
(1985) 10 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.C.C. No. 179 of 1980

Commissioner of Sales Tax

APPELLANT

Vs

Shivandas Tekchand

RESPONDENT

Date of Decision : 30-10-1985

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 43

Citation : (1987) 67 STC 174

Hon'ble Judges : J.S. Verma, Acting C.J.; B.M. Lal, J

Bench : Division Bench

Judgement

J.S. Verma, Ag. C.J.

1. This reference u/s 44(1) of the M. P. General Sales Tax Act, 1958 is at the instance of the Commissioner of Sales Tax to decide the following question of law, viz.:

Whether in the facts and circumstances of the case, the Tribunal was justified in setting aside the penalty imposed u/s 43 of the M. P. General Sales Tax Act, 1958 when the dealer maintained separate goods accounts for purchases of paddy from registered dealers and unregistered dealers and when taxable purchases from unregistered dealers of paddy were shown less in the returns which fact was sufficient to establish mens rea for action u/s 43 ?

2. The dealer is engaged in the business of manufacture and sale of rice. The relevant period of assessment is 1971-72 ending on Diwali. Purchases of paddy from unregistered dealers were for an amount of Rs. 5,38,062. The paddy was utilised for manufacture of rice and was assessed to purchase tax. The dealer had shown the purchase turnover of Rs. 3,73,170.80 in the return resulting in shortfall therein to the extent of Rs. 1,64,892.15. The return was treated to be false and after issuing notice to show cause as to why penalty should not be imposed u/s 43 of the Act, a penalty of Rs. 2,000 was imposed.

3. The dealer filed an appeal before the Appellate Assistant Commissioner who

rejected it. The second appeal to the Tribunal, however, was allowed and the penalty has been set aside. The Tribunal has held that the explanation given by the dealer was quite plausible and no case for imposition of penalty was made out. It has been pointed out that full particulars of the purchases made from the registered as well as unregistered dealers had been shown in the return and the mistake was only in showing some purchases under wrong head, or in other words, the error was only of misclassification and not of suppressing of any material fact or particulars relating to the purchases made by the dealer. Accordingly the Tribunal has held that the requisite element of guilty mind is not made out.

4. In our opinion, the conclusion reached by the Tribunal is fully justified and is also in accordance with the decision of the Supreme Court in [1980] 46 STC 197 (Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, Indore) wherein it has been pointed out that a return cannot be said to be false within the meaning of Section 43 unless there is an element of deliberate-ness in it, and where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it would not be right to condemn the return as a "false" return inviting imposition of penalty.

5. Thus the test indicated by the Supreme Court for justifying imposition of penalty u/s 43 of the Act is correctly applied by the Tribunal in the present case and the conclusion reached by it is clearly justified.

6. Consequently the reference is answered against the Commissioner of Sales Tax and in favour of the dealer by holding that the Tribunal was justified in its view that no case for imposition of penalty u/s 43 of the Act was made out in the present case. There shall be no order as to costs.