2025:CGHC:16614

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved for orders on :14-08-2024

Order passed on :03-04-2025

WPT No. 99 of 2020

1 - M/s Sunil Kumar Agrawal Through Its Proprietor Sunil Kumar Agrawal S/o Shri Radheshyam Agrawal, A/a 50 Years, Seva Kunj Road, Near Girls College, Raigarh, Chhattisgarh, District : Raigarh, Chhattisgarh

--- **Petitioner**

versus

1 - State of Chhattisgarh Through Joint Commissioner, State Tax Bilaspur Division- II, Commercial Tax- Gst Department, North Block, Sector-19, Atal Nagar, Naya Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2 - Deputy Commissioner, Commercial Tax, Bilaspur Division- Ii, Commercial Tax- G S T Department, North Block, Sector- 19, Atal Nagar, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

3 - Commercial Tax Officer, Raigarh Circle, Circle- Ii, Korba, Commercial Tax- G S T Department, North Block, Sector-19, Atal Nagar, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

4 - Commercial Tax Officer, Raigarh, Circle- I, Commercial Tax- G S T Department, North Block, Sector-19, Atal Nagar, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

5 - Assistant Commissioner, Circle- I, Raigarh, Commercial Tax- G S T Department, North Block, Sector-19, Atal Nagar, Naya Raipur Chhattisgarh, District : Raipur, Chhattisgarh

--- **Respondents**

WPT No. 106 of 2020

1 - Dee Cee Coal Carriers Pvt. Ltd. A Company Duly Registered Under The Provisions of The Companies Act, 1956, Having Its Registered Office At 206, Palco House, 2162/ T-10, Guru Arjun Nagar, Main Road, West Patel Nagar, New Delhi 110008 Through Its Director Jonmenjoy Moyra, Son Of Shri Govinda Mohan Moyra, Aged About 50 Years Resident Of P Ravishankar Shukl Nager, Korba, District Korba 495677., District : Korba, Chhattisgarh

---**Petitioner**

Versus

Digitally signed by MOHAMMAD AADIL KHAN

1 - State of Chhattisgarh Through The Principal Secretary, Department Of Commercial Tax GST Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

2 - Divisional Deputy Commissioner Commercial Tax, Bilaspur Division - II, Commercial Tax GST Department, Ambe Plaza, Tifra, Bilaspur, District Bilaspur Chhattisgarh.

3 - Joint Commissioner State Tax Bilaspur Division - II, Commercial Tax GST Department, Ambe Plaza, Tifra, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Commercial Tax Officer Commercial Tax, Korba, Circle - I, Commercial Tax GST Department, Collectorate Campus, Korba District Korba Chhattisgarh., District : Korba, Chhattisgarh

5 - Assistant Commissioner Commercial Tax, Bilaspur Division Ii, Commercial Tax GST Department, Ambe Plaza, Tifra, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

6 - Commissioner Commercial Tax Department, Department Of Commercial Tax GST Mahanadi Bhawan Mantralaya, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- **Respondents**

WPT No. 110 of 2020

1 - M/s Narayani Sons Private Limited 209, Ajc Bose Road, Kamani Estate, 4th Floor, Room No 166, Kolkata 700017, Cin U51900wb2005ptc102304 Through Its Authorized Signatory Shri Chakradhar Mohanty, Project Manager , S/o Shri Banshidhar Mohanty, Aged About 35 Years , R/o Kharmora, Dadarkhurd Ward No. 23 , House No. 97/07 , Korba Chhattisgarh 495682., District : Korba, Chhattisgarh

---**Petitioner**

Versus

1 - State of Chhattisgarh Ltd. Through The Principal Secretary, Department of Commercial Tax Gst Mahanadi Bhawan, Mantralaya , Atal Nagar , Nawa Raipur , District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

2 - Divisional Deputy Commissioner Commercial Tax, Bilaspur Division II Commercial Tax GST Department Ambe Plaza, Tifra, Bilaspur , District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Joint Commissioner State Tax Bilaspur Division II , Commercial Tax GST Department, Ambe Plaza , Tifra , Bilaspur , District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Commercial Tax Officer Commercial Tax, Korba , Circle II, Commercial Tax GST Department , Collectorate Campus, Korba , District Korba Chhattisgarh., District : Korba, Chhattisgarh

5 - Assistant Commissioner Commercial Tax, Bilaspur Division II, Commercial Tax GST Department, Ambe Plaza , Tifra, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

6 - Commissioner Commercial Tax Department, Department Of Commercial Tax GST , Mahanadi Bhawan, Mantralaya , Atal Nagar , Nawa Raipur , District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

--- **Respondents**

WPT No. 112 of 2020

1 - M/s Naraayani Sons Private Limited 209, Ajc Bose Road, Kamani Estate, 4th Floor, Room No. 166, Kolkata- 700017, Cin- U51900wb2005ptc102304 Through Its Authorized Signatory Shri Chakradhar Mohanty, Project Manager, S/o Shri Banshidhar Mohanty, Aged About 35 Years, R/o Kharmora, Dadarkhurd, Ward No. 23, House No. 97/07, Korba, Chhattisgarh- 495682, District : Korba, Chhattisgarh

---**Petitioner**

Versus

1 - State of Chhattisgarh Through The Principal Secretary, Department Of Commercial Tax- GST, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

2 - Divisional Deputy Commissioner, Commercial Tax, Bilaspur Division- II, Commercial Tax- GST Department, Ambe Plaza, Tifra, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Joint Commissioner, State Tax Bilaspur Division- II, Commercial Tax- GST Department, Ambe Plaza, Tifra, Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Commercial Tax Officer, Commercial Tax, Korba, Circle- II, Commercial Tax- GST Department, Collectorate Campus, Korba, District Korba Chhattisgarh, District : Korba, Chhattisgarh

5 - Assistant Commissioner, Commercial Tax, Bilaspur Division- II, Commercial Tax- GST Department, Ambe Plaza, Tifra, Bilaspur, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

6 - Commissioner, Commercial Tax Department, Department of Commercial Tax- GST, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

--- **Respondents**

WPT No. 2 of 2021

1 - B G R Mining And Infra Limited A Company Registered Under The Companies Act , 1956, Having Its Office At 8-2 596/r, Road No. 10, Bajara Hills, Hyderabad 500 034 (Telangana), And Its Office In The State Of Chhattisgarh At 598/6, S.S. Plaza , P.H. Road, Korba , Post Office And Police Station Korba, District Korba Chhattisgarh., District : Korba, Chhattisgarh

---**Petitioner**

Versus

1 - State of Chhattisgarh Through The Secretary, Department of Commercial Taxes, Having Its Office At Mahanadi Bhawan, Mantralaya , Atal Nagar, Mandir Hasod , District Raipur Chahttisgarh., District : Raipur, Chhattisgarh

2 - Joint Commissioner of State Tax Bilaspur , Division No. 2, Post Office And Police Station Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Deputy Commissioner Of State Taxes Bilaspur Division No. 2 , Post Office And Police Station Bilaspur, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

4 - Assistant Commissioner of Commercial Taxes Korba Division , Korba District Korba, Chhattisgarh., District : Korba, Chhattisgarh

5 - Commercial Tax Officer (Commercial Tax Circle 2) Korba Division , Korba , District Korba Chhattisgarh., District : Korba, Chhattisgarh

--- **Respondents**

WPT No. 103 of 2020

1 - M/s Chennai Radha Engineering Works Pvt. Ltd. A Company Duly Registered Under The Provisions Of The Companies Act, 1956, Having Its Registered Office At 209, Ajc Bose Road, Kamani Estate, 4th Floor, Room No. 166, Kolkota 700017 Through Its Authorized Signatory Vimal Azhagesan, General Manager, S/o Late Shri A Venkatesan, Aged About 59 Years, R/o 2/123 A, Rajaji Street, Shrinivasapuram, Mayiladuthurai And Post And Tehsil District Nagapattinam, Tamilnadu 6090001

---**Petitioner**

Versus

1 - State of Chhattisgarh Through The Principal Secretary, Department of Commercial Tax-GST, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh

