(2008) 01 MP CK 0028

In the Madhya Pradesh High Court

Anil Chemicals and Industries Ltd. and Another APPELLANT

Vs

Assistant Commissioner of Commercial Tax and Others RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 26(4)(a), 26(4)(b), 26(4)(c)

Citation : (2008) 18 VST 22

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—This order shall govern disposal of W.P. No. 562 of 2006, W.P. No. 568 of 2006, W.P. No. 573 of 2006, W.P. No. 579 of 2006, W.P. No. 582 of 2006, W.P. No. 586 of 2006 and W.P. No. 7623 of 2006. Since the common question of law is involved in all the writ petitions mentioned above, they were heard analogously and are decided by this common order.

2. The sole issue which has cropped up for consideration in these bunch of writ petitions is whether, in the facts and circumstances of cases at hand, the respondents were justified in imposing interest/penalty u/s 26(4)(a), 26(4)(b) and 26(4)(c) of the M.P. Vanijya Kar Adhiniyam, 1994 (hereafter referred as "the Commercial Tax Act") [Sections 17(3) and 45B(2), Madhya Pradesh General Sales Tax Act, 1958],

3. The brief facts are that the petitioner, a company registered under the Companies Act, 1956 established a new industrial unit, which went into trial production on June 26, 1987. In order to avail the facility of the Madhya Pradesh Deferment of Payment of Tax Rules, 1986, it moved an application before the Directorate of Industries for issuing the certificate of eligibility. The said application came to be rejected on the ground that the activity undertaken by the petitioner was not an activity of "manufacture". The said rejection was challenged in Writ Petition No. 862 of 1990, whereupon by order dated March 31,

1998 it was held that the petitioner-unit is involved in the manufacturing process and the matter was remanded to State Government for a fresh decision. In another petition preferred by the petitioner, i.e., M.P. No. 1359 of 1990 by order dated August 17, 1999 the respondents were directed to issue eligibility certificate. Consequent thereof, the State Government vide order dated December 6, 2005 issued certificate of eligibility for availing of the facility of deferment of payment of tax under the Madhya Pradesh General Sales Tax Act, 1958 and the Central Sales Tax Act, 1956 in the following terms:

Certificate of eligibility for availing of the facility of deferment of payment of tax under the Madhya Pradesh General Sales Tax Act, 1958 and the CST Act, 1956.

It is hereby certified that the dealer holding registration certificate No. SDH/SRL 976 under the Madhya Pradesh General Sales Tax Act, 1958 and No. SDH/SRL 248 under the Central Sales Tax Act, 1956 issued by the Sales Tax Officer, Sidhi, who is a manufacturer in the name and style M/s. Anil Chemicals and Industries Limited, Industrial Area, Waidhan, District Sidhi (MP), is eligible for availing of the facility of deferment of payment of tax under the Madhya Pradesh Deferment of Payment of Tax Rules, 1986.

(2) The dealer has established a new industrial unit which has gone into commercial production on April 9, 1990 and as such he is eligible for availing of the facility of deferment of payment of tax under the Madhya Pradesh Deferment of Payment of Tax Rules, 1986.

(3) The dealer has opted for the scheme of deferment from payment of tax under the Madhya Pradesh Deferment of Payment of Tax Rules, 1986.

(4) The date of commencement of commercial production of the unit is April 9, 1990 and the unit is eligible for availing of the facility of deferment of payment of tax under the Madhya Pradesh Deferment of Payment of Tax Rules, 1986. It is eligible to avail of the facility of deferment of payment of tax in respect of the sales of the products manufactured by it as specified below for the period of nine years commencing from April 9, 1990 and ending with April 8, 1999.

The payment of tax payable by the dealer for each year shall be deferred for a period of ten years. The tax payable by the dealer of each year shall be paid by him as indicated below:

Accounting year (financial year) Year of deposit 1. 1990-1991 (with effect from April 9, 2000-2001 1990) 2. 1991-1992 2001-2002 3. 1992-1993 2002-2003 4. 1993-1994 2003-2004 5. 1994-1995 2004-2005 6. 1995-1996 2005-2006 7. 1996-1997 2006-2007 8. 1997-1998 2007-2008 9. 1998-1999 2008-2009 10. 1999-2000 (up to April 8, 1999) 2009-2010

(4)(a) Fixed capital investment of the industrial units as on the date of commencement of commercial production was as under:

(a) Land Rs. 30,678.00 (b) Building Rs. 67,643.00 (c) Plant and machinery Rs.

14,97,481.00

(5) The dealer is registered/licensed for the manufacture, in the new industrial unit, of the following products:

Principal product Annual installed capacity 1. Ammonium nitrate 1. 2500 M.T. (two thousand five hundred tons) fuel oil mixed. with effect from April 9, 1990 to March 31, 1992. 2. 5000 M.T. (five thousand M.T.) with effect from April 1, 1992 to April 8, 1992 as per 119th SLC meeting dated January 28, 1999 decision. 2. Bye-products nil

Note: The facility of deferment of payment of tax shall be availed only in respect of tax on sales of above products obtained during the process of manufacture.

