NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 219 of 2017

M/s Ganpati Motors A Partnership Firm Through Its Partner Shri Khemamal Madhyani, S/o Late Shri Teomal Madhyani Aged About 63 Years, R/o Sawarkar Market, Opp. Basant Talkies, G. E. Road, Supela, Durg Bhilai Chhattisgarh., Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mahanadi Bhavan, Naya Raipur, Raipur Chhattisgarh., Chhattisgarh
2. Commissioner Of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. Deputy Commissioner Appellate, Commercial Tax, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Neelabh Dubey, Advocate
For State	:	Shri Vikram Sharma, Panel Lawyer

D.B. : Hon'ble The Chief Justice &
Hon'ble Mr. Justice Manindra Mohan Shrivastava

Judgment On Board

16/05/2019

Per **P.R. Ramachandra Menon, C. J.**

1. The stand taken by the Revenue with regard to 'initiation' of proceedings against the assessee, finding that the order passed by the Competent Authority in favour of the assessee, dropping the penalty proceedings is detrimental to the interest of revenue, as upheld by the learned Single Judge, is under challenge in this appeal preferred by the assessee.

2. We have heard learned counsel appearing for the appellant as well learned counsel for the State.

3. The sequence of events reveals that assessment for the year 2009-10 was finalized

by the assessing officer on 23.1.2013. Penalty proceedings were also proposed against the assessee, but the officer himself dropped the said proceedings as per order dated 29.7.2013. In the course of further proceedings, the Commissioner noted that course pursued by the officer deciding to drop the penalty proceedings was quite prejudicial to the rights and interest of the revenue and under such circumstances, it was decided to invoke the power under section 49 (3) of the Chhattisgarh Value Added Tax Act, 2005 ("in short "*the Act of 2005*") and accordingly, the record was called for and the matter was examined further. A show-cause notice was issued to the assessee on 26.12.2016, which is stated as served to the assessee, by hand, on 23.1.2017. The assessee sought to challenge it by filing a writ petition, mainly contending that, owing to the mandate of Section 49 (3) of the Act of 2005, the proceedings had to be 'initiated', if at all the course pursued by the officer concerned was prejudicial to the revenue, within a maximum period of 'three years'. As per the statute, it is three 'calender years' and as such, the time expired on 31.12.2016 according to the learned counsel. In fact, the notice was served only on 23.1.2017 and hence the proceedings were clearly barred by limitation, which accordingly was put to challenge.

4. The prayer was vehemently opposed by the Revenue. Both the sides were heard in detail and placing reliance on binding decisions, the learned Single Judge observed that the 'initiation' of the proceeding was having particular sanctity under the statute and the same is not as understood by the assessee. It has to be with reference to the date on which the revisional authority applied its mind to the facts of the case and decided to proceed further with reference to Section 49 (3) of the Act. The learned Single Judge held that the proceedings initiated by the Commissioner was clearly within the time, having chosen to act on 26.12.2016 and hence the challenge was repelled and the petition was dismissed, which, in turn, is under challenge in this appeal.

5. During the course of hearing, learned counsel representing the State submits that the issue is no more res integra, in so far as the position has been made clear by the Apex Court as per the verdict reported in **N. Ranga Rao & Sons Vs. State of Karnataka and Ors. (2007) 9 SCC 691.** In the said verdict, it has been categorically held, with reference to the similar provision as it exists in the Karnataka Tax on Entry Goods Act, 1979, that the initiation of proceedings has got a definite connotation and it is the date on which the authority decides to call for the relevant record for scrutiny. The Commissioner in the instant case having decided

to call for records on 26.12.2016 and since notice was issued on the said date, the proceedings were well within time and hence the challenge is throughly wrong and unfounded.

6. The learned counsel appearing for the appellant, however, submits that in the case of **N. Ranga Rao**' [(2007) 9 SCC 691], there was no provision for issuance of any show-cause notice. Unlike this, in the instant case, there is specific provision in the Rule for issuance of show-cause notice and as such, a distinction is to be drawn. We find it difficult to accept the said proposition. This is more so, in view of the fact that the notice in the instance case was issued by the authority on 26.12.2016 and such notice was despatched from the office, as borne by the seal affixed on the relevant proceeding, on 28.12.2016. It is further seen that the competent authority had subscribed his signature to the proceedings on 23.12.2016, deciding to call for the records. The relevant file has been placed for perusal of the Court by learned counsel representing the State and we have perused the same.

7. It is clear from the records that the proceedings were initiated by the Commissioner on 23.12.2016, when it was decided to call for the records and at any rate, on 26.12.2016 when the notice was issued, which was despatched from the office on 28.12.2016. The date of receipt of the notice by the appellant (on 23.1.2017) does not have any significance at all, by virtue of the law declared by the Apex Court as mentioned above. We find no tenable ground to call for interference. Appeal fails and is accordingly dismissed.

8. The file placed for perusal of the Court stands returned to the learned State counsel.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen