(1983) 07 MP CK 0005

In the Madhya Pradesh High Court

Case No : M.C.C. No. 226 of 1982

Commissioner of Sales Tax APPELLANT

Vs

Bhandari Crosfields Ltd. RESPONDENT

Date of Decision : 27-07-1983

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 43(1)

Citation : (1985) 60 STC 353

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

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; G.M. Chaphekar and L.K. Hingorani, for the Respondent

Judgement

R.K. Vijayavargiya, J.—This order shall also dispose of Misc. Civil Case No. 227 of 1982 (Commissioner of Sales Tax, M. P. v. Bhandari Crosfields Ltd., Indore).

2. By these references u/s 44(1) of the M. P. General Sales Tax Act, 1958 (for short "the Act") the Board of M. P., Gwalior has referred the following question of law for the opinion of this Court:

Whether under the facts and circumstances of the case, where the dealer made in the returns an untenable claim for deduction in respect of sales of cattle feed and poultry feed, when such a claim had already been rejected by the assessing authority in respect of assessment for the year 1965-66 the returns furnished by the dealer can be said to be false returns so as to attract penalty u/s 43(1) of the Act?

3. The material facts giving rise to these references are as follows : The assessee was assessed to sales tax under the Act as also under the Central Sales Tax Act, 1956 for the period 1st January, 1971 to 31st December, 1971. The assessing authority imposed a penalty of Rs. 45,000 and Rs. 18,000 respectively u/s 43(1) of the Act for furnishing false returns. In the returns the assessee correctly disclosed its gross turnover but claimed deduction of certain sales on the ground

that the sales of cattle feed and poultry feed made by it were not exigible to tax because cattle feed and poultry feed fell within the purview of fodder which was exempt from tax. The assessing authority held that since in the previous year the exemption claimed by the assessee was disallowed by claiming the said deduction the assessee furnished a false return for which penalty was leviable u/s 43(1) of the Act. On appeal the appellate authority upheld the order of the assessing authority that penalty was imposable u/s 43(1) of the Act. However, the appellate authority reduced the amount of penalty. On further appeals the Tribunal held that the assessee having disclosed correctly its sales it cannot be said that it furnished false returns merely because it claimed exemption of certain sales which were disallowed in the previous year. The Tribunal therefore set aside the orders passed by the assessing authority and the appellate authority imposing penalty on the assessee. Aggrieved by the order of the Tribunal the Department submitted applications for making references to this Court and that is how at the instance of the Department the aforesaid question of law has been referred by the Tribunal to this Court for its opinion.

4. We have heard the learned Counsel for the parties. The Tribunal has held that the assessee truly disclosed the sales made by it and therefore it cannot be held that it furnished false returns merely because it claimed exemption on certain sales on the ground that they were not exigible to tax because the goods sold came within the purview of fodder which was exempt from tax. The Tribunal thus has found that the returns furnished by the assessee were not false. In the circumstances no question of law arises in these references.

5. In Dadabhoy''s New Chirimiri Ponri Hill Colliery Company Pvt. Ltd. v. Commissioner of Sales Tax, M. P. [1979] 44 STC 100 a Division Bench of this Court has held as follows:

...When the facts are fully disclosed in a return and are not misstated, the raising of a legal plea of exemption cannot make the return a false return within the meaning of Section 43(1), even if the assessee knew that the plea of exemption was not sustainable. A return will be a false return when some statement of fact in the return is falsely made. But when the facts are fully and correctly disclosed, raising of a false legal plea cannot make the return false.

We are in respectful agreement with the view taken in the aforesaid decision.

6. We are, therefore, of the opinion that the Tribunal was fully justified in holding that on the facts and in circumstances of the case the return filed by the assessee cannot be said to be false and in setting aside the order passed by the assessing authority imposing penalty u/s 43(1) of the Act.

7. The references are answered accordingly. In the circumstances the parties shall bear their own costs of these references.

