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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 30 of 2020

1. Hariom Ingots And Power Pvt. Ltd. 59-60, Light Industrial Area, Bhilai Through Its Director Sandeep Kumar Agrawal, S/o Shri Santosh Kumar Agrawal, Aged About 36 Years, Resident of New Khursipar, Bhilai, Chhattisgarh.

---- Petitioner

Versus

1. The State of Chhattisgarh Through Its Principal Secretary, Finance And Planning Department (Commercial Tax Department) Mantralaya, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
2. The Commissioner of Commercial Tax Department, Government of Chhattisgarh, G.S.T. Bhavan, Sector - 19, North Block, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
3. The Additional Commissioner of Commercial Tax, G.S.T. Bhavan, Sector -19 North Block, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
4. The Assistant Commissioner of Commercial Taxes, Circle - 2 C.T. Office, Malviya Nagar Chowk, Durg, District : Durg, Chhattisgarh

----- Respondents

For Petitioner	:	Mr. Mool Chand Jain, Advocate
For State	:	Mr. V.R. Tiwari, Addl. A.G. with Mr. Somkant Verma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order on Board

27.01.2020

1. The challenge in the present Writ Petition is to the order Annexure P-6 dated 28.11.2019 passed by the Additional Commissioner, Commercial Tax ie., Respondent No. 3. Vide the said impugned order, the Respondent No. 3 exercising the revisional powers under

Section 49 (1) of the Chhattisgarh Value Added Act, 2005 has affirmed the order of the Assistant Commissioner i.e., the Respondent No. 4 to the extent of the tax liability assessed upon the petitioner to the tune of Rs. 65,84,394/- with penalty of Rs. 98,76,591/- and interest also on the said amount, amounting Rs. 44,11,544/-, in all totalling Rs. 2,08,72,529/-.

2. The contention of the counsel for the petitioner is that the order of Revisional Authority is a non-speaking order to the extent that, though the concerned authority has referred to all the contentions that the petitioner has raised in his objections but those objections have not been dealt-with. The order has been passed in a mechanical manner. Therefore, the order deserves to be set-aside/quashed and the matter should be remitted back for a fresh order to be passed.

3. The further contention of the counsel for the petitioner was that the transaction made with M/s Maharashtra Traders, Bharatpur, so far as the amount of Rs. 95,13,656/- is concerned, the said transaction is of the financial year 2012-2013 and the tax interest and penalty has already been imposed upon the petitioner for the said transaction in the said financial year. Therefore, the petitioner could not have been taxed again while fixing the liability of the subsequent periods. Similarly, the contention of the counsel for the petitioner is that the concerned authorities have also not kept in mind the view of the Hon'ble Supreme Court passed in the case of ***J.K. Synthetics Limited 1994 vs Commercial Taxes Officers***[1]; wherein it has been

1 (1994) 4 SCC 276

held that interest would be leviable only after assessment has been done, which in the instant case it could not have been levied, as the petitioner had bonafidely submitted C-Forms along with the return and 2 percent commercial tax required was also deposited.

4. According to the counsel for the petitioner, the petitioner was not aware of the fact that the alleged 11 C-forms are fake and fictitious, which were in-fact issued to the petitioner from the respective purchasers. That this ought to have been duly verified by the Department and thereafter the petitioner would be liable to only, pay the difference of the tax, not the interest on the said amount or the penalty. This aspect also has not been dealt with by the Respondent No. 3, while deciding the representation. Likewise, it was also the contention of the counsel for the petitioner that even before imposing of the penalty under sub-section 2 of Section 22, the Commissioner ought to have provided an opportunity of hearing, as according to the counsel for the petitioner, no person can be penalised without an opportunity of hearing provided, so far as penalty part is concerned.

5. The State counsel on the contrary, opposing the petition submits that the impugned order is by itself self-explanatory. According to the State counsel, the Respondent No. 3 ie. Revisional Authority has considered all the contentions put-forth by the petitioner and thereafter has passed the impugned order. The State counsel further submits that the authority had granted sufficient opportunity of hearing to the petitioner while proceeding under Section 22, therefore, it cannot be said that the said action provided to the petitioner was without granting an opportunity of hearing. The State

counsel further submits that the petitioner was granted sufficient time to lead evidence, which too he has not availed and, therefore, he could not now cry foul at this juncture.

6. Having heard the contentions put-forth on either side and on perusal of impugned order, it would be apparently clear that in the impugned order the finding of Revisional Authority is only in the last two paragraphs, wherein he has mechanically held that the finding given by the Respondent No. 4 does not warrant any interference as there is a finding of the Assessing Officer that 11 C-Forms could not be certified and they were found to be false and thus, the petitioner was liable to pay 3 percent difference of tax on the said amount on those 11 C-Forms.

7. It was further the contention of the State counsel that the Respondent No. 3 that since 11 C-Forms could not be certified, therefore, it is apparent that the petitioner tried to evade tax, therefore, there would be an automatic liability of interest and penalty under Section 19 (4) and Section 22 (2) of the aforementioned Act, 2005.

8. A perusal of the order would reveal that the concerned authority has not dealt with the objections, which the petitioner had raised in the revision. Though, the concerned authority has mentioned the grounds raised by the petitioner in the revision but the same has not been discussed and even there is no discussion even in respect of the transaction with M/s Maharashtra Traders, Bharatpur, which was

for the financial year 2012-2013 and for which the petitioner was already levied of all tax, interest and penalty.

9. Under the circumstances, this Court is of the opinion that it is fit case where the order is not sustainable and the same deserves to be remitted back to the Respondent No. 3 for fresh adjudication on the merits, taking in to consideration all the objections that the petitioner has raised before the Revisional Authority.

10. Accordingly, the impugned order Annexure P-6 dated 28.11.2019 stands set-aside/quashed and the matter stands remitted back to the Respondent No. 3 for passing a reasoned and speaking order, taking into consideration the objection that the petitioner has raised in the revision petition. It is expected that the Respondent No. 3 shall take a decision on the matter within a period of sixty days from the date of receipt of copy of this Order.

11. As a consequence, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Rahul