
(2001) 07 MP CK 0042

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 22/97

Avdesh Kumar Gupta

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 22, 22(9), 5(3)
Madhya Pradesh Vanijyik Kar Niyam, 1995 — Rule 15

Citation : (2001) 3 MPHT 474

Hon'ble Judges : S.P. Shrivastava, J;N.G. Karamdelkar, J

Bench : Division Bench

Advocate : Shri N.K. Mody, for the Appellant; Shri K.B. Chaturvedi, Government Advocate, for the Respondent

Judgement

S.P. Srivastava, J.—Feeling aggrieved by the order dismissing its writ petition directed against the orders passed by the Sales Tax Officer cancelling the registration granted to the petitioner/appellant under the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 and the Central Sales Tax Act which was affirmed in revision, the petitioner/appellant has now come up in Letters Patent Appeal seeking redress praying for the setting aside of the impugned order passed by the learned Single Judge and the respondent-authorities.

2. We have heard the learned counsel for the appellant as well as the learned Government Advocate and have carefully perused the record.

3. The learned counsel for the appellant has urged various grounds in support of this appeal but considering the facts and circumstances brought on record, we are of the opinion that this appeal can be disposed of on a short ground.

4. Before proceeding further, it may be noticed that the provisions contained in Section 22(9) of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 provide as follows :--

"22. Registration of dealers.-

(1).....

(2).....

(3)

(4).....

(5).....

(6).....

(7)

(8).....

(9) When

(a) a registered dealer discontinues or transfer his business; or

(b) the liability of a registered dealer to pay tax ceases in accordance with the provisions of sub-section (3) of Section 5; or

(c) a registered dealer has been granted a registration certificate by mistake;

(d) a registered dealer is in arrears of tax or penalty or any other sum due under this Act; or

(e) the Commissioner for reasons to be recorded in writing, is of the opinion that the registration certificate should be cancelled for any other reason;

the Commissioner may either on his own motion or on the application of the dealer in this behalf cancel the registration certificate but notwithstanding such cancellation the dealer shall be liable to pay tax for the period during which his registration certificate remained in force."

5. The relevant provision contained in Rule 15 of the Rules framed under the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 known as Madhya Pradesh Vanijyik Kar Niyam, 1995 provides as follows:--

"15. Cancellation of Registration Certificate under sub-section (9) of Section 22.--

(1) When a permanent registration certificate issued to a dealer becomes liable for cancellation under clause (a), (b) or (c) of sub-section (9) of Section 22, the Registering Authority shall after making such enquiry as it thinks necessary, cancel the said registration certificate of the dealer.

(2) A dealer may apply, to the Registering Authority in form 7 for the cancellation of his permanent registration certificate on any of the ground mentioned in clause (a), (b) or (c) of sub-section (9) of Section 22. If the application is on the ground mentioned in clause (a) of sub-section (9) of Section 22 he shall also tender along with the application the registration certificate together with certified copies thereof, if any. On the receipt of such application, the Registering Authority shall, if it is satisfied after making such enquiries as it deemed

necessary, that the application is correct cancel the permanent registration certificate.

(3) If in the opinion of the Registering Authority there are reasons for cancellation of the permanent registration certificate of a dealer under clause (d) or clause (e) of sub-section (9) of Section 22, it shall, after giving the dealer a reasonable opportunity of being heard, pass such order as it deems fit.

(4).....

(5).....

6. In the present case, a perusal of the orders passed by the Sales Tax Officers as well as the order passed in revision by the Sambhagiya Upayukt Vikryakar, Gwalior indicates that pursuant to the direction issued by the Sambhagiya Upayukt Vikryakar, Satna, the Sales Tax Officer, Satna and the Sales Tax Officer, Shahdol had held an enquiry and these reports had been utilised against the petitioner/appellant.

7. In the writ petition, it has been averred as follows:--

"..... the respondent has got some information behind the back of the petitioner for which the petitioner was never given any opportunity and on the basis of some enquiry behind the back of the petitioner was held and the third respondent recorded some findings that the branches are not in existence which is not sustainable in the eye of law."

8. If had further been asserted by the petitioner that "..... in the circumstances, if the respondents could have given the adequate opportunity to the petitioner and such enquiry could have been made in the presence of the petitioner then the petitioner could have been able to show existence of the branches."

9. In the counter-affidavit/return filed by the contesting respondents in reply to the aforesaid assertions it was admitted that the reports submitted by the Sales Tax Officer, Satna as well as the Sales Tax Officer, Shahdol had been utilised against the petitioner/appellant. The correctness of the fact asserted by the petitioner that it had not been apprised of the contents of the adverse reports submitted by the Sales Tax Officers was not disputed by the respondent.

10. Before the learned Single Judge, it had been urged and pressed as noticed in the impugned judgment that the orders under challenge had been based on the reports, copies of which had not been provided to the petitioner.

11. The learned Single Judge on the basis of an alleged admission of the petitioner said to have been contained in a declaration given by it in Form No. 25 (A) submitted at the Chakghat Barrier and quarterly return submitted in the department came to the conclusion that the petitioner was suppressing the material fact and evading the payment of tax. Observing that the conduct of the petitioner disclosed that he was evading the payment of sales tax by disclosing his income as "Nil" from Satna and Budhar branches and his reply to show-cause

notice was not satisfactory the writ petition was dismissed.

12. During the pendency of the appeal, I.A. No. 2633/97 had been filed asserting that in fact the evidence on the record amply demonstrated that the appellant was carrying on the business at Gwalior and had opened the branches at Satna and Budhar also. The account books of both the branches were common and accordingly a joint sale of Satna and Budhar branches had been shown in the return cumulatively. The alleged bills which had been shown by the respondents as a sale from Satna branch had been duly mentioned in the list annexed to the return. It was also asserted that the observation of the respondent-authority to the effect that there was sale from Satna branch but in the books it was disclosed that there was no sale was apparently incorrect as all the sales were duly mentioned in the return for Satna and Budhar branches. It was also asserted that the respondents had duly assessed the appellant as per the returns filed by him and had not found any concealment or arrears in the payment of tax. It was further asserted that no penalty had ever been imposed for non-payment of tax found due.

13. It may be noticed that in spite of opportunity having been provided, no counter-affidavit in opposition to I.A. No. 2633/97 had been filed by the contesting respondent.

14. As has already been noticed hereinabove, the statutory rules clearly stipulate that before issuing the order for cancellation of registration certificate, a duly stood cast upon the Registering Authority to afford a reasonable opportunity of being heard to the concerned dealer.

15. It may be noticed that the technical rules of evidence applicable to civil or criminal litigation form no part of the rules of natural justice. What is required is that the decision to make the finding must be based on some material that tends logically to show the existence of facts consistent with the finding and the reasoning supportive of the finding if it be disclosed, is not logically self-contradictory. It must be emphasised that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to adduce additional material of probative value which; had it been placed before the decision maker might have deterred him from making a finding even though it cannot be predicted that it would inevitably have had that result. There is nothing rigid or mechanical about the principles of natural justice but the procedure to be applied in a particular set of circumstances must be right, just and fair, natural justice it has been said is only fair play in action.

16. In the present case what we find is that the respondent-authorities on their own showing had utilised the reports of the Sales Tax Officers, Satna and Shahdol against the petitioner/appellant. The copies of these reports were not supplied to the petitioner/appellant which is apparent from the fact that the correctness of the assertions to this effect has not been disputed in the counter-

affidavit/return by the contesting respondent. The appellant was not afforded any opportunity to meet the evidence consisting of the reports submitted by the aforesaid Sales Tax Officers which were found to be material and vital by the respondent-authorities and the appellant was never given any opportunity to bring on record the additional material to demonstrate that the reports could not be held to be such which could be utilised in support of the finding returned against it.

17. It may be noticed that a reasonable opportunity envisaged under the statutory rules has to be taken to be wide enough to cover such a situation. It was incumbent upon the respondent authorities to bring to the notice of the petitioner/appellant all the material which was going to be utilised against it so that it could have an opportunity to file the evidence in rebuttal bringing to the notice of the concerned authorities the relevant facts which might on assessment of the evidence have persuaded the concerned authority to come to a different conclusion. The omission in this regard at the instance of the respondent-authorities has seriously prejudiced the petitioner/appellant.

18. Considering the facts and circumstances noticed hereinabove, we are of the opinion that the matter requires to be looked into afresh after affording an opportunity to the petitioner/appellant as indicated hereinabove.

19. In the result, this appeal succeeds in part. The impugned order of the Sales Tax Officer dated 27-1-1994 (a true copy of which has been filed as Annexure P-2 to the writ petition) and the impugned order passed by the revising authority dated 14-3-1995 (a true copy of which has been filed as Annexure P-1 to the writ petition) are quashed with a direction to the Sales Tax Officer, the respondent No. 3 in the writ petition to consider the matter regarding the cancellation of the registration in question afresh after affording an opportunity to the petitioner/appellant as indicated hereinabove within a period not later than three months from the date of production of a certified copy of this order before the said authority.

20. Considering the circumstances, there shall however, be no order as to costs.