

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment reserved on 26-02-2018****Judgment delivered on 17-05-2018****WA No. 241 of 2017**

1. M/s Kishan Lal And Company S-1 Shree Complex, T. P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 49 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.
2. Sushil Kumar Agrawal S/o Late Shrikishan Agrawal, Aged About 49 Years R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba Chhattisgarh.

**---- Appellants****Versus**

1. Additional Commissioner Of Commercial Tax, Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
2. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh.

**---- Respondent****WA No. 249 of 2017**

1. M/s Kishan Lal And Company S-1 Shree Complex, T. P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 49 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.
2. Sushil Kumar Agrawal S/o Late Shrikishan Agrawal, Aged About 49 Years R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba Chhattisgarh.

**---- Appellants****Versus**

1. Additional Commissioner Of Commercial Tax Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
2. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh, District : Raipur, Chhattisgarh

**---- Appellants****WA No. 250 of 2017**

1. M/s Kishan Lal And Company S-1 Shree Complex, T. P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 49 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.
2. Sushil Kumar Agrawal S/o Late Shrikishan Agrawal, Aged About 49 Years R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba Chhattisgarh

**---- Appellants**

**Versus**

1. Additional Commissioner Of Commercial Tax Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through Secretary, Department Of Commercial Taxes, Mantralaya, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

**---- Respondent**

**WA No. 251 of 2017**

1. M/s Kishan Lal And Company S-1 Shree Complex, T. P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 49 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.
2. Sushil Kumar Agrawal S/o Late Shrikishan Agrawal, Aged About 49 Years R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba Chhattisgarh

**---- Appellants**

**Versus**

1. Additional Commissioner Of Commercial Tax Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through Secretary Department Of Commercial Taxes Mantralaya, Naya Raipur Chhattisgarh , District : Raipur, Chhattisgarh

**---- Respondent**

**WA No. 252 of 2017**

1. M/s Kishan Lal And Company S-1 Shree Complex, T. P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 49 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.
2. Sushil Kumar Agrawal S/o Late Shrikishan Agrawal, Aged About 49 Years R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba Chhattisgarh

---- Appellants

**Versus**

1. Additional Commissioner Of Commercial Tax Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through Secretary, Department Of Commercial Taxes, Mantralaya, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent

**WA No. 253 of 2017**

1. M/s Kishan Lal And Company S-1 Shree Complex, T. P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 49 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.
2. Sushil Kumar Agrawal S/o Late Shrikishan Agrawal, Aged About 49 Years R/o Darri Road, Korba, P. O. Korba, P. S. Kotwali Korba, Tehsil And District Korba Chhattisgarh

---- Appellants

**Versus**

1. Additional Commissioner Of Commercial Tax Vanijyik Kar Bhavan, Civil Lines, Raipur Chhattisgarh.
2. State Of Chhattisgarh, Through Secretary, Department Of Commercial Taxes, Mantralaya, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent

**WPT No. 42 of 2016**

1. M/s Kishan And Company S-1 Shree Complex, T.P. Nagar, Stadium Road, Korba Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 48 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh

---- Petitioner

**Versus**

1. Additional Commissioner Of Commercial Tax Bilaspur, Vanijyik Kar Bhavan, Near Nehru Chowk, Mungeli Road, Bilaspur Chhattisgarh.
2. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent

**WPT No. 43 of 2016**

1. M/s Kishan And Company S-1 Shree Complex, T.P. Nagar, Stadium Road, Korba, Chhattisgarh Through Proprietor Sushil Kumar Agrawal, Aged About 48 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali, Korba, Tehsil And District Korba, Chhattisgarh.

---- **Petitioner****Versus**

1. Additional Commissioner Of Commercial Tax Bilaspur, Vanijyik Kar Bhavan, Near Nehru Chowk, Mungeli Road, Bilaspur, Chhattisgarh
2. State Of Chhattisgarh, Through Secretary, Department Of Commercial Taxes, Mantralaya, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- **Respondent****WPT No. 44 of 2016**

1. M/s Kishan And Company S-1 Shree Complex, T.P. Nagar, Stadium Road, Korba Chhattisgarh Through Proprietor Sushil Kumar Agrawal Aged About 48 Years, S/o Late Shrikishan Agrawal, R/o Darri Road, Korba, P.O. Korba, P.S. Kotwali Korba, Tehsil And District Korba, Chhattisgarh.

