(2018) 07 MP CK 0282

In the Madhya Pradesh High Court

Case No : Tax Reference No.23 of 2016

Adani Exports Limited, Indore (Now Known As M/S. Adani Enterprises Limited — APPELLANT

Vs

Commissioner Of Commercial Tax, Indore & Another — RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:
- Madhya Pradesh Commercial Tax Act, 1994 — Section 17, 28(1), 70(2)(b)
- Central Sales Tax Act, 1956 — Section 8(5)

Citation : (2018) 07 MP CK 0282

Hon'ble Judges : P.K. Jaiswal, J;S.K. Awasthi, J

Bench : Division Bench

Advocate : Sumit Nema, Vibhash Khedekar, Archana Kher

Final Decision : Dismissed

Judgement

This petition under Section 70 (2) (b) of the Madhya Pradesh Commercial Tax Act, 1994 has been filed against order dated 24.09.2016 (Annexure 'F')

passed by the Madhya Pradesh Commercial Tax Appellate Board, Bhopal (Bench Indore) in Reference Case No.01 / CTAB / IND / 2016 (Central),

by which, the learned Appellate Board rejected the prayer for referring Questions No.1 and 2 to the High Court for its opinion.

2. Facts of the case are that the petitioner is engaged in the business of manufacture and sale of edible oil manufactured from soya seeds. The

petitioner is a registered dealer under the provisions of Madhya Pradesh General Sales Tax Act, 1958 and continued to be so under the provisions of

Madhya Pradesh Commercial Act, 1994. The petitioner is also registered dealer under the Central Sales Tax Act, 1956.

3. The petitioner was assessed to tax under the Central Sales Tax Act, 1956 by the Assistant Commissioner of Commercial Tax, Indore by order of

assessment dated 10.01.2008 (Annexure 'A'). The sale supported by C-Forms was duly allowed as deduction under Section 8 (5) of the Central Sales

Tax Act, 1956. However, this assessment was reopened under Section 28 (1) of the Madhya Pradesh Commercial Tax Act, 1994 and a fresh order

was passed on 30.07.2009 (Annexure 'A') wherein 2 C-Forms were treated as invalid on the basis of information received from Delhi Sales Tax

Department. In addition to levy of tax at a higher rate, penalty under Section 28 (1) of the Madhya Pradesh Commercial Tax Act, 1994 was also

levied.

4. Being aggrieved by said re-assessment order dated 30.07.2009 (Annexure 'A'), the petitioner filed an appeal before the Appellate Authority â?

Assistant Commissioner, Commercial Tax, Division No.3, Indore, who vide order dated 29.09.2010 (Annexure 'B') rejected the appeal.

5. The petitioner being aggrieved by common order of appeal, preferred a second appeal before the Madhya Pradesh Commercial Tax Appellate

Board, Indore. On 05.04.2016 (Annexure 'D'), the learned Appellate Board passed an order affirming penalty imposed by the learned Appellate

Authority. Thereafter, an application dated 14.06.2016 (Annexure 'E') under Section 70 (1) of the Madhya Pradesh Commercial Tax Act, 1994 was

filed by the petitioner before the learned Appellate Board, requesting to refer questions of law to the High Court of Madhya Pradesh, Bench at Indore.

Vide order dated 24.09.2016 (Annexure 'F'), the learned Appellate Board has only referred Questions No.3 and 5 to this Court under Section 70 (1) of

the Madhya Pradesh Commercial Tax Act, 1994 and declined to refer the remaining questions.

6. Relevant paragraphs No.4 to 7 of order dated 24.09.2016 (Annexure 'F') passed by the learned Appellate Board read, as under: -

â??4- vihy cksMZ us vius mDr vkns'k esa ;g mYysf[kr fd;k gS fd jftLVMZ Mhyj ls laO;ogkj djus ij gh vf/klwpuk Ã?ekad 27 fnukad 13-12-2004 ykxw

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Â 5- vkosnd us vius fyf[kr rdZ esa ;g mYys[k fd;k gS fd ;fn QzkWM fdlh nwljs ds }kjk fd;k tkrk gS] rks mlds fy, Mhyj dks rc rd mRrjnk;h ughas ekuk tk ldrk gS] tc rd fd mldh lgHkkfxrk izdV u gksA bl laca/k esa mUgksusa fuEufyf[kr U;k; n`""Vkarksa dk mYys[k fd;k gS %&

Â a) Chunnilal Prashadilal v. CST, UO (Lucknow)(1986)-62-STC-112 (SC),

b) The State of Madras v. Radio & Electricals Ltd.(1966)-18-STC-222 (SC),

c) ADM Stores & another v. CST, Delhi (1966)-18-STC-305 (Delhi),

d) ACTO v. White Marble House(2006)-148- STC-14 (Rajasthan),

e) Milk Food Ltd. v. Commissioner, VAT (2013) 59-VST-1 (Delhi),

f) Western Coalfield Ltd. v. CCT(2009) 14- STJ-379 (MP Bd),

g) Western India Ply Woods Ltd. v. State of Tamil Nadu(2014) 24-STJ-114 (Madras),

h) Gujarat Ambuja Cement v. Assessing Authority(2000) 118-STC-315 (HP), i) SECL Chirimiri v. CCT(2010)-16-STJ-504 (CG Tribunal)

