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**(2007) 12 MP CK 0030**  
**In the Madhya Pradesh High Court**

Adinath Traders

APPELLANT

Vs

Commissioner, Commercial Tax Department and Others

RESPONDENT

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**Date of Decision :** 11-12-2007

**Acts Referred:**

Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 28, 28(1)

**Citation :** (2008) 14 VST 400

**Hon'ble Judges :** Viney Mittal, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Viney Mittal, J.—This order shall dispose of eight writ petitions being W.P. No. 5053 of 2006, W.P. No. 5054 of 2006, W.P. No. 5055 of 2006, W.P. No. 5057 of 2006, W.P. No. 2252 of 2007, W.P. No. 2253 of 2007, W.P. No. 2254 of 2007 and W.P. No. 2255 of 2007. All the writ petitions have been filed by the same assessee, M/s. Adinath Traders. Whereas four writ petitions being W.P. No. 5053 of 2006, W.P. No. 5055 of 2006, W.P. No. 2252 of 2007 and W.P. No. 2253 of 2007 pertain to a dispute with regard to reassessment of commercial tax qua various assessment years, the remaining four writ petitions pertain to reassessment of entry tax qua the said assessment years. For the sake of convenience the facts are borrowed from W.P. No. 5053 of 2006.

2. The petitioner-firm is a registered dealer under the provisions of the M.P. Vanijyik Kar Adhiniyam, 1994. The petitioner-firm is dealing in the business of coconut. According to the petitioner-firm, coconut is purchased from various dealers in the State of Tamil Nadu through brokers and brought to the State of Madhya Pradesh for sale and consumption. For the assessment year 1997-98 a tax return was filed by the petitioner-firm. Assessment was made by the assessing authority and due tax was deposited by the petitioner-firm. However, under the provisions of Section 28 of the Act, a show cause notice was issued by the assessing authority, indicating that the assessing authority had reason to believe that while making assessment of the petitioner-firm, some sales had

escaped assessment.

3. Consequently, the petitioner was required to show cause as to why the assessment for the aforesaid year be not re-opened and be made again. The said show cause notice also required the petitioner-firm to show cause against the imposition of penalty for concealment of sale. The petitioner-firm filed its objections against the reopening of the assessment. A reassessment order was passed by the assessing authority. An order of penalty was also passed.

4. The petitioner-firm challenged the aforesaid orders passed by the assessing authority by filing a revision petition. The revision petition filed by the petitioner-firm was allowed by the revisional authority vide order dated October 30, 2002. The matter was remanded back to the assessing authority for reconsideration. On remand, the matter was reconsidered by the assessing authority and an order dated January 19, 2005 has been passed whereby reassessment has been made and the petitioner-firm has been required to pay additional tax of Rs. 2,66,636. The assessing authority has also imposed a penalty of Rs. 2,33,543. The order dated January 19, 2005 passed by the assessing authority has been appended as annexure PI with the present petition.

5. The petitioner-firm challenged the aforesaid orders passed by the assessing authority by filing a revision petition before the revisional authority. Various pleas were raised before the revisional authority. Various additional documents were also produced during the course of proceedings before the revisional authority. Vide an order dated January 31, 2006 the revisional authority upheld the order of reassessment qua the additional demand of tax raised by the assessing authority, but accepted the plea raised by the petitioner-firm qua penalty and as such, set aside the penalty imposed by the assessing authority u/s 28(1) of the Act. The order of revisional authority is appended as annexure P2 with the present petition.

6. Similar orders were passed by the assessing authority qua the assessment years 1998-99, 1999-2000, 2000-01. Through the aforesaid orders dated January 31, 2006, the revisional authority quashed the penalties qua the aforesaid years as well, but upheld the additional demand of tax.

7. Consequent upon conclusion that the assessee had concealed the sales, reassessment proceedings qua the entry tax were also initiated against the petitioner-firm. Reassessment of the aforesaid entry tax has also been made. The assessing authority imposed penalty qua entry tax also. However, even for the entry tax, the revisional authority accepted the plea raised by the petitioner-firm qua the imposition of penalty and set aside the same. In these circumstances, these eight writ petitions are before this court.

8. I have heard Shri Shailendra Mukhati, learned Counsel for the petitioner and Shri Umesh Gajankush, learned Government counsel for the respondents and with their assistance have also gone through the record of the case.