2 - Divisional Deputy Commissioner Commercial Tax, Bilaspur Division-II, Commercial Tax-GST Department, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh

3 - Joint Commissioner State Bilaspur Division-II, Commercial Tax-GST Department, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh

4 - Commercial Tax Officer Commercial Tax, Korba, Circle-II, Commercial Tax-GST Department, Collectrorate Campus, Korba District Korba Chhattisgarh

5 - Assistant Commissioner Commercial Tax, Bilaspur Division-Ii, Commercial Tax-GST Department, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh

6 - Commissioner Commercial Tax Department, Department Of Commerical Tax-GST, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur, District Raipur Chhattisgarh

--- **Respondents**

WPT No. 111 of 2020

1 - Dee Cee Coal Carriers Pvt. Ltd. A Company Duly Registered Under The Provisions Of The Companies Act, 1956, Having Its Registered Office At 206, Palco House, 2162/t-10, Guru Arjun Nagar, Main Road, West Patel Nagar, New Delhi-110008 Through Its Director- Jonmenjoy Moyra, S/o Shri Govinda Mohan Moyra, Aged About 50 Years, Resident Of P. Ravishankar Shukla Nagar, Korba District Korba 495667

---**Petitioner**

Versus

1 - State of Chhattisgarh Through The Principal Secretary, Department of Commercial Tax- GST, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh

2 - Divisional Deputy Commissioner Commercial Tax, Bilaspur Division-II, Commercial Tax- GST Department, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh

3 - Joint Commissioner State Tax Bilaspur Division-II, Commercial Tax- GST Department, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh

4 - Commercial Tax Officer Commercial Tax, Korba, Circle-II, Commercial Tax- GST Department, Collectorate Campus, Korba District Korba Chhattisgarh

5 - Assistant Commissioner Commercial Tax, Bilaspur Division-II, Commercial Tax- GST Department, Ambe Plaza, Tifra, Bilaspur District Bilaspur Chhattisgarh

6 - Commissioner Commercial Tax Department, Department of Commercial Tax- GST, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh

--- **Respondents**

WPT No. 1 of 2021

1 - B G R Mining And Infra Limited A Company Registered Under The Companies Act, 1956, Having Its Office At 8-2-596/r, Road No. 10, Bajara Hills, Hyderabad-500034 (Telangana) And Its Office In The State Of Chhattisgarh At 598/6, S. S. Plaza, P.H. Road, Korba, Post Office And Police Station Korba, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

---**Petitioner**

Versus

1 - State of Chhattisgarh Through The Secretary, Department of Commercial Taxes, Having Its Office At Mahanadi Bhawan, Mantralaya, Atal Nagar, Mandir Hasod, District Riapur, Chhattisgarh, District : Raipur, Chhattisgarh

2 - Joint Commissioner of State Tax Bilaspur, Division No. 2, Post Office And Police Station Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

3 - Deputy Commissioner of State Tax Bilaspur, Division No. 2, Post Office And Police Station Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh

4 - Assistant Commissioner of Commercial Taxes Korba Division, Korba, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

5 - Commercial Tax Officer (Commercial Tax Circle-2) Korba Division, Korba, District Korba, Chhattisgarh, District : Korba, Chhattisgarh

--- Respondents

For Petitioners : Mr. Ramit Mehta, Mr. Sumeet Gadodia, Mr. Anand Dadariya and Mr. Abhyuday Singh, Advocates.
For Respondents/State : Mr. Gary Mukhopadhyay, Govt. Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

CAV Order

1. That, after the order of the Hon’ble Division Bench of this Court dated 01.09.2023, this bunch of petitions have been heard on maintainability. As the facts and issue involved in the above writ petitions are identical, therefore, this Court finds it appropriate to decide the same by this common order.