6- vr% lEiw.kZ rF;ksa ,oa fof/kd izko/kkuksa ds izdk'k esa ;g iz'u mBrs gS fd D;k QkWeZ ds vHkko esa Hkh vf/kIwpuk Ã?ekad 27 fnukad 13-12-

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dsUnzh; vf/kfu;e dh /kkjk 8 Â¼5Â½ ls gks tkrk gSA vr% bls lanfHkZr fd;k tkuk vko';d ugha gSA

7- vr% gekjs er esa vkosnd }kjk izLrqr fof/k iz'u Ã?ekad 3 ,oa 5 dks gh lna fHkZr fd;k tkuk mfpr gksxkA vr% mDr iz'uksa dks Ã?ekad 1]2 nsdj

mUgsa ekuuh; e-iz- mPp U;k;ky; [k.MihB bUnkSj dks lna fHkZr fd;k tkrk gSAâ??

7. Learned Senior Counsel for the petitioner has drawn our attention to Questions No.1 and 2 and submitted that the Madhya Pradesh Commercial

Tax Appellate Board was not right in law in confirming the penalty under Section 28 (1) of the Madhya Pradesh Commercial Tax Act, 1994, without

considering the effect of condition prescribed under Section 28 (1) for levy of penalty being â??omission leading to such reassessment being

attributable to the dealerâ??.

8. Reliance has been placed by the learned Senior Counsel for the petitioner on the law laid down by the Apex Court in the case of M/s. Guljag

Industries v. Commissioner of Commercial Tax reported in (2007) 11 STJ 361 (SC).

9. This question will cover in Questions No.3 and 5 referred by the learned Madhya Pradesh Commercial Tax Appellate Board by order dated

24.09.2016.

10. As per notification dated 13.12.2004, in exercise of the powers conferred by Section 17 of the Madhya Pradesh Commercial Tax Act, 1994 and

sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, exemption was granted by the State Government in respect of the goods specified in

Column (2) of the Schedule from payment of tax under the said Acts, for the period from the date of publication of notification to 31stMarch, 2005,

subject to the restrictions and conditions specified in Column (3) of the Schedule. In Column (3) of the Schedule, it has been specifically mentioned

that when the goods specified in Column (2) are manufactured by a dealer registered under the Adhiniyam out of such soyabean seeds which has

suffered tax under sub-section (2) of Section 10-B and sold by such manufacturer.

11. In this matter, transaction should be made with the registered dealer and who has submitted C-Form, but in the case in hand, C-Forms submitted

by the purchaser have been found forged, which clearly shows that the purchasers are not registered dealer, therefore, the petitioner is liable to pay

tax and penalty as imposed by the Competent Authority and the same has been affirmed by the Appellate Board, therefore, order dated 24.09.2016

passed by the Appellate Board is just and legal.

12. On due consideration of the aforesaid, so also provisions of Section 28 (1) of the Madhya Pradesh Commercial Tax Act, 1994, which clearly

provides â??assessment of turn over escaping assessmentâ? and the law laid down by the Apex Court in the case of M/s. Guljag Industries v.

Commissioner ofCommercial Tax (supra) holding that â??In the case of Chairman, SEBI v. Shriram Mutual Fundreported in (2006) 5 SCC 361, it has

been held by Apex Court that mens rea is not an essential ingredient for attraction penal provisions of a Civil Act. The breach of civil obligation will

immediately attract penalty irrespective of whether the contravention is with a guilty intention. Unless language of the provision intends the need to

establish means rea, it is generally sufficient to prove the contravention. In the present case, out whether the assessee has contravened Section 78 (2)

and not to find out evasion of tax. The said function is assigned to the Assessing Authority in assessment proceedings. In the circumstances, it is held

that mens rea is not an essential ingredient for imposition of penalty under Section 78 (2). Therefore, mere failure to carry the prescribed declaration

form duly filled in is liable for penalty as per provisions of Section 78 (5) of the RST Act, and there is no need to prove mens rea on the part of the

assessee.â??

13. In the present case, we are of the view that the Competent Authority has rightly imposed tax and penalty on the petitioner and when C Form

submitted by the petitioner has been found forged, therefore, Competent Authority has no option, except to impose tax and penalty on the petitioner

and the same has also been confirmed by the Madhya Pradesh Commercial Tax Appellate Board, therefore, there is no illegality in the order

impugned.

14. The reference filed by the petitioner has no merit and is accordingly is dismissed.