9. Shri Shailendra Mukhati, learned Counsel for the petitioner, has referred to various observations made by the revisional authority in the order, annexure P2 and has vehemently contented that a specific plea had been raised by the assessee-firm that in the affidavit filed by the dealers from Tamil Nadu, it has been specifically maintained that the aforesaid dealers merely dealt with the brokers and had no record or proof that the material supplied by them had actually been ordered or received, on behalf of the present assessee-firm or not.

10. On that basis, Shri Mukhati maintains that in view of the affidavit submitted by the Tamil Nadu firm, the assessee-firm had raised an objection before the assessing authority as well as before the revisional authority that there was no material available on the record, justifying reopening of the assessment and in any case, merely because the account books of the Tamil Nadu firm reflected certain sales being made to the present assessee-firm, would not be itself sufficient, to come to the conclusion that the aforesaid sale transactions having not been reflected in the account books of the petitioner-firm, there was any concealment of the sales/entry.

11. Shri Mukhati has also referred to the observations made by the revisional authority, whereby taking note of the aforesaid fact, the penalty imposed by the assessing authority has been set aside by the revisional authority. According to the learned Counsel, the observations made by the revisional authority are in fact self contradictory and as such, not legally sustainable. The learned Counsel further contends that no material whatsoever, had ever been supplied by the department to the assessee-firm and as such a grave and serious prejudice had been caused in the reassessment proceedings.

12. All the aforesaid contentions raised by the learned Counsel for the petitioner have been refuted by Shri Umesh Gajankush, learned Government counsel appearing for the respondents.

13. Shri Gajankush has referred to the provisions of Section 28 of the Act and Rule 45 of the M.P. Vanijyak Kar Niyam, 1995 to contend that once there was reason to believe with the assessing authority that some sales had been concealed by the assessee, then, the assessing authority was justified in issuing a show cause notice and on receipt of such a show cause notice, it was for the assessee-firm to have raised objections and place such material on record which would justify the original assessment. Shri Gajankush has contended that since no material had been placed by the assessee-firm in this case, therefore, the order passed by the assessing authority as upheld by the revisional authority, qua the reassessment of tax was wholly justified.

14. I have duly considered the rival contentions of the learned Counsel for the parties. I have also gone through various observations made by the revisional authority in its impugned order.

15. The basic plea which had been raised by the assessee-firm in the revisional proceedings, was that there was no connection with regard to the sales in the

account books of the Tamil Nadu dealers, which were sought to be fastened with the present assessee-firm, inasmuch as, the Tamil Nadu dealers had specifically, admitted that all the transactions had taken place through the brokers and it could be possible that brokers had given some wrong names and such sales may in all probability may not be for and on behalf of the present dealer.

16. The aforesaid plea was in fact also accepted by the revisional authority inasmuch as, the penalty imposed by the assessing authority was set aside on this ground alone. If the revisional authority has chosen to accept the said plea for setting aside the penalty, then obviously the aforesaid plea qua the reassessment of tax should also have been taken into consideration and was liable to be accepted

17. Even otherwise, another objection had been raised by the petitioner-firm before the revisional authority that the material which has been relied upon by the assessing authority had not been made available to the petitioner-firm. In fact, the perusal of the order passed by the revisional authority also justifies the said grievance raised by the petitioner-firm.

18. Although, the revisional authority has chosen to deal with the aforesaid y pleas raised by the petitioner-firm, but a perusal of the order of the assessing authority shows that it had not adverted to at all to the said pleas/objections raised by the assessee-firm.

19. In these circumstances, without commenting any further on the merits of the controversy, it would be appropriate, if the matter is remanded back to the assessing authority for fresh determination with regard to the reassessment of tax, since the order of penalty passed originally by the assessing authority has already been set aside.

20. Consequently, the present petitions are allowed. The orders passed by the revisional authority, as well as by the assessing authority, qua the reassessment of tax are set aside. The matter is remanded back to the assessing authority for redetermination on the question of tax only in the fresh proceedings.

21. In the fresh proceedings, if a demand is raised by the petitioner-firm for 1 supply of any record/documents, then such request made by the petitioner-firm shall be dealt with, in accordance with law.

22. C.C. as per Rules.