(2011) 11 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1192 of 2004

Anand Construction (M/S) APPELLANT

Vs

Divisional Dy. Commissioner, Commercial Tax, Indore and Others RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 2(ja), 22, 7
Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 2(r)

Citation : (2012) ILR (MP) 858

Hon'ble Judges : Shantanu Kemkar, J;Prakash Shrivastava, J

Bench : Division Bench

Advocate : P.M. Jain, for the Appellant; Mini Ravindran, Dy. G.A., for the Respondent

Judgement

Prakash Shrivastava, J.—This order will govern the disposal of W.P. No. 1192/2004 and W.P. No. 1193/2004. These writ petitions have been filed against the common order dated 09.03.2004 passed by the Divisional Dy. Commissioner Commercial Tax Division No. 1, Indore affirming the order of the Commercial Tax Officer dated 21.02.2003 deleting certain raw materials from the Registration Certificate of the petitioner issued under the M.P. Vanijya Kar Adhiniyam, 1994 (For short, ''the State Act'') and the Central Sales Tax Act, 1956 (for short ''Central Sales Tax Act''). The Writ Petition No. 1192/2004 is in respect of the deletion of raw material from the Registration Certificate issued under the Central Sales Tax Act and Writ Petition No. 1193/2004 is in respect of the deletion of raw material from the Registration Certificate issued under the State Act.

2. In brief, the petitioner is a contractor involved in the business of taking Government/Semi Government and private contracts for construction of roads. The petitioner was issued the Registration Certificates under the Central Sales Tax Act and the State Act. In these Registration Certificates, tools, oils, grease and furnace oil were entered as raw material and incidental goods. The petitioner was issued the show cause notices dated 31.03.2002 for deletion of these raw

materials and incidental goods from the Registration Certificates issued under the State and Central Acts. The petitioner, thereafter, filed reply to the show cause notice and respondent No. 2 Commercial Tax Officer, Circle 1, Indore had passed the orders dated 21.02.2003 deleting these raw materials and incidental goods from the Registration Certificates of the petitioner. The petitioner had preferred the revision before the Respondent No. 1 which has been dismissed by the impugned common order dated 09.03.2004.

3. Learned counsel appearing for the petitioner submitted that the respondents have committed an error in deleting the raw material and incidental goods from the Registration Certificates of the petitioner without appreciating that the petitioner is a manufacturer involved in the process of manufacturing and that the grounds on which these raw materials and incidental goods have been deleted, are unsustainable.

4. Learned counsel for the respondents supporting the orders, submitted that no error has been committed by the authorities in deleting these items from the Registration Certificates since the petitioner is not a manufacturer and under the relevant rules, he is not entitled for inclusion of these materials in the Registration Certificates.

5. We have heard learned counsel for the parties and perused the record.

6. The impugned orders dated 21.02.2003 passed by respondent No. 2 under the State and Central Acts are cryptic orders where the respondent No. 2 has recorded the finding that the petitioner is not covered under the category of manufacturer without assigning any reason and even without considering the activities of the petitioner and the provisions of the Act and Rules. Same is the position in respect of the revisional order. The revisional authority has referred to Rule 13, but has not examined the activity of the petitioner in the light of the various provisions of the Act.

Section 2(r) of the State Act defines raw material, 2(o) defines manufacture and 2(k) defines goods. Section 22 of the Act deals with registration of the dealer. Similarly section 7 of the Central Sales Tax Act deals with registration of the dealer and after the amendment, the works contract has been defined u/s 2(ja) of the Act which includes manufacture also. It is worth noting that the original certificates specifying the materials in question as raw material and incidental goods, were issued to the petitioner after following the due procedure prescribed under the Act and subsequently when the authorities intended to take a different view, then it was all the more necessary for them to pass an order considering all the relevant aspects of the matter and give reasons for reaching to the conclusion as to why the petitioner is not a manufacturer, by examining the nature of activity of the petitioner in the light of the relevant provisions of the Act and the Rules which they have failed to do in the present case.

7. For the reasons stated herein-above, the impugned orders passed by the respondents cannot be sustained and are hereby set aside with liberty to the

respondents to pass fresh, reasoned and sneaking order after giving proper opportunity of hearing to the petitioner.

8. The writ petitions are disposed of accordingly. Let the original order be retained in the record of W.P. No. 1192/ 2004 and a copy thereof be placed in the record of W.P. No. 1193/2004.