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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 187 of 2020

{Arising out of order dated 22.11.2019 passed by the learned Single Judge in Writ Petition (T) No. 136 of 2019}

- M/s G.G. Jain, T.P. Nagar, Korba (C.G.) through Trihil Jain, S/o Late Shri Vinod Jain, aged about 34 years, R/o Parshva Apartment, Choubey Colony, Raipur (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh through Principal Secretary, Commercial Tax & GST Department, Mantralaya, Mahanaid Bhawan, Atal Nagar, Raipur (C.G.)

2. Commercial Tax & GST Department, through its Commissioner, Head Office, Commercial Tax & GST Department, North Block, Sector-19, Atal Nagar, Raipur (C.G.)

3. The Joint Commissioner, Commercial Tax & GST Department, Division-2, Bilaspur (C.G.)

4. The Deputy Commissioner, Commercial Tax & GST Department, Division-2, Bilaspur (C.G.)

5. The Assistant Commissioner, Commercial Tax & GST Department, Korba Circle, Korba (C.G.)

---- Respondents

For Appellant	:	Shri Shishir Dixit, Advocate.
For Respondent/State	:	Shri Siddharth Dubey, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge
Judgment on Board

Per P. R. Ramchandra Menon, Chief Justice

24.02.2020

1. Heard I.A. No. 1 of 2020, which is an application for condonation of delay of 24 days in filing the writ appeal. For the reasons stated in the application, it is allowed and the delay in filing of appeal is condoned.

2. Interference declined by the learned Single Judge with regard to the availability of alternative remedy in respect of the re-assessment passed under the Chhattisgarh Value Added Sales Tax Act, 2005 (for short, 'Act of 2005') is put to challenge by the Appellant.

3. Heard Shri Shishir Dixit, the learned counsel appearing for the Appellant as well as Shri Siddharth Dubey, the learned Deputy Government Advocate appearing for the State.

4. The sum and substance of the case projected by the Petitioner/Appellant is that there is no machinery so as to segregate the cost and labour and such other elements from the total figure involved in the works contract before the same is subjected to tax in terms of the Act of 2005. If there is no mechanism in this regard the provision is not liable to be sustained and reliance is sought to be placed in this regard on the ruling rendered by the Apex Court in ***M/s Gannon Dunkerley and Co. & Others vs. State of Rajasthan & Others*** reported in (**1993) 1 SCC 364**.

5. There is no dispute with regard to the factual sequence. Assessment order was passed on 16.08.2018. After completing the procedural formalities, a re-assessment was ordered by the competent authority. Instead of pursuing the statutory remedy, the writ Petitioner/Appellant directly approached this Court by filing writ petition, challenging the re-assessment order and seeking for a declaration, which is as extracted below:

> "10.1 That, this Hon'ble Court be pleased to hold that in absence of Rule or Machinery provision in the Chhattisgarh Value Added Sales Tax Act, 2003 for calculating liability of tax in sale of goods in execution of works contract, no Assessment or Re-Assessment can be made.
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> 10.2 That, this Hon'ble Court be pleased to Set Aside the Re-Assessment order dated 16.08.2018 (Annexure P/4) in the interest of Justice.

> 10.3 Any other relief which this Hon'ble Court may deem fit be granted.”

6. Obviously, the Appellant/writ Petitioner has not chosen to challenge the provision of law and has indirectly sought for declaration. Insofar as the provision stands, there can't be any interference on this score. The Appellant is having alternative remedy in terms of Section 48 of the Act of 2005, to question the impugned order. In the said circumstances, without prejudice to rights and liberties to pursue the challenge, the learned Single Judge dismissed the writ petition, declining to invoke the power under Article 226 of the Constitution of India. More so, when, the writ Petitioner chose to approach this Court virtually after 15 months of passing the re-assessment order. We find no ground to interfere in the writ appeal. It fails. It is dismissed accordingly, without prejudice to the right to pursue the statutory remedy in accordance with law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Brijmohan