(1990) 02 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 79 of 1986

Commissioner of Sales Tax APPELLANT

Vs

Uttam Construction Co. RESPONDENT

Date of Decision : 28-02-1990

Acts Referred:

Madhya Pradesh Entry Tax Act, 1976 — Section 13
Madhya Pradesh General Sales Tax Act, 1958 — Section 17, 17(1), 17(3), 7
Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 — Section 13

Citation : (1990) 78 STC 308

Hon'ble Judges : S.K Jha, C.J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : P.C. Naik, Dy. A.G, for the Appellant; B.L. Nema, for the Respondent

Judgement

S.K. Jha, C.J.—A statement of the case has been submitted u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as "the Act"), referring the following question of law to this Court for its opinion :

"Whether, in the facts and circumstances of the case, the Tribunal was justified in setting aside the penalty u/s 13 of the Entry Tax Act, read with Section 17(3) of the Madhya Pradesh General Sales Tax Act, on the ground that penalty is leviable only in case of registered dealers and not in case of dealers deemed to be registered u/s 7 of the Madhya Pradesh General Sales Tax Act as the said section is not made applicable under the Entry Tax Act, vide Section 13? "

2. The short facts relevant for the disposal of this reference may be culled from the statement of the case itself. The non-applicant, Uttam Construction Co., Khairagarh, undertakes Public Works Department and Irrigation Department contracts. He was assessed under the M.P. Entry Tax Act as an unregistered dealer (underlining Here italicised. is ours for the sake of emphasis) for the period November 1, 1978 to October 21, 1979, by the Additional Sales Tax Officer, Rajnandgaon, vide order dated December 5, 1980. The tax was assessed

at Rs. 34,033.76 and a penalty of Rs. 6,000 was also imposed u/s 17(3) of the Act. Subsequently, the assessment order was rectified twice and the tax assessed was reduced and the penalty was also reduced to Rs. 3,000. Annexures B-1 and B-2 are copies of the assessment and rectified assessment orders respectively. Being aggrieved by the first rectified order dated February 2, 1981, the non-applicant (unregistered dealer) filed first appeal before the Appellate Deputy Commissioner of Sales Tax. The appeal was rejected vide order dated September 29, 1982. Being aggrieved by the aforesaid order, the non-applicant filed second appeal before the Tribunal. This appeal was decided by the Tribunal on July 22, 1983. The penalty imposed u/s 17(3) of the Act was set aside. The Tribunal was of the view that Section 17(1) of the Act provides in the case of the dealers other than registered dealers that they may be required by the Commissioner by a notice served in the prescribed manner to furnish the return. u/s 7(4) of the Act, a dealer liable to pay tax has been deemed as registered dealer. This deeming provision has not been adopted u/s 13 of the Entry Tax Act. Therefore, penalty u/s 17(3) of the Act could not be imposed in this case as no notice as required by Section 17(1) of the Act was issued to the non-applicant. Annexure D is a copy of the order of the Tribunal. This being the question, the only point for consideration is as to whether the non-applicant (unregistered dealer) was liable to pay any penalty under the provisions of the M.P. Entry Tax Act, 1976 ?

3. Section 17(1) of the Act, reads thus :

"Every such dealer as may be required so to do by the Commissioner by notice served in the prescribed manner and every registered dealer shall furnish returns in such form in such manner for such period by such dates and to such authority, as may be prescribed :

..............."

It will thus be seen that Section 17(1) of the Act contemplates two species of dealers : (1) a registered dealer, and (2) any such dealer, as may be required by the Commissioner by notice served in the prescribed manner. Admittedly, the non-applicant is an unregistered dealer. Therefore, in order to come within the purview of Section 17(1) of the Act, only such dealer, evidently any unregistered dealer, as required by notice issued by the Commissioner in the prescribed manner shall be liable to file a return. For the non-filing of a return by an unregistered dealer, who has not been served with any notice by the Commissioner, the provision of Section 17(3) of the Act for penalty would not arise at all.

4. Learned counsel for the Revenue argued that by virtue of the provisions of Section 7 of the Act there are certain transactions fictionally importing any dealer having a turnover of certain specified amount to be a registered dealer, but the whole difficulty is that Section 13 of the Entry Tax Act does not cover Section 7 of the Sales Tax Act at all. On the contrary, Section 13 of the Entry Tax Act

embraces within its field all the provisions of Section 17 of the Sales Tax Act. It would be worthwhile to quote the relevant provisions of Section 13 of the Entry Tax Act. It reads thus :

"Subject to the provisions of this Act and the rules made thereunder Sections 3, 7-A, 17, 18, 19, 20............48 and 51 of the Sales Tax Act and the rules, orders and notifications issued thereunder shall mutatis mutandis apply to a dealer in respect of entry tax levied and payable under this Act as if those sections were mutatis mutandis incorporated in this Act and the rules, orders and notifications issued under those sections were mutatis mutandis issued under the relevant sections as so incorporated in this Act."

It will thus be seen on the one hand that Section 7 of the Act has not been incorporated in Section 13 of the Entry Tax Act ; on the contrary the whole of Section 17 has been incorporated as if the provisions of that section of the Act were incorporated in the Entry Tax Act itself.

5. Therefore, when it is the admitted case of the parties and the Tribunal (Hoard of Revenue) has stated in its case that no notice u/s 17(1) of the Act was. issued to the dealer, the question of levying of any penalty under the provisions of the Entry Tax Act docs not arise at all.

6. The question referred to us is accordingly answered in favour of the assessee (unregistered dealer) and against the Revenue. The non-applicant entitled to his costs. Hearing fees assessed at Rs. 250. A copy of this judgment be sent to the Tribunal (Board of Revenue) immediately.

