

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Single Bench : Hon'ble Shri H.L. Dattu, C.J.****Writ Petition (T) No. 5704 of 2006****Petitioner**

Raipur Dugth Sangh (Sahkari)
Maryadit a cooperative society
Chhokra Nala, Raipur (C.G.)
Through its Managing Director,
S.M. Tikyani S/o M.K. Tikyani
Aged about 56 years

versus**Respondents**

1. Additional Commissioner
Commercial Tax
Vanijyik Kar Bhavan, Civil Lines,
Raipur (C.G.)
2. Assistant Commissioner
Commercial Tax
Vanijyik Kar Bhavan, Civil Lines,
Raipur (C.G.)
3. State of Chhattisgarh
Through Secretary
Department of Commercial Tax
D.K.S. Bhavan Mantralaya
Raipur (C.G.)

Present : Shri Shashank Dubey, Sr. Advocate with Ms. Smriti Sharma,
counsel for the petitioner.
Shri Prashant Mishra, Addl. Advocate General for the State.

ORAL ORDER**(Passed on 30th April, 2007)**

Petitioner is a Milk Cooperative Society ('Society' for short). It is stated that the Society uses skimmed milk powder as raw material for the purpose of manufacture of milk and other milk products. The said Society had obtained the registration certificate to deal with the products other than the skimmed milk powder. By filing an application dated 12-02-1986, the Society had gone before the Registering Authority/Sales Tax Officer for amendment of the registration certificate as provided under Rule 11-A of the Madhya Pradesh General Sales Tax Rules, 1959 ('Rules' for short). Since, the petitioner did not hear anything from the respondents either about acceptance or rejection

of their request, while filing their annual returns for the assessment year 1988-89 they had claimed exemption from payment of sales tax/reduced rate of tax before the Assessing Authority. This request of the petitioner was rejected by the Assessing Authority solely on the ground that the registration certificate does not include the skimmed milk powder. After completion of the assessment proceedings, the assessee had carried the matter before the Revisional Authority by filing a revision petition. The Revisional Authority by its order dated 26-11-2005 has rejected the revision petition and has confirmed the order passed by the Assessing Authority for the assessment period 01-04-1988 to 31-03-1989. Aggrieved by the said order of the Assessing Authority as well as the Revisional Authority the petitioner/assessee is before this Court in this writ petition.

(2) Learned counsel for the petitioner would submit that Rule 11-A of the Rules provides for deemed acceptance of the request made for amendment of the registration certificate, if for any reason the respondents have not disposed of the claim made within the time prescribed in the provision itself and since the respondents had not considered the request made by the petitioner/assessee, the application filed on 12-02-1986, is deemed to have been allowed and the registration certificate issued earlier is deemed to have been amended. Therefore, the Assessing Authority and the Revisional Authority were not justified in refusing to grant the relief of exemption/ reduced rate of tax to the petitioner while concluding the assessment proceedings for the assessment period 01-04-1988 to 31-03-89.

(3) Per contra, learned counsel for the respondents would submit that the request of the petitioner/assessee for amendment of registration certificate was rejected by the respondents on 22-09-1986. This assertion is also made in the return filed by the respondents. However, the return is silent insofar as the communication of refusal to amend the registration certificate to the petitioner/assessee, is concerned.

(4) The learned counsel for the petitioner would submit that under Rule 11-A of Rules the Registering Authority/Sales Tax Officer after application filed by the petitioner/assessee for amendment of registration certificate is rejected, it is mandatory on their part to communicate the same to the petitioner/assessee. Since that has not been done, the petitioner/assessee was prevented from questioning the refusal of registration certificate before the appropriate forum. He further states that the order passed by the respondents dated 22-02-1986 requires to be set-aside and a direction requires to be issued to the Sales Tax Officer to reconsider the application for amendment of the registration certificate and pass appropriate order and communicate the same to the petitioner/assessee.

(5) Rule 11-A of the Rules reads as under:

"(11) (A) Amendment of registration certificate.

- (1) Where any registered dealer on the occurrence of any event referred to in section 32 or in pursuance of any other provision of the Act makes an application for amendment of his registration certificate or makes an application for specification of any goods in his registration certificate by way of raw material or incidental goods or deletion of any of such goods there from, the appropriate sales tax officer or the authorized officer, as the case may be, if satisfied after making such inquiry as he may think necessary, that the information furnished by the applicant is correct shall amend the registration certificate of the applicant within the period specified in clause (a) of sub section (8) of section 15.
- (2) If on inquiry made in respect of the application made by a registered dealer, the appropriate sales tax officer or the authorized officer, as the case may be, is not satisfied about the correctness of the

information given in the application, he shall, for reasons to be recorded in writing, reject the application or refuse to specify any goods by way of raw material or incidental goods in the registration certificate of the applicant within the period specified in clause (a) of sub section (8) of section 15. An intimation regarding the rejection of the application for amendment or refusal to specify any goods as raw material or incidental goods as the case may be, stating reasons there for shall be sent to the applicant within ten days of the date of the order rejecting the application."

(6) Sub rule 2 of Rule 11-A of the Rules, mandates that the Registering Authority/Sales Tax Officer after considering the application filed by a dealer / assessee under sub Rule 1 of Rule 11-A of the Rules, has to communicate the reasons for rejection within ten days from the date of order of rejection of the application filed under Rule 11-A of the Rules.

(7) In the instant case, the Registering Authority has rejected the application on 22-02-1986 but has not communicated the same to the petitioner/assessee within ten days from the date of order of rejection, that only means that though it is rejected, the same is not communicated and therefore it is in contravention of sub rule 2 of Rule 11-A of the Rules.

(8) Since petitioner was prevented by the respondents – authorities from producing the necessary amended Registration Certificate, it would be proper and in the interest of justice also to set aside the order of assessment and the order passed by the revisional authority and direct them to re-do the matter after considering the application filed by the assessee for amendment of Registration Certificate.

(9) Accordingly, the following :-

ORDER

1. The petition is allowed.
2. The orders passed by the Assessing Authority as well as the Revisional Authority for the assessment year 1988-89 are set-aside.
3. The Assessing Authority is directed to reconsider the application filed by the petitioner for amendment of registration certificate and communicate the same to the petitioner/assessee. Thereafter the assessing Authority is directed to complete the assessment proceedings for the assessment period 01-04-1988 to 31-03-1989.
4. All other contentions of the both the parties are left open.

Sd/-
Chief Justice