HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPT No. 23 of 2021

Shree Raipur Cement Plant (A Unit of Shree Cement Limited)
Vs.
Commissioner, Commercial Tax and another

19.02.2021	Mr. Sanjay Jhawar, Mr. Vivek Sharma and Mr. Rahul Lakhwani, counsel for the petitioner. Mr. Amrito Das, Addl. Advocate General for the State. Learned counsel for the petitioner would submit that the present writ petition is an off-shoot of an earlier WPT No. 131 of 2018 wherein this Court has passed an order on 19.08.2019 with respect to exemption of the entry tax on production of clinker. Learned counsel submits that subsequent to it, for the year 2015-2016, the petitioner has filed returns. In such return, the assessment order has not yet been passed. However, reopening the issue on the pretext of section 22 of the Chhattisgarh Value Added Tax Act 2005, the reassessment order has been passed on 18.01.2021 vide Annexure P-12 whereby the tax along-with penalty & interest has been levied. He would submit that section 22 can only be invoked after assessment of a dealer has been made u/s 21 and if it has not yet been done, section 22 cannot be invoked. He further submits that during the proceeding, the petitioner has further been served with a notice by Annexure P-15 to reassess the reassessment order on the ground that certain material and amounts have been left out which are required to be assessed. Therefore, it is submitted that the order dated 18.01.2021 is without jurisdiction and subsequent notice of re-reassessment would be without jurisdiction. Per contra, learned State Counsel would submit that the petitioner	

has already filed their return and it would be a deemed assessment under sub-section (2) of section 21 of the Act, 2005. He would submit that the petitioner was assessed under section 21, thereafter after inspection was made by the team of the respondents, it was found that certain assessment of material and tax was left out, therefore, section 22 was invoked.

Perused the order dated 18.01.2021. The order purports that the tax-return has been filed by the petitioner. Subsequently certain inspection was made. Thereafter, reassessment has been made u/s 22 whereby the order dated 18.01.2021 was passed. Section 22(2) of the C.G. VAT Act, 2005 contemplates that where an omission is attributable to the dealer in respect of assessment, the authority may impose penalty by way of reassessment. At present, except the fact that the petitioner has filed the return, there is nothing on record to hold that assessment order was initially passed for which reassessment section 22 is invoked. The State, therefore, is directed to file reply and clarify the same.

In the meanwhile, it is directed that in respect of the demand of original tax as finds place in order P8-1-2021, the petitioner shall be required to pay 40% of the tax within a period of 30 days and on such deposit, no further coercive steps shall be taken against the petitioner. Further since the issue of invocation of notice u/s section 22 is being considered, therefore, till the next date, no further coercive step may be initiated pursuant to the notice Annexure P-15.

List it along-with WPT No.131 of 2018 after four weeks.

Cc as per rules.

Sd/-
GOUTAM BHADURI
JUDGE

Rao