2. The South Eastern Coalfields Limited (SECL) floated different tenders for the work of Hiring Heavy Earth Moving Machines (HEMM) for excavating overburden (all kinds of strata/ overburden in situ), loading into tippers, transportation and unloading of excavated materials and sprinkling & spreading of material at the site shown and other related works. Pursuant to the notice inviting tender, petitioners participated in tender proceedings and on being successful in the tender, the work order was issued in their favour on different dates. After issuance of work order by SECL, petitioners, who are registered dealer under the provisions of the Chhattisgarh Value Added Tax, 2005 (henceforth 'the Act of 2005') and the Central Sales Tax Act, 1956 (for short 'the Act of 1956'), submitted amendment application seeking incorporation of 'High-Speed Diesel HSD)' in their registration certificate for mining activities and granting permission to petitioners for inter-state purchase of HSD at concessional tax rates against C-Forms. On making such application, the registration certificates of petitioners were amended, 'HSD for mining machineries' was added with effect from the respective dates mentioned in the C-Forms of respective petitioners.

3. The respondent authority issued a letter/notice under Section 49 (1) of the Act of 2005 calling upon each petitioner individually to explain as to why the entry 'HSD for mining machineries' made in their registration certificate be not deleted. Petitioners submitted reply to the notice issued under Section 49 (1) of the Act of 2005. Respondent authorities passed order impugned deleting entries made in the registration certificate of petitioners regarding the purchase of HSD at a concessional rate of tax. Consequent to the passing of the order of deletion of entry in the registration certificate, respondent authorities have initiated proceedings under Section 10 (b) of the Act of 1956 against the petitioners in WPT Nos.111/2020, 112/2020 & 2/2021 and passed order under Section 10 (a) of the Act of 1956 of recovery of tax with penalty on them. Petitioners in the aforementioned writ petitions have challenged both the orders of respondent authority i.e. the order of deletion of entry included in the registration certificate of petitioners by way of amendment and the order imposing penalty under Section 10 (a) of the Act of 1956. Whereas petitioners in other writ petitions bearing WPT Nos. 103/2020, 106/2020, 110/2020 & 1/2021, order deleting entry made in registration certificate is under challenge. The petitioner in WPT No.99/2020 has challenged the order deleting entries in registration certificates as well as the order of penalty.

4. That, on 01.09.2022, petitions were heard, and subsequently, on 18.10.2022, a combined order was pronounced wherein it has been held that since the alleged “amended notice” does not contain the new dispatch number, it cannot be said that the alleged notice was issued under sub-section (3) of Section 49 of the Act of 2005 and, in consequence, the order impugned passed in pursuance thereof has been declared to be as null and void.

5. Against the combined order dated 18.10.2022 the respondent State has filed writ appeals before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench of this Court had decided the writ appeals on 01.09.2023 wherein in para 14, 15, 17 & 18 has held as under:

> *14. A bare perusal of the contents made in the aforesaid notice issued by the respondent-department would reveal the fact that it were issued to the petitioners only for issuance of the proceeding as required under sub-section(3) of Section 49 of the Act of 2005, else no notice as such asking them as to why the entry made in their registration certificates be not deleted would have been issued, although the wrong provision has been shown to be mentioned therein as "sub-section(1)" instead of "sub-section(3)" of the said provision. But, mere mentioning of the wrong provision as such would ipso facto be not sufficient to vitiate the entire proceedings, as issuance of show cause notice would required to be issued only in sub-section (3) and not under subsection(1), as observed in precedent paragraphs. Issuance of notice as such, would therefore, lead to an irresistible conclusion that the respondent-department has intended to initiate the proceedings for the amendment of the registration certificates as granted to the petitioners under both the Acts i.e. the State Act and the Central Act, for deleting the words "mining and high speed diesel (HSD)" as mentioned therein.*
>
> *15. The aforesaid intention of the respondent-department is fortified by the reply itself filed by the petitioner, as from a bare perusal of it would show that the petitioners have neither raised an objection regarding the issuance of alleged notice nor have raised the competency of the authority, who issued the same, till the passing of the order impugned by the respondent-department deleting the words "mining and high speed diesel (HSD)" from their registration certificates. Having failed to raise such an objection at the inception of issuance of the alleged notices and waited up to the*

passing of the order impugned would, thus, lead to an irresistible conclusion that they are fully aware of the intention of the respondent-department for initiation of such a proceeding under sub-section(3) of Section 49 of the Act of 2005 and, issuance of the said amended notice was nothing, but appears to have been issued only in an abundant cautious as reflected from the conduct of the parties.

