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HIGH COURT OF CHHATTISGARH, BILASPUR

WPT No. 249 of 2021

- M/s Tata Sky Limited A Company Duly Registered Under The Companies Act, 1956, Having Its Registered Office At 3rd Floor, Unit 301 To 305, Windsor, Off Cst Road, Kalina Santa Cruz (East), Mumbai 400098 And Also Having Local Offices At Plot No. 30, Kedia Business Park, G. E. Road, Tatibandh, Raipur 492009 Through Its Authorized Signatory Sambasivan Ganesan, S/o S. Ganesan, Aged About 55 Years R/o Flat No. 201, A Wing, 2nd Floor, Rustomjee Elita, Behind D. N. Nagar, Police Station D. N. Nagar, Andheri West Mumbai 400053 (M. H.)

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Commercial Taxes, Mantralaya, Naya Raipur District Raipur Chhattisgarh

2. Commissioner Commercial Tax, 3rd Floor, Vanijyakar Gst Bhawan, Sector-19, North Block Atal Nagar Naya Raipur District Raipur Chhattisgarh

3. Assistant Commissioner Commercial Tax, Raipur District Raipur Chhattisgarh

4. Commercial Tax Officer, Commercial Tax, Division No. 01, Raipur District Raipur Chhattisgarh

---- Respondents

For Petitioner:	Shri Neelabh Dubey, Advocate.
For Respondents/State:	Shri Avinash K. Mishra, G.A., on advance copy

Hon'ble Shri Justice Sanjay S. Agrawal

Order on Board

13.12.2021

1. The petitioner has filed this petition questioning the inaction on the part of the respondent authorities, who have issued the garnishee notices (Annexures P/3 and P/4) even without deciding the application as submitted by the petitioner under Section 47 of the Chhattisgarh Value Added Tax Act, 2005 (hereinafter referred to as the 'Act of 2005').

2. Learned counsel for the petitioner submits that vide order dated 28.12.2005 and 02.07.2016, the Commercial Tax Officer, while exercising the power under Section 21 of the Act of 2005, has passed the assessment order for the year 2011-12 and 2012-13 and being aggrieved with that, an appeal was preferred before the Deputy Commissioner (Appeals) under Section 48 (1) of the Act of 2005, who in turn, vide order dated 27.12.2016 has affirmed the said order as passed by the Commercial Tax Officer. The said order was affirmed further by the Tribunal vide order dated 06.09.2021.

3. It is contended further that immediately after passing of the aforesaid orders, an application for referring the substantial question of law was made as required under Section 55 of the Act of 2005 on 30.11.2021 before the Chairman Chhattisgarh, Commercial Tax Tribunal, at Raipur and simultaneously, an application under Section 47 of the Act of 2005 was made before the Commissioner, Commercial Taxes praying for restraining the respondent authorities from initiating the recovery proceedings, however, the same has not been decided and, instead issued the impugned garnishee notices (Annexures P/3 and P/4) by the Commercial Tax Officer. According to him, the said notices ought to have been issued by the said authority after the disposal of his application as made under Section 47 of the Act of 2005. He, therefore, prays for staying the effect and operation of the impugned garnishee notices (Annexures P/3 and P/4) till the disposal of his application.

4. On the other hand, learned State counsel while opposing the aforesaid contention of Shri Dubey submits that since the appellate authorities have already affirmed the orders as passed by the Commercial Tax Officer and therefore, there is no infirmity in issuance of the alleged garnishee notices (Annexurex P/3 and P/4) and the petition as framed is therefore, liable to be dismissed.

5. I have heard learned counsel for the parties and perused the entire papers annexed with this petition carefully.

6. From perusal of the record, it appears that assessment orders were passed on 28.12.2015 and 02.07.2016 by the Commercial Tax Officer in exercise of his power under Section 21 of the Act of 2005 for the year 2011-12 and 2012-13. It appears further that the said orders have been affirmed further in appeal by the Deputy Commissioner (Appeals) vide order dated 27.12.2016 and was found to be affirmed further by the Tribunal on 06.09.2021. Since an application for referring substantial question of law as required under Section 55 of the Act of 2005 has already been submitted by the petitioner before the Chairman, Chhattisgarh Commercial Tax Tribunal, Raipur and an appropriate application under Section 47 of the Act was also made before the Commissioner, Commercial Taxes and, it appears that without deciding the said application, the impugned garnishee notices (Annexures P/3 and P/4) have been issued, which would affect the valuable right of the Petitioner. Therefore, it is directed to the said authorities i.e. Commissioner, Commercial Taxes to decide the petitioner's application filed under Section 47 of the Act of 2005 as early as possible preferably within the period of one month from today and, till then the impugned garnishee notices (Annexures P/3 and P/4) shall be kept in abeyance.

7. With the aforesaid observations, the petition stands disposed of.

Sd/-

(**Sanjay S. Agrawal)**
Judge

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