
(2014) 08 MP CK 0158
In the Madhya Pradesh High Court
Case No : M.A. No. 905/2006

Asha Trading Company

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) 08 MP CK 0158

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : K.N. Gupta, Sr. Advocate and Sweta Bothra, Advocate for the Appellant; M.P.S. Raghuvanshi, Additional Advocate General, Advocate for the Respondent

Judgement

1. Heard.
2. The appellant has filed this appeal against the order 27.4.2006.
3. The appellant is a Proprietary concern. It was registered as dealer under M.P. Commercial Tax Act 1994 as well as under Central Sales Tax Act 1956. The dispute is in regard to tax liability of the appellant of the assessment year 01.04.1998 to 31.03.1999.
4. The Taxing Authority received an information that the appellant did not make entry in its books of account of inter-State sales. The Taxing Officer verified the fact on the basis of the entries made in the books of tax barrier and the books of account of the appellant and thereafter quantified the total inter-State sale of Rs. 35,90,596/- and imposed a tax liability of the appellant.
5. The appellant filed an affidavit before the authority that it had not sold the goods -Dana Mungfali through vehicles to the parties. Except this affidavit, no other evidence was produced by the appellant before the Taxing Authority. The authority granted time to the appellant to produce evidence and explanation. The appellant company only produced the affidavit and also certificate of Krishi Upaj

Mandi Samiti. The appellant company did not make a request before the authority that those firms be summoned for examination and cross-examination, which had said to have issued goods -Dana Mungfali from the appellant depot. The authority has rejected the claim of the appellant after holding that the information was received from the check post barrier to the effect that those goods were sent by the appellant to the firms, hence, it was an inter-State sale. Against the aforesaid order an appeal was filed. The appellate authority dismissed the appeal.

6. Learned senior counsel questioning the legality and propriety of the order passed by the taxing authority and the appellate authority has contended that no enquiry was conducted by the taxing authority in support of the fact that the appellant has concealed inter-State sale. It is further contended by the learned senior counsel that it was obligatory on the part of the authority to supply the details to the appellant and thereafter conduct an enquiry and burden of proof was on the taxing authority to prove the fact that the appellant has concealed the fact of inter-State sale. In support of his contentions, learned senior counsel relied on the following judgments:-

(i) Balram Das Laxmi Narayan v. Dy. Commissioner of Sales Tax - 1981 CUR. T.J. 279.

(ii) Raj Photo Studio Vs. Sales Tax Officer,

(iii) Milan Supari Stores v. Commissioner of Sales - [1997] 30 VKN - 31.

(iv) Vasanji Ghela and Co. Vs. Commissioner of Sales Tax,

(v) State of Kerala Vs. K.T. Shaduli Yusuff etc.,

(vi) State of Kerala Vs. M.M. Mathew and Another,

7. Section 28 of the M.P. Commercial Tax Act, 1994 (hereinafter referred to the "Act of 1994") prescribes procedure of assessment of turnover escaping assessment. Section 28(1) of the aforesaid Act is relevant to decide the controversy involved in the present case. The provision is as under:-

"28. Assessment of turnover escaping assessment-(1) Where an assessment has been made under this Act or the Act repealed by this Act and if for any reason any sale or purchase of goods chargeable to tax under this Act or the Act repealed by this Act during any period has been under assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongfully made therefrom or a set off has been wrongly allowed, the Commissioner may, at any time within five calender years from the date of order of assessment after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to reassess within a period of two calender years from the commencement of such proceedings the tax payable by such dealer and the Commissioner may, where the omission leading to such reassessment is attributable to the dealer,

direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount."

8. Hon"ble Supreme Court in State of Kerala Vs. K.T. Shaduli Yusuff etc., has held as under in regard to applicability of the rule of natural justice in best assessment method under the provisions of Kerala General Sales Tax Act and rules made thereunder:-

"Tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. A taxing officer is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a court of law, but that does not absolve him from the obligation to comply with the principles of natural justice. It must, however, be remembered that the rules of natural justice are not constant: they are not absolute and rigid rules of natural justice and rigid rules having universal application. Suresh Koshy George Vs. University of Kerala and Others,

9. Hon"ble Supreme Court in the aforesaid case specifically observed that the taxing officer is not fettered by technical rule of evidence and pleadings and circumstances entitled to act on material, which may not be accepted as evidence in a court of law.

10. In the present case, the Taxing Officer relied on the evidence gathered from the check post barrier and in accordance with the record of the check post barrier the appellant sent goods through vehicles to various parties out side of the State.

11. In our opinion, the Taxing Officer has applied the rule of natural justice and he has also acted in accordance with the provisions of Section 28(1) of the Act of 1994. The act of the Commercial Tax Officer is within the four corners of the enquiry and it can not be said to be arbitrary, illegal and against the rules of natural justice. The point raised by the learned senior counsel has already been dealt with by the Hon"ble Supreme Court in the afore-quoted judgment. Hence, it is not necessary to consider other judgments.

12. We do not find any merit in this appeal. It is hereby dismissed.

13. No order as to costs.