17. Applying the aforesaid principles laid down by the Supreme Court to the case in hand, vis-a-vis the intention of the respondent department as reflected and observed from the issuance of the alleged impugned notices and the reply to it filed by the petitioners, it is difficult to hold that the order impugned deleting the words "mining and high speed diesel (HSD)" from their registration certificates has been passed by the respondent-department without the issuance of proper notice, as alleged by the petitioners.

18. Consequently, the appeals preferred by the respondent department are allowed and the common impugned order passed by the learned Single Judge in bunch of writ petitions is hereby set aside and the matter is accordingly remitted back to the learned Single Judge for its decision in accordance with law.

6. Mr. Ramit Mehta, learned counsel for the petitioner in WPT No.99/2020 would submit that petitioner M/s Sunil Kumar Agrawal is a proprietorship firm duly registered under the Act of 1956 and the Act of 2005, having registration certificates dated 28.05.2004 & 1.4.2000. Petitioner deals in the business of undertaking works contract/order for deploying Heavy Earth Movers Machinery (HEMM) for the execution of tasks/activities like overburden extraction and removal in mining, constructions of roads, bridges, canals, river channels etc. SECL invited tenders from eligible contractors for the execution of the aforementioned work. In response to the notice inviting tender, the petitioner submitted the bid and was declared successful. After

becoming successful in the tender process, the petitioner submitted an application before respondent No.4-Commercial Tax Officer, Circle-II, Ragiarh, for amending C-Forms issued to the petitioner under the Act of 1956 & the Act of 2005. Based on the application, the petitioner was issued amended C-Forms adding and entering 'HSD for mining machineries'. Based on the entry made in the registration certificate, the petitioner started purchasing inter-state HSD at a concessional rate of tax. Suddenly respondent Department issued a notice under Section 49 (1) of the Act of 2005 to the petitioner calling upon to explain why the entry made in the registration certificate of the petitioner be not deleted. Petitioner submitted reply to said notice, but respondent No.2-Deputy Divisional Commissioner, Commercial Tax, Bilaspur Division No.2, overlooking contents of the reply and provisions of law, passed impugned order 14.10.2020 and deleted entry in the registration certificate of the petitioner regarding 'mining and HSD' w.e.f. 5.2.2020. Consequent thereto, respondent No.4 passed amended order dated 29.10.2020 (Annexure P-19) for recovery of tax with penalty of Rs.1,96,08,045/- under Section 10(a) of the Act of 1956 and directing petitioner to deposit the same in government treasury within 30 days from receipt of order.

7. It would further argued that the above order was passed without conducting any enquiry and without giving reasonable opportunity of hearing to the petitioner as mandated by the law. It is further submitted that Section 8 of the Act of 1956 deals with rates of tax on sales in the course of inter-state trade or commerce. Sub-section (1) prescribes the rate of tax payable if the goods of description referred to in sub-section (3) of Section 8 is in the course of inter-state trade or commerce. The petitioner is engaged in mining activities. The words 'in mining' are used under clause (b) of sub-section (3) of Section 8 of

the Act of 1956. Goods specified for the purpose of work, as mentioned in sub-section (3), entitle the petitioner for concessional rate of tax and therefore, the petitioner was charged with the concessional rate of tax on inter-state purchase/trade of 'high-speed diesel' to carry out mining activities. Respondent authorities have mentioned in the document/letter issued in the course of correspondence that high-speed diesel (HSD) purchased by the petitioner is being used for mining activities. SECL - employer had also issued the certificate to the effect that the nature of work awarded to the petitioner comes within the category of 'mining activity', even then respondent Department had illegally and arbitrarily passed impugned orders. Nature of work awarded to the petitioner is one of the main process of mining in winning of coal. He referred to the definitions of words 'mining' & 'extract' given in the Black's Law Dictionary. Extraction and removal of overburden is preliminary mandatory operation, it is also a process of winning of minerals. In support of his contention, he relied upon the decision of the Hon'ble Supreme Court in the case of **Bhagwan Dass vs. State of UP & ors, reported in (1976) 3 SCC 784**.