---- **Petitioner****Versus**

1. Additional Commissioner Of Commercial Tax Bilaspur, Vanijyik Kar Bhavan, Near Nehru Chowk, Mungeli Road, Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through Secretary Department Of Commercial Taxes, Mantralaya, Naya Raipur Chhattisgarh , District : Raipur, Chhattisgarh

---- **Respondent**


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For Appellants/petitioners  
For Respondent/State

Shri Siddharth Dubey, Advocate  
Shri P.K. Bhaduri, Govt. Advocate

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**Hon'ble Shri Justice Prashant Kumar Mishra****Hon'ble Shri Justice Ram Prasanna Sharma****C A V Judgment**

The following judgment of the Court was delivered by

***Prashant Kumar Mishra, J.***

1. These six writ appeals and three writ petitions have been preferred by the assessee challenging the revisional order passed under Section 49 (3) of the Chhattisgarh Value Added Tax Act, 2005 (for short 'the VAT Act') imposing liability of payment of Value Added Tax & Entry Tax for the assessment years 2006-07, 2007-08 & 2008-09. While the six writ appeals would arise from the orders passed in writ petitions wherein final orders were assailed, the three writ petitions were preferred earlier in the year 2016 challenging the issuance of show cause notice dated 14-7-2015 on the ground that the very initiation of *suo motu* revisional jurisdiction is bad in law. These writ petitions challenging show cause notice were earlier dismissed, however, in writ appeals the order passed by the writ Court was set aside and the matter was remitted back for rehearing. Thus, the writ petitions having remained pending, they have been clubbed with the writ appeals for analogous hearing.

2. The argument before the writ Court, as reflected in the impugned order, was that the order should have been passed within one year from the date of show cause notice i.e. 14-7-2015, but the same having been passed on 28-11-2016 i.e. beyond the period of one year from the date of initiation of the proceeding, it deserves to be set aside.

3. The writ Court has held that in view of the provisions contained in Section 49 (3) of the VAT Act, the order should be passed within one year from the date of initiation of proceeding, which in this case is the date on which he decides to issue notice as contemplated in Rule 61 of the Chhattisgarh Valued Added Tax Rules, 2006 (for short 'the Rules, 2006') and that the mandate of passing final order within one calendar year is mandatory, however, the word 'one calendar year' has been construed to mean the calendar year calculated from the first of January immediately following the calendar year in which the assessment period expired.

Thus, the period of one calendar year would commence from 1-1-2016 and the order having been passed within the one calendar year i.e. before 31-12-2016, as the order has actually been passed on 28-11-2016, it is within time allowed for passing the order as contemplated under Section 49 (3) of the VAT Act.

4. Before proceeding further to consider the legality and validity of the order passed by the learned Single Judge in writ petitions wherein the final order in *suo motu* revision has been assailed, we shall deal with the original writ petitions i.e. WPT Nos.42, 43 & 44 of 2016 for the reason that in these writ petitions the very initiation of the proceeding by issuance of show cause notice has been assailed on the ground that the show cause notice seeks to *suo motu* revise the original assessment orders in respect of Provincial Tax and Entry Tax passed on 1-5-2009, 1-5-2010 and 22-1-2008 by issuing show cause notices after three years i.e. on 14-7-2015 whereas the limitation for initiation of such proceeding under Section 49 (3) of the VAT Act is three years from the date of passing of the order sought to be revised.

5. We have heard learned counsel appearing for the parties in these 3 writ petitions at length.
6. Before proceeding to discuss the legal issue about the limitation, it would be appropriate to reproduce one of the show cause notice dated 14-7-2015 which mentions the original assessment order sought to be revised. Since the dates are important we felt it necessary to reproduce the entire notice itself :

कार्यालय अपर आयुक्त वाणिज्यिक कर, छत्तीसगढ़ बिलासपुर

क्रमांक/ अ.आ./वा.क./ 15/ 270

बिलासपुर, दिनांक 14.7.15

प्रति,

मेसर्स किशन एण्ड कंपनी,  
श्री कॉम्प्लेक्स, कोरबा  
टिन – 22844601491

विषय:- निगरानी प्रकरण में सुनवाई हेतु उपस्थिति ।

निगरानी प्रकरण क्रमांक 78 ए.सी. – कोरबा/15  
वेटकर निर्धारण वर्ष 2007-08

आपको सूचना दी जाती है, कि सहायक आयुक्त, वाणिज्यिक कर, कोरबा द्वारा छ.ग. मूल्य संवर्धित कर अधिनियम 2005 के अंतर्गत पारित कर निर्धारण प्रकरण क्रमांक 05/08 आदेश पारित दिनांक 01.05.2009 प्रकरण स्व-विवेक से धारा 49 (3) के तहत विचारार्थ स्वीकार किया गया । जिसकी सुनवाई दिनांक 18.08.2015 को मेरे समक्ष दिन को 12:00 बजे कार्यालय अपर आयुक्त, वाणिज्यिक कर, बिलासपुर में नियत है । अतः आप स्वयं या किसी भी व्यक्ति द्वारा जिसको वेट कर अधिनियम के अंतर्गत अधिकार हो, के द्वारा उपस्थित हों । साथ में आप मामले से संबंधित समस्त लेखा पुस्तकें व अन्य दस्तावेज आदि भी प्रस्तुत करें ।