Production up to 125 per cent of licence/registered capacity is permissible under the provision of IDR Act and no revised licence is required for this purpose.

6. This certificate is subject to the general conditions specified in paragraph 2 of the Government of Madhya Pradesh Separate Revenue Department Notification No. A-3-11-86(74)-STV dated October 16, 1986 and shall be liable to be cancelled for breach of any of those conditions.

4. As will be evident from paragraph (4) of the aforesaid certificate, the deferment was accorded for a period of ten years commencing from April 9, 1990 and ending with April 8, 1999.

5. That for respective periods the petitioner-company did not pay the tax because it had opted for the scheme of deferment of tax under the scheme of 1986. However, since the company was not having the certificate of eligibility and the aforesaid writ petitions were also pending, tax for the respective periods from 1990 to 1999 was determined as payable under the M.P. General Sales Tax Act, 1958/Commercial Tax Act, 1994, M.P. Entry Tax Act, 1976 and under the Central Sales Tax Act and on the said tax penalty/interest u/s 26(4)(a), (b), (c) of Commercial Tax Act, 1994 [under Section 17(3) and 45B(2) of Act of 1958] was determined as payable.

6. It is the contention of the petitioner that non-payment of tax was neither wilful nor deliberate and there was sufficient cause for not paying tax as per return because of the pendency of the writ petition against non-grant of eligibility certificate which was subsequently granted on December 6, 2005 and made effective retrospectively from April 9, 1990 uptil April 8, 1999. It is accordingly urged that the levy of penalty and interest was unwarranted.

7. Per contra, the learned Government Advocate appearing for the Revenue has justified the orders imposing penalty and interest mainly on the ground that during the period when the company was assessed of its liability to pay tax, no eligibility certificate was available and the petitioner was duty-bound to pay the tax as per return and since the same was not paid the levy of penalty and interest was just and proper, though it is not denied by the learned Government

Advocate that the eligibility certificate issued on December 6, 2005 was effective from the date commencing from April 9, 1990 and ending with April 8, 1999.

Heard the learned Counsel for the parties.

8. To appreciate the controversy in its right perspective it would be worthwhile to note the provisions contained u/s 26(4)(a), (b) and (c):

Section 26-

(4)(a) If a dealer required to file return under Sub-section (1)-

(i) fails without sufficient cause to pay the amount of tax payable according to a return for any period in the manner prescribed under Sub-section (2) of Section 32; or

(ii) and (iii) ....

Such dealer shall be liable to pay interest in respect of,-

(a) the tax payable by him according to the return referred to in Sub-clause (i); or

(b) ....

(c) ....

(b) If a registered dealer having filed a return under Sub-section (1) or a revised return under Sub-section (3) for any period and paid the tax payable according to such return or revised return after the time prescribed therefor, fails to pay interest along with such return or revised return in accordance with the provisions of Clause (a) the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax payable or paid and the interest payable by him, by way of penalty (a sum equal to such rate as may be notified which shall not be less than 0.5 per cent but shall not exceed 1.5 per cent per month) form the date such interest had become due to the date of its payment or to the date of order of assessment, whichever is earlier,

(c)(i) a dealer fails without sufficient cause to comply with the requirement of notice issued under Sub-section (1); or

(ii) ....

(iii) a registered dealer having paid the tax payable according to a return and furnished the return in time, fails to furnish along with the return proof of payments made in accordance with the provisions of Sub-section (2),

the Commissioner may after giving the dealer a reasonable opportunity of being heard, direct him to pay, in addition to any tax payable or paid by him by way of penalty a sum not exceeding fifty rupees for each occasion of default subject to a maximum of five hundred rupees in each case.

9. It is thus clear that penalty/interest could be levied if the dealer fails to furnish returns/revised return or pay tax due as per return in the prescribed manner and/ or in time. An exception however is carved out to the extent that the failure must be without sufficient cause. Thus under the statute it is mens rea not to file return/pay tax without there being a bona fide reason which forms the bedrock for levying penalty/interest on the non-payment/delayed payment. In the instant case, as revealed from the facts noted above, there was sufficient cause for not paying the tax for different periods between April 9, 1990 to April 8, 1999 which, in fact, is now covered by the eligibility certificate dated December 6, 2005.

10. The same is justified in view of the decision rendered by the apex court in the case of J.K. Synthetics Ltd. v. Commercial Taxes Officer [1994] 94 STC 422, wherein the apex court while considering Section 11B of the Rajasthan Sales Tax Act, 1954 before its substitution by the Act No. 4 of 1979 held that if a dealer deposits full amount of tax due before filing of return at the regular intervals disclosing correct and complete information in return which has bearing on assessment, it would be difficult to hold that such dealer had not acted bona fide in depositing the tax due as per return so as to visit him with liability to pay interest by way of penalty on the additional amount of tax payable after the assessment is made.

Thus, if there existed a dispute rendering non-grant of eligibility certificate which was ultimately granted from a retrospective date, the petitioner was prevented by a sufficient cause. That being so, the levying of penalty and interest was uncalled for.

12. In view of the foregoing discussion, these writ petitions are allowed and the order levying penalty and interest are set aside. No costs.

Let the copy of this order be placed on the record of each writ petition.