8. He further submits that respondent authorities have erroneously interpreted provisions of Section 8 (3) (b) of the Act of 1956, which is an attempt to rewrite a piece of legislation. The demand made while passing impugned order by respondent authority classifying the word 'mining' as 'in mining' and 'for mining' is misinterpretation of words. Unless and until there is extraction of overburden and its removal, there cannot be winning/extraction of coal, therefore, the nature of work awarded to the petitioner is one of the process of mining. The petitioner requested the respondent Department to amend registration certificates by adding high-speed diesel (HSD) in the list of specified

goods for mining activities. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Indra Singh & Sons v. S.T.O., reported in (1966) 17 STC 510 (SC)**.

9. He further submits that the writ petitions were admitted & entertained by this Court and therefore, after such admission, this petition should not be dismissed on the ground of alternative remedy and it should be decided on merits.

10. Mr. Sumeet Gadodiya learned counsel for petitioners in WPT Nos. 1/2021 and 2/2021, while adopting submissions of learned counsel for the petitioner in WPT No. 99/2020, submitted that work awarded to the petitioner is primary and initial work of mining activities. For the purpose of winning of mineral like 'coal' in the case at hand, the removal of overburden is an integral part of mining. Further, it would argued that reasonable opportunity of hearing, as provided under Section 49 (3) of the Act of 2005, was not provided to the petitioners therefore, the order passed by the respondent is in clear violation of the principle of natural justice and is liable to be quashed.

11. Mr. Anand Dadariya learned counsel for petitioners in WPT Nos. 103, 106, 110, 111 and 112 of 2020, while adopting submissions made by Mr. Ramit Mehta and Mr. Sumeet Gadodiya, Advocate for petitioners in respective writ petitions, contended that petitioners being successful in the tender process initiated by SECL, submitted application before the respondent Department seeking amendment in their registration certificates issued under the State Sales Tax Act and Central Sales Tax Act. In the application, they have specifically mentioned the nature of the work which was awarded by SECL. After verification, the respondent Department amended registration certificates by entering the words 'mining' and 'high-speed diesel (HSD)' in the registration certificate. it would argued that the

respondent authorities have not provided any opportunity of hearing to the petitioners, who are registered dealers. Reasonable opportunity of hearing, as provided under Section 49 (3) of the Act of 2005, means personal hearing to the registered dealer (here the petitioners), which is absent in cases at hand. With regard to the maintainability of writ petitions, he places reliance upon the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise vs. Singhai Sushil Kumar reported in (2016) 13 SCC 223**.

12. On the other hand, Mr. Gary Mukhopadhyay, learned Government Advocate raised an objection with regard to the maintainability of all these writ petitions on the ground of the availability of efficacious alternative remedy of filing the appeal under Section 49 (4) of the Act of 2005 as the proper opportunity of hearing was provided to the petitioners and the petitioners has an opportunity to explain their issue before the appellate authority. he prayed to dismiss the writ petitions filed by the petitioners as the impinged orders have been passed as per provision of the Act. Further submits that there is no proposition in law that once a writ petition is admitted, the petitioner cannot be asked to avail alternative remedy. The grounds raised by the petitioners in writ petitions can very well be considered by the Appellate Authority therefore, the writ petitions are not maintainable. He places reliance upon the judgment of the Hon’ble Supreme Court in the **State of Madhya Pradesh and another vs. M/s Commercial Engineers and Body Building Company Limited (Civil Appeal no. 7170/2022)** & **Renu Singh Vs. Principal Commissioner of Income-tax 2024] 164 taxmann.com 381 (SC).**

13. I have heard learned counsel for the parties and perused the documents placed on record with utmost circumspection.

14. The main issue relates to maintainability of these writ petitions and whether this Court should entertain these petitions despite there being alternative remedy or direct the petitioners to approach the competent authority as per Section 49 (4) of the Act of 2005.

