition arrived at by the Supreme Court would apply with full force in the present case also because in Chhattisgarh Act also power has been conferred on the State Government to extend the period when assessment proceeding in respect of any dealer relating to any year cannot be completed before the expiry of the period specified therefor and the said notification is also required to record reasons in writing for giving such extension."

8. The aforesaid view taken by this Court is clearly in favour of the petitioner because in the present case also, the power of extension was exercised by the authority after expiry of period of limitation i.e. after 31st of December, 2003. Therefore, for this reason alone, the impugned orders cannot be sustained and are therefore set aside.

9. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha