

(1987) 07 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.C.C. No. 36 of 1985

Auto Sales (Bombay)

APPELLANT

Vs

Additional Sales Tax Officer, Flying Squad and Another

RESPONDENT

Date of Decision : 08-07-1987

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 44

Citation : (1987) 67 STC 252

Hon'ble Judges : R.K. Verma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : M.S. Choudhary, for the Appellant; S.R. Joshi, Government Advocate, for the Respondent

Judgement

G.G. Sohani, J.—As directed by this Court u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as "the Act"), the Board of Revenue has referred the following question of law to this Court for its opinion :

Whether, on the facts and in the circumstances of the case, the order of remand passed by the Board of Revenue is illegal ?

2. The material facts giving rise to this reference, briefly, are as follows :

The assessee deals in motor parts, fuel ejection pumps, etc., at Indore and is assessed to tax as a dealer under the Act. For the period from 1st April, 1970 to 31st March, 1971, the assessee disclosed in its return gross turnover at Rs. 3,73,969. The report of the investigation by the Flying Squad revealed that the Manager of the assessee-firm had furnished some papers and diaries, which disclosed transactions, which had not been entered into the account books of the assessee. The assessing authority, however, came to the conclusion that there was no definite evidence that the business transactions revealed in papers seized from the Manager of the assessee, who had a dispute with the assessee and had been removed, were done at the instance of the assessee. The assessing authority, however, held that if taking advantage of the goodwill of the assessee-

firm, an employee of the firm had done any business on his own account, the assessee must be held responsible for that business. In this view of the matter, the gross turnover of the assessee was raised by the assessing authority to Rs. 5,50,000 and the taxable turnover was determined at Rs. 3,87,474. Aggrieved by the order of assessment passed by the assessing authority, the assessee preferred an appeal before the Appellate Assistant Commissioner. The contention raised by the assessee before the appellate authority was that there was no material before the assessing authority for holding that the transactions revealed in the papers seized from the former employee of the assessee reflected the transactions of the assessee and the assessing authority was, therefore, not justified in resorting to best judgment assessment. The appellate authority did not set aside the finding of the assessing authority that there was no evidence for holding that the transactions revealed in the papers seized from the former employee of the assessee were the transactions entered into by the assessee. The Appellate Assistant Commissioner held that the assessee was entitled to some relief and the Appellate Assistant Commissioner accordingly granted an ad hoc relief of Rs. 40,000 in the total turnover of the assessee. Partly aggrieved by that order, the assessee preferred an appeal before the Board of Revenue. The learned President of the Board held that the proper course in the case would be to consider the transactions noted- in the diaries or in the loose papers found in the possession of the former employee of the assessee in detail and only that transaction, which appeared to be bogus in the light of the evidence available, should be excluded from consideration. The Board, therefore, set aside the order passed by the first appellate authority and remanded the case to the assessing authority to pass an order afresh. Aggrieved by that order, the assessee sought reference but as the application filed by the assessee in that behalf was rejected, the assessee filed an application in this Court u/s 44(2) of the Act. That application was allowed and that is how the aforesaid question of law has been referred to this Court for its opinion.

3. The learned counsel for the assessee contended that the order passed in appeal by the Appellate Assistant Commissioner granting relief to the assessee became final because the department did not prefer any appeal from that order and the Board was, therefore, not justified in law in remanding the case for reassessment because it might result in wiping out the relief granted by the Appellate Assistant Commissioner to the assessee. It was also contended that in any event, when the Board affirmed the finding of the assessing authority as well as that of the Appellate Assistant Commissioner that there was no evidence for coming to the conclusion that the business transactions sought to be included in the total turnover of the assessee were the transactions of the assessee, the Board was not justified in remanding the case for a fresh assessment. Reliance was placed on the decision in *Panduranga Rice Mill Vs. The State of Andhra Pradesh and Another*, . In reply the learned Government Advocate contended that the assessee was liable to pay tax in accordance with the provisions of the Act and the Board was justified in remanding the case to determine that liability.

4. Now it was not disputed before us that the Board had the power to remand a case if the facts and circumstances of that case warranted such a remand. In the instant case, however, the Board having affirmed the finding of the assessing authority as well as that of the Appellate Assistant Commissioner that there was no material to show that the assessee had clandestinely entered into transactions revealed from the papers seized from its former employee, any further enquiry to fish out some information against the petitioner was not justified, as held by the Andhra Pradesh High Court in Panduranga Rice Mill Vs. The State of Andhra Pradesh and Another, , Our answer to the question referred to this Court, is, therefore, in the affirmative and in favour of the assessee.

5. Reference answered accordingly. Parties shall bear their own costs of this reference.