15. The substratum of arguments of the Counsel for the petitioners is based on the premise that once a writ petition was entertained, the petitioner cannot be relegated to avail alternative remedy.

16. In "***GENPACT INDIA PRIVATE LIMITED V. DEPUTY COMMISSIONER OF INCOME TAX & ANR."*** Reported in ***2022 (18) SCC 782***, the Hon'ble Supreme Court in Para 24, 25, 26 and 27 has held as under:-

> *24. Recently, in **Authorised Officer, State Bank of Travancore & Anr. v. Mathew K.C. (2018) 3 SCC 85**, the principles laid down in Chhabil Dass Agarwal2 were reiterated as under:*
>
> > *"The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal2 …"*
> >
> > ***25.** We do not, therefore, find any infirmity in the approach adopted by the High Court in refusing to entertain the Writ Petition. The submission that once the threshold was crossed despite the preliminary objection being raised, the High Court ought not to have considered the issue regarding alternate remedy, may not be correct. The first order dated 25.01.2017 passed by the High Court did record the preliminary objection but was prima facie of the view that the transactions defined in Section 115QA were initially confined only to those covered by Section 77A of the Companies Act. Therefore, without rejecting the preliminary objection, notice was issued in the matter. The subsequent order undoubtedly made the earlier interim order absolute. However, the preliminary objection*

having not been dealt with and disposed of, the matter was still at large.

26. In State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others (2008) 12 SCC 675 this Court dealt with an issue whether after admission, the Writ Petition could not be dismissed on the ground of alternate remedy. The submission was considered by this Court as under:

"38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari25 that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case, AIR p. 331)

"2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed." (emphasis supplied)

Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under

Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner.

27. We do not, therefore, find any error in the approach of and conclusion arrived at by the High Court. It is relevant to mention that the concessions given on behalf of the Revenue as recorded in the directions issued by the High Court also take care of matters of prejudice, if any. Consequently, the appellant, as a matter of fact, will have a fuller, adequate and efficacious remedy by way of appeal before the appellate authority.

17. In **Genpact India Private Limited (supra)**, the decision in **Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti (supra)** was taken note of.

18. A perusal of the aforesaid two judgments would go to show that as a proposition of law it cannot be countenanced that once a writ petition is entertained, the same cannot be dismissed on the ground of availability of the alternative remedy at the time of hearing. In that view of the matter, the contention of Counsel for the petitioners fails.

19. The Hon'ble Division Bench of this Court while deciding the writ appeals in the present matters has held that "from a bare perusal of it would show that the petitioners have neither raised an objection regarding the issuance of alleged notice nor have raised the competency of the authority, who issued the same, till the passing of the order impugned by the respondent-department deleting the words "mining and high-speed diesel (HSD)" from their registration certificates. Having failed to raise such an objection at the inception of issuance of the alleged notices and waiting up to the passing of the order impugned would, thus, lead to an irresistible conclusion that they are fully aware of the intention of the respondent department for initiation of such a proceeding under sub-section (3) of Section 49 of the Act of 2005".

20. From the above observation made by the Hon'ble Division Bench of this Court, the petitioners cannot take a plea that the respondent authority has not provided any opportunity of hearing before passing the impugned order. While deciding these petitions earlier, this court has found that the alleged "amended notice" does not contain the new dispatch number, therefore, it cannot be said that the alleged notice was issued under sub-section (3) of Section 49 of the Act of 2005 and, in consequence, the order impugned passed in pursuance thereof has been declared to be as null and void but the Hon'ble Division Bench has held that the petitioners were fully aware of the intention of the respondent-department for initiation of such a proceeding under sub-section(3) of Section 49 of the Act of 2005, and direction was issued to decide these petitions in accordance with law.

21. In the case of ***Assistant Commissioner of State Tax & Ors. Versus M/s Commercial Steel Limited reported in 2021 (7) SCR 660,*** the Hon'ble Apex Court has observed that respondents therein had a statutory remedy under Section 107 of the CGST Act. Relevant paras are reproduced herein below:-

> *12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.*
>
> *13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition*

filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.

