

(2019) 02 CHH CK 0144

Chhattisgarh High Court

Case No: WPT No. 11, 12 Of 2019

M/s Bagga Wheel Care

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Feb. 11, 2019

Acts Referred:

- Chhattisgarh Value Added Tax Act, 2005 - Section 48(5)

Hon'ble Judges: Prashant Kumar Mishra, J

Bench: Single Bench

Advocate: Neelabh Dubey, Alok Bakshi, Sudeep Verma

Final Decision: Disposed Of

Judgement

Prashant Kumar Mishra, J

1. Learned counsel for the petitioner would submit that as against the assessment order dated 22.09.2017, the petitioner had preferred first appeal

before the Appellate Additional Commissioner, Commercial Tax which too has been dismissed, against which the petitioner is contemplating filing of

second appeal under Section 48 (5) of the Chhattisgarh Value Added Tax Act, 2005. However, in the meanwhile, notice for imposing penalty pursuant

to the assessment order has been issued against the petitioner, which should not have been issued for the simple reason that the original assessment is

yet to attain finality. Learned counsel would refer to the order passed by this Court in the matter of M/s Lal Medicine Centre and another vs State of

Chhattisgarh and others, passed in WPT No.176/2016, decided on 21.12.2016.

2. In the matter of M/s Lal Medicine Centre (supra), the following has been observed by this Court in paras 4 to 6:-

4. Mr. Neelabh Dubey, learned counsel for the petitioner, would argue that it is exactly for this reason that this Court, relying on the order passed by

the Division Bench of M.P. High Court in the matter of M/s. Ram Kumar and Suresh Kumar Vs. The State of M.P., passed in WP No.8772/2014

decided on 20.06.2014, has held in the matter of M/s. S.K. Sarawagi & Co. Pvt. Ltd. Vs. State of Chhattisgarh (W.P.T. No.138 of 2016, decided on

10.11.2016) that when appeal against the original assessment order is pending consideration, the proceedings for recovery of penalty should not be

initiated before finalisation of the original proceedings.

5. Learned counsel for the State would not dispute that in view of the assessment order which has reduced the additional tax liability by Rs.81,21,346/-

, the penalty proceedings needs to be re-initiated, as the petitioner may not be liable for penalty of Rs.3,45,56,784/-.

6. In view of the assessment order passed by the Appellate Deputy Commissioner, Commercial Tax, Raipur, the penalty imposed on the petitioner at 4

times of Rs.86,39,196/- do not survive lacking the foundation thereof, therefore, the impugned order -Annexure P/1 is set-aside at the motion stage

itself. However, liberty is reserved in favour of Commercial Tax Officer, Circle-1, Raipur to re-initiate the proceedings in view of the assessment

order passed by the Appellate Deputy.

3. Considering that the similar orders have already been passed in several matters, the present writ petitions are disposed of with observation that

during the pendency of the second appeal, which is likely to be preferred by the petitioner shortly, the penalty proceedings shall not be finalized. This

order would be effective only when the petitioner moves the second appeal within the statutory period of limitation.