(1978) 11 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 178 of 1976

Commissioner Of Sales APPELLANT

Vs

Amir Brothers RESPONDENT

Date of Decision : 21-11-1978

Acts Referred:
Central Sales Tax Act, 1956 — Section 7

Citation : (1979) 44 STC 200

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant;

Judgement

G.L. Oza, J.—This is a reference made by the Board of Revenue for getting an answer to the question:

Whether, on the facts and circumstances of the case, registration u/s 7(2) of the Central Sales Tax Act is sufficient to exclude the liability of an assessee for penalty u/s 18(6) of the M.P. General Sales Tax Act for failure to apply and obtain registration u/s 7(1) of the Central Sales Tax Act, 1956 ?

2. The facts on which this reference has been made are that the non-applicant dealer was assessed to sales tax, both under the M.P. General Sales Tax Act, 1958, and the Central Sales Tax Act, 1956, in respect of the period 5th November, 1964, to 24th October, 1965, though the dealer himself claimed that no part of his turnover during that period could be treated as turnover relating to inter-State trade. The assessing officer did not accept the contention and held that the dealer was liable to be assessed under the Central Act in respect of turnover of Rs. 37,840 and a penalty of Rs. 2,000 was also imposed u/s 18(6) of the State Act for failure to get himself registered u/s 7(1) of the Central Sales Tax Act. On first appeal, the quantum assessable under the Central Act was determined at Rs. 34,180. As regards the turnover with regard to the State Act, (sic) the Commissioner found that the figure of Rs. 34,180 is correct so far as

the turnover for the Central Act is concerned. As regards the penalty, the appellate authority reduced it to Rs. 1,000. In second appeal, the assessment under the Central Act was accepted, but the order imposing penalty was set aside. The Commissioner of Sales Tax aggrieved by this order sought a reference to this Court.

3. Registration u/s 7(1) and Section 7(2) of the Central Sales Tax Act, 1956, is necessary in regard to different sets of circumstances. The section reads thus:

Section 7(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in Sub-section (1), and every such application shall contain such particulars as may be prescribed.

It is, therefore, apparent that when a dealer has transactions in the nature of inter-State trade, registration u/s 7(1) is necessary. Registration u/s 7(2) could not be said to be a registration u/s 7(1). This question came up before a Division Bench of this Court in Commissioner of Sales Tax, M.P. v. Imphalbs Manufacturing Co. 1972 M.P.L.J. 181 and it was held as under:

It is no doubt true that the language of Section 7(1) and Section 7(2) is not very clear and that on a first look at the provisions one is tempted to take the view that the registration u/s 7(2) is only voluntary or anticipatory registration contemplated under Sub-section (1) of Section 7. But that is not so. The purposes of the two registrations are altogether different. It, therefore, follows that if a person indulges in inter-State sale, he has to get himself registered u/s 7(1); and if he fails to do so, he exposes himself to the penalties prescribed under the law. The Board of Revenue was altogether in error in holding that the registration under Sub-section (2) of Section 7 can be deemed to be registration under Sub-section (1) thereof.

4. It is not in dispute that the non-applicant (the assessee in the present case) has not obtained registration u/s 7(1) of the Central Sales Tax Act and for his failure to apply and obtain registration u/s 7(1) penalty could be imposed u/s 18(6) of the M.P. General Sales Tax Act, 1958.

5. Consequently, our answer to the question is in the negative. As none appeared for the assessee, the parties are directed to bear their own costs.

