
(1987) 07 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 393 of 1983

Commissioner of Sales Tax

APPELLANT

Vs

Hariram Chouhan

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 17(3), 43, 43(1), 44(1)

Citation : (1987) 67 STC 437

Hon'ble Judges : N.D. Oza, C.J.;C.P. Sen, J

Bench : Division Bench

Advocate : The A.G, for the Appellant; B.L. Nema, for the Respondent

Judgement

N.D. Ojha, C.J.—The Tribunal, constituted under the M. P. General Sales Tax Act, 1968 (hereinafter referred to as the Act), has referred to this Court u/s 44(1) of the Act, the following question for its opinion :

Whether, in the facts and circumstances of the case, the Tribunal was justified in holding that no penalty u/s 43 of the M. P. General Sales Tax Act, 1958, can be levied, where a dealer has not furnished any return as prescribed under the Act ?

2. The statement of the case as also the orders of the Sales Tax Officer and the Appellate Assistant Commissioner of Sales Tax, indicate that for the accounting year, 1969-70, the assessee-opposite party has filed a return for the quarter between 10th November, 1969 and 7th February, 1970, but for the remaining three quarters, however, no return was filed. The Sales Tax Officer, in regard to the quarterly return that had been filed, found that it was false and on that basis levied a penalty of Rs. 3,600 u/s 43(1) of the Act. In regard to non-filing of the returns for the remaining three quarters, another penalty of Rs. 6,000 was levied by the Sales Tax Officer, u/s 17(3) of the Act. This order was upheld in appeal by the Appellate Assistant Commissioner of Sales Tax, who specifically found that the imposition of penalty on the assessee under the aforesaid two sections was justified and did not require any change. However, a reduction in the amount of

tax in the sum of Rs. 340 was made by the Appellate Assistant Commissioner. Aggrieved by that order, the assessee went up in second appeal before the Tribunal. The Tribunal has not reversed the finding of the Sales Tax Officer and the Appellate Assistant Commissioner that the assessee had filed a return for the first quarter, which was found to be false and that he had not filed any return for the remaining three quarters. While dealing with the question of penalty, however, the Tribunal came to the conclusion that since penalty for non-filing of the return had already been imposed u/s 17(3) of the Act, there was no occasion or justification for imposing another penalty for the same default u/s 43(1) of the Act.

3. It appears that the Tribunal completely missed the fact that the order of imposition of penalty was not only for non-filing of the return but was both for filing a false return for the first quarter and for non-filing of return for the remaining three quarters. It is true that in the application made on behalf of the Commissioner of Sales Tax u/s 44(1) of the Act for making a reference to this Court, the same question has been framed, which has been referred by the Tribunal, but in the statement of the case, the Tribunal has specifically stated the case of the Commissioner of Sales Tax in para 3 of the order. It has been stated therein that the Revenue's case was that return was filed for one quarter only and that was found to be false. Penalty was imposed u/s 17(3) of the Act for non-submission of three returns for three quarters. Penalty u/s 43(1) of the Act was imposed because the one return filed was found to be false. It is thus apparent that even according to the statement of the case drawn up by the Tribunal; there is no dispute that it was a case where return had been filed for the first quarter, which was found to be false and no return had been filed for the remaining three quarters. On these facts, which are not only facts found but facts admitted, the Tribunal in the appellate order apparently committed an obvious error in taking the view that since penalty had already been imposed for non-filing of the return u/s 17(3) of the Act, there was no occasion or justification for imposing another penalty for the same default u/s 43(1) of the Act. The penalty, which has been imposed u/s 43(1) was not for non-filing of the return but for filing a false return in respect of the first quarter.

4. On these facts found and admitted, the question which really arose was as to whether in the facts and circumstances of the case, the Tribunal was justified in holding that no penalty u/s 43(1) of the M. P. General Sales Tax Act, 1958, could be levied, even where a dealer had furnished a false return in respect of one quarter. In our opinion, it is a fit case, particularly when the facts are not disputed, to reframe the question, which has been referred to us. We accordingly reframe the question referred to us as follows :

Whether, in the facts and circumstances of the case, the Tribunal was justified in holding that no penalty u/s 43(1) of the M. P. General Sales Tax Act, 1958, could be levied, even where a dealer had furnished a false return in respect of one quarter ?

In our opinion, on the facts pointed out above, the question referred to us can be reframed in view of the decision of the Supreme Court in *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax* [1954] 26 ITR 766.

5. Having heard learned counsel for the parties, on the reframed question, we are of the opinion that since the assessee-opposite party had, apart from not filing returns for the remaining three quarters, had also filed a false return for the first quarter, it was liable to penalty on both counts, namely, for not filing returns for three quarters u/s 17(3) of the Act and for filing a false return in respect of the first quarter, u/s 43(1) of the Act.

6. Our answer, therefore, to the reframed question is that in the facts and circumstances of the case, the Tribunal was not justified in holding that no penalty u/s 43(1) of the M. P. General Sales Tax Act, 1958, could be levied even where a dealer had furnished a false return in respect of the first quarter. However, there shall be no order as to costs.