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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 11 of 2019

- M/s Bagga Wheel Care a Proprietorship Firm having Its Office at Gurunanak Chowk, Rajnandgaon, Chhattisgarh, Through Its Proprietor Manjeet Singh Bagga, Aged About 44 Years, S/o Late S. Sampuran Singh Bagga, R/o House No.27, Mahesh Nagar, Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh, Through Learned Special Secretary, Commercial Tax - GST Department, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh
2. The Learned Appellate Deputy Commissioner Of Commercial Tax, Office Of Appellate Deputy Commissioner Of Commercial Tax, Atal Nagar, Raipur, Chhattisgarh
3. The Learned Assistant Commissioner Of Commercial Tax, Rajnandgaon-Circle, Office Of Assistant Commissioner Of Commercial Tax, Rajnandgaon, Chhattisgarh

---- Respondent

WPT No. 12 of 2019

- M/s Bagga Wheels Care A Proprietorship Firm Having Its Office Office At Gurunanak Chowk, Rajnandgaon, C.G., Through Its Proprietor Manjeet Singh Bagga, Aged About 44 Years, S/o Late S. Sampuran Singh Bagga, R/o House No.17, Mahesh Nagar, Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. The State Of Chhattisgarh Through Learned Special Secretary Commercial Tax-GST Department, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh
2. The Learned Appellate Deputy Commissioner Of Commercial Tax Office Of Appellate Deputy Commissioner Of Commercial Tax, Atal Nagar, Raipur, Chhattisgarh
3. The Learned Assistant Commissioner Of Commercial Tax Rajnandgaon-Circle, Office Of Assistant Commissioner Of Commercial Tax Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner

Shri Neelabh Dubey, Advocate

For Respondent-State

Shri Alok Bakshi, Addl. AG and
Shri Sudeep Verma, Dy. GA

Hon'ble Justice Mr. Prashant Kumar Mishra

Order On Board

11/02/2019

1. Learned counsel for the petitioner would submit that as against the assessment order dated 22.09.2017, the petitioner had preferred first appeal before the Appellate Additional Commissioner, Commercial Tax which too has been dismissed, against which the petitioner is contemplating filing of second appeal under Section 48 (5) of the Chhattisgarh Value Added Tax Act, 2005. However, in the meanwhile, notice for imposing penalty pursuant to the assessment order has been issued against the petitioner, which should not have been issued for the simple reason that the original assessment is yet to attain finality. Learned counsel would refer to the order passed by this Court in the matter of **M/s Lal Medicine Centre and another vs State of Chhattisgarh and others**, passed in WPT No.176/2016, decided on 21.12.2016.
2. In the matter of **M/s Lal Medicine Centre** (supra), the following has been observed by this Court in paras 4 to 6:-

“4. Mr. Neelabh Dubey, learned counsel for the petitioner, would argue that it is exactly for this reason that this Court, relying on the order passed by the Division Bench of M.P. High Court in the matter of M/s. Ram Kumar and Suresh Kumar Vs. The State

of M.P., passed in WP No.8772/2014 decided on 20.06.2014, has held in the matter of M/s. S.K. Sarawagi & Co. Pvt. Ltd. Vs. State of Chhattisgarh (W.P.T. No.138 of 2016, decided on 10.11.2016) that when appeal against the original assessment order is pending consideration, the proceedings for recovery of penalty should not be initiated before finalisation of the original proceedings.

5. Learned counsel for the State would not dispute that in view of the assessment order which has reduced the additional tax liability by Rs.81,21,346/-, the penalty proceedings needs to be re-initiated, as the petitioner may not be liable for penalty of Rs.3,45,56,784/-.

6. In view of the assessment order passed by the Appellate Deputy Commissioner, Commercial Tax, Raipur, the penalty imposed on the petitioner at 4 times of Rs.86,39,196/- do not survive lacking the foundation thereof, therefore, the impugned order -Annexure P/1 is set-aside at the motion stage itself. However, liberty is reserved in favour of Commercial Tax Officer, Circle-1, Raipur to re-initiate the proceedings in view of the assessment order passed by the Appellate Deputy.”

3. Considering that the similar orders have already been passed in several matters, the present writ petitions are disposed of with observation that during the pendency of the second appeal, which is likely to be preferred by the petitioner shortly, the penalty proceedings shall not be finalized. This order would be effective only when the petitioner moves the second appeal within the statutory period of limitation.

Sd/-
Prashant Kumar Mishra
Judge

Nirala