
(2009) 06 MP CK 0033

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2204 of 2003

Ankur Seeds P. Ltd.

APPELLANT

Vs

Deputy Commissioner, Commercial Tax

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 33 VST 62

Hon'ble Judges : Prakash Shrivastava, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By filing this writ under Article 227 of the Constitution of India, the assessee (dealer) seeks to challenge the revisionary order dated April 24, 2003 passed by the Deputy Commissioner, Commercial Tax, Indore (annexure P1) which in turn affirms the penalty order dated October 3, 2002 passed by assessing officer under the provisions of the Madhya Pradesh Commercial Tax Act, 1994 against the petitioner.

2. None appeared for the petitioner. Shri Umesh Gajankush, learned Government Advocate for the State (respondent).

3. Instead of dismissing the writ in default, we considered it just and proper to peruse the record of the case and also considered it in the interest of justice to hear the State counsel with a view to find out whether any case is made out for interference in the impugned order. Having perused the record of the case and on hearing the submissions of learned State counsel, we are inclined to allow the writ and quash the impugned orders.

4. The issue involved in the writ is short whether the assessing officer (Check-post Officer) was justified in imposing penalty on the petitioner under the Madhya Pradesh Commercial Tax Act, 1994 (for short called, "the Act") and if so whether revisionary authority was justified in upholding the same by impugned

order.

5. In our opinion, on the facts brought on record, no case for imposition of any penalty on the petitioner is made out and hence, both the orders impugned herein are liable to be quashed.

6. The only complaint made against the petitioner by the taxing authority was that in place of submission of form No. 75, they submitted form No. 86 on the check-post at the time of clearing their goods. It is due to this mistake committed by the petitioner, the check-post authority under the Act imposed a penalty of Rs. 72,560 on the petitioner. It was unsuccessfully challenged by petitioner in revision, which has given rise to filing of this writ.

7. In our opinion, no case for imposition of penalty on the petitioner is made out in this case. As laid down by the Supreme Court in one of its classic case reported in *Hindustan Steel Ltd. v. State of Orissa* [1970] 25 STC 211, their Lordships have ruled that every breach of a penal provision in taxing statute does not empower the taxing authority to impose penalty on the assessee, if it is noticed that the breach is technical or venial in nature. It was ruled that something more is required to be established against the assessee for imposition of penalty, namely, their conduct or/and mens rea is evading payment of tax by taking recourse to illegal methods such as making of false declaration in the returns or by filing forged or/and bogus documents, etc.

8. We respectfully apply this principle of law to the facts of this case and accordingly, hold that the facts taken note of supra may at best amount to committing technical or venial breach of a taxing provision but that by itself is not sufficient to attract the provisions relating to imposition of penalty on the assessee (petitioner herein). In other words, non-submission of particular form or its wrong submission in itself is not enough to attract the rigour of penalty provision and imposition of Rs. 72,560 on the petitioner by way of penalty under the Act. It is more so in this case because both the authorities below have failed to record any finding of fact against the petitioner so far as their intention to avoid payment of tax is concerned and secondly, how, and why they indulged in submission of wrong forms before the authorities.

9. We are, therefore, not inclined to concur with the reasoning and conclusion of two authorities below impugned in this writ.

10. In view of foregoing discussion, the petition succeeds and is allowed. Impugned order dated April 24, 2003 passed by the Deputy Commissioner, Commercial Tax, Indore (annexure P1) is set aside. As a consequence, penalty imposed on the petitioner by order dated October 3, 2002 by Check-post Officer is quashed.

11. No cost.