22. In the case of ***United Bank of India Versus Satyawati Tandon & Ors reported in (2010) 8 SCC 110***, Hon'ble Apex Court in para 43, 44 and 45 held as that:-

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person ind that this rule apother greater rigour in matters involvingd person and taxes, cess, fees, other types of public money and the dues of banks and other Hinancial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of uns grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self- imposed restraint evolved by this Court, which every High Court is bound to keep

in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

23. In The **State of Madhya Pradesh and Another vs. M/s Commercial Engineers and Body Building Company Limited** (Civil Appeal No. 7170/2022, decided on 14.10.2022), the Hon'ble Apex Court in para 6, held as under:

6. At this stage, a recent decision of this Court in the case of The State of Maharashtra and Others v. Greatship (India) Limited (Civil Appeal No. 4956 of 2022, decided on 20.09.2022) is required to be referred to. After taking into consideration the earlier decision of this Court in the case of United Bank of India v. SatyawatiTondon and others, reported in (2010) 8 SCC 110, it is observed and held that in a tax matter when a statutory remedy of appeal is available, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India against the Assessment Order by-passing the statutory remedy of appeal. While holding so, this Court considered the observations made by this Court in paragraphs 49 & 50 in SatyawatiTondon (supra), which read as under:

"49. The views expressed in Titaghur Paper Mills Co. Ltd. vs. State of Orissa (1983) 2 SCC 433 were echoed in CCE v. Dunlop India Ltd. (1985) 1 SCC 260 in the following words: (SCC p. 264, para 3) "3. … Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public

injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.

50. In Punjab National Bank v. O.C. Krishnan (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed: (SCC p. 570, paras 5-6) "5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act'). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

24. In the case of ***M/S. SOUTH INDIAN BANK LTD. & ORS. versus NAVEEN MATHEW PHILIP & ANR. ETC., 2023 LiveLaw (SC) 320*** the Hon'ble Supreme Court of India in paragraph 15 has observed that *"Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are*

repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Than singh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419], Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433: 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

25. That, in the case of ***The State of Maharashtra and others vs. Greatship (India) Limited (CIVIL APPEAL No. 4956/2022, decided on 20.09.2022)***, the Hon'ble Supreme Court of India in paragraphs 8 and 9 has observed that:

> *8. Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions.*
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> *9. In view of the above and in the facts and circumstances of the case, the High Court has seriously erred in*

entertaining the writ petition against the assessment order. The High Court ought to have relegated the writ petitioner – assessee to avail the statutory remedy of appeal and thereafter to avail other remedies provided under the statute.

26. The question is not about the maintainability of writ petition under Article 226 of the Constitution of India but about the maintainability of writ petition against the order passed under section 49(3) of the VAT Act 2005, bypassing the statutory alternative remedy.

27. There is a difference between the entertainability and maintainability of a writ petition. Even if the alternate remedy is available to the Petitioner, that cannot be a ground to hold the writ petition under Article 226 of the Constitution of India against an administrative authority as “not maintainable”. The powers under Article 226 of the Constitution of India can be exercised even if there exists an alternate remedy; however, it is in restricted circumstances, within well-defined parameters. As a matter of settled judicial practice, the jurisdiction under Article 226 of the Constitution of India is not exercised if there is an alternative efficacious remedy available, and in such circumstances, the writ court may decline to “entertain” the writ petition. There is, therefore, a difference between maintainability and entertainability of a writ petition.

28. The arguments which have been advanced by the learned counsel for the petitioners are very well to them while filing for statutory appellate remedy. Therefore, looking to the facts and circumstances of the case and the arguments advanced hereinabove, this Court, at this stage, is not inclined to entertain these petitions. However, this Court is inclined to grant liberty to petitioners to file an appeal before the concerned appellate authority according to the provisions of the Act, within 30 days from the date of receipt of the copy of this order and the same

shall be decided by the appellate authority in accordance with law within reasonable period of time without raising objection to limitation.

29. With the aforesaid observation(s) and direction(s), all the writ petitions stand disposed of.

Sd/-

(Ravindra Kumar Agrawal)
Judge

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