अनुपस्थिति की स्थिति में प्रकरण का निर्वतन श्रेष्ठतम विवेकानुसार एक पक्षीय आदेश द्वारा किया जावेगा ।

आज दिनांक 14.07.2015 को यह सूचना मेरे हस्ताक्षर तथा कार्यालय की सील से जारी की गई ।

सही / -

अपर आयुक्त

वाणिज्यिक कर, बिलासपुर

7. For proper adjudication, it would be proper to refer Section 49 (3) of the VAT Act, which is quoted below :

**“49 : Power of revision by Commissioner .--**

XXX XXX XXX  
XXX XXX XXX  
XXX XXX XXX

(3) The commissioner may on his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person appointed under section 3 to assist him including any officer to whom he has delegated his powers under sub-section (1) is erroneous in so far as it is prejudicial to the interest of the revenue, and he may, after giving the dealer or person a reasonable opportunity of being heard, and after making or causing to be made such

enquiry as he deems necessary, pass within one calendar year from the date of initiation of proceeding such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or canceling the assessment and directing a fresh assessment:

Provided that-

(a) no proceeding shall be initiated under this sub-section after the expiry of three calendar years from the date of the order sought to be revised;

(b) no order shall be revised by the commissioner under this sub-section where a second appeal against such order is pending before the Tribunal or such appeal has been decided by the Tribunal on merits.”

8. It is settled by the Supreme Court in **Commissioner of Customs, Mumbai v Toyo Engineering India Ltd.**<sup>1</sup> at para 16 that the department/ Revenue cannot travel beyond the show-cause notice. Thus, the argument advanced by the learned counsel appearing for the State that as a matter of fact what is sought to be revised was the reassessment order and not the original assessment order need not be considered, as the same is not permissible in view of what has been held by the Supreme Court.

9. Thus, we are required to consider as to whether the notices dated 14-7-2015 seeking to revise the original assessment orders dated 1-5-2009, 1-5-2010 and 22-1-2008, respectively was within the prescribed time period or not ?

10. In the proviso (a) to sub-section (3) of Section 49 of the VAT Act an embargo has been created for the purpose that no proceeding initiating *suo motu* revision under Section 49 (3) shall be initiated after the expiry of three calendar years from the date of the order sought to be revised.

<sup>1</sup> (2006) 7 SCC 592



Since the orders sought to be revised, as stated in the show cause notices, were passed on 1-5-2009, 1-5-2010 and 22-1-2008, they were clearly beyond the prescribed time period of three years. When once the period of limitation expires, the mandate against being subject to *suo motu* revision sets in and the right to embark upon and invoke Section 49 (3) get extinguished.

11. Even otherwise, the limitation has to be calculated from the date of assessment and not from the date of reassessment order, as the subject matter of show cause notices dated 14-7-2015 invoking *suo motu* revisional power under the VAT Act read with Section 13 of the Entry Tax Act (in the VAT case and Entry Tax case of the assessee, the year is different), refers to the original order of assessment.

12. On this count, we may profitably refer to the decision of the Supreme Court rendered in **Commissioner of Income Tax, Chennai v Alagendran Finance Ltd.**<sup>2</sup> wherein it is held thus at para 20 :

20. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income Tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity.

13. As a consequence of above discussion, we have no hesitation to hold that the show cause notices dated 14-7-2015 for the provincial tax and entry tax for *suo motu* revision of original assessment order(s) passed on

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<sup>2</sup> (2007) 7 SCC 215

1-5-2009, 1-5-2010 and 22-1-2008 were barred by limitation, as the same were issued after three calendar years, therefore, the show cause notices deserve to be and are hereby quashed. As a consequence of quashing of show cause notices for provincial tax and entry tax for the assessment year 2006-07, 2007-08 and 2008-09, the final revisional order passed under Section 49 (3) of the VAT Act would be resolutely illegal. Thus, the final orders are also quashed.

14. *Ex consequenti*, all the writ appeals (WA) as well as the writ petitions (WPT) stand allowed.

15. There shall be no order as to cost(s).



Sd/-  
Judge  
Ram Prasanna Sharma