(1984) 09 MP CK 0001

In the Madhya Pradesh High Court

Case No : M.C.C. No. 115 of 1983

Commissioner of Sales Tax APPELLANT

Vs

Vijay Motors RESPONDENT

Date of Decision : 17-09-1984

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 2(r)

Citation : (1986) ILR (MP) 103 : (1985) JLJ 78 : (1987) 65 STC 76

Hon'ble Judges : U.N. Bhachawat, J;Rampal Singh, J

Bench : Division Bench

Advocate : P.D. Agarwal, for the Appellant; M.C. Jain, for the Respondent

Judgement

U.N. Bhachawat, J.—This is a reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958 (for short, hereinafter referred to as the Act),at the instance of the department for our decision of the following questions :

(1) Whether, in the facts and circumstances of the case, the certificates in respect of supply of goods to Government departments issued by the authorized officer under Notification No. 1065-537-V-ST dated 7th April, 1967, could not be rejected on the ground that the supply consisted of tax-paid goods ?

(2) Whether, in the facts and circumstances of the case, if the certificates could not be rejected, the assessing authority could not reduce the claim of deduction u/s 2(r)(ii) on the ground that the tax-paid goods had been supplied to Government departments which has been assessed at a concessional rate of tax under Notification No. 1065-537-V-ST dated 7th April, 1967?

2. The material facts, giving rise to the present reference are these : There levant period of assessment is 1st April, 1973 to 31st March, 1974. The assessee-non-applicant herein deals in motor parts and batteries at Gwalior. He was assessed to tax for the aforesaid period by the Sales Tax Officer, Gwalior Circle I, by his order dated 23rd March, 1977. It was a best judgment assessment. The assessee had claimed taxation at concessional rate of tax on sales worth Rs.

3,69,493, made to the Government departments. The assessee had kept mixed accounts. It was, therefore, not possible for the assessing officer to verify whether sales of tax-paid goods were made to the Government departments or not. He, therefore, estimated the sales for Rs. 25,000 of the tax-paid goods to the Government departments and reduced the assessee''s claim to Rs. 3,44,493 for the concessional rate under Notification No. 1065-537-V-ST dated7th April, 1967.

3. Being aggrieved by the aforesaid order, the assessee unsuccessfully filed an appeal before the Appellate Assistant Commissioner of Sales Tax, Gwalior.

4. The assessee then filed a second appeal before the Sales Tax Tribunal(the Board of Revenue, Madhya Pradesh, Gwalior) against the order dated30th July, 1977 of the Appellate Assistant Commissioner of Sales Tax, Gwalior, dismissing his appeal.

5. The Sales Tax Tribunal, upholding the contention of the assessee that once the certificate certifying the sales to the Government departments in the prescribed form is furnished, there is no justification for the reduction in the claim for assessment to concessional rate of tax in respect of supplies to the Government departments, allowed the appeal. The relevant excerpt from the order of the Tribunal is set out below :

3. It was next contended that there was no justification for reduction in the claim for assessment to concessional rate of tax in respect of supplies to Government departments, when the necessary certificates required under law had been furnished.

This contention too deserves to be accepted in view of the decision of a Division Bench of this Tribunal in Gala Bros. in appeal No. 53-V/77 decided on7th July,1978. It has been held therein that it is not permissible to reject certificates issued under Notification No. 1065-537-V-ST dated 7th April, 1967,when the conditions specified under the notification are fully satisfied. Reduction of the claim of appellant by Rs. 25,000 was therefore not in order.

4. The appeal is allowed. Best judgment assessment and the enhancement made in the dealer''s gross turnover is set aside. The claim for assessment at the concessional rate of tax in respect of supplies to Government department sould be allowed in full to the extent it is supported by the requisite certificates. Assessment be revised accordingly.

6. There after, at the instance of the department the Tribunal has made the present reference.

7. Ordinarily, we would have dealt with the questions referred ad seriatim, but since question No. 2 can be disposed of on a short ground, we propose to deal with that first. We proceed accordingly.

8. Re : Question No. (2) : This question does not arise from the order of the

Tribunal as the Tribunal has not at all touched this point so as to give rise to this question. It is a well-settled proposition in law that only those questions of law can be referred for the decision by this Court which arise from the order of the Tribunal and the learned Panel Lawyer appearing for the department has not disputed the above factual and legal position. In this view of the matter, that is, since question No. (2) does not arise from the order of the Tribunal, we refuse to answer it.

9. We now advert to question No. (1). Ere we proceed to dwell on the merits, we bring to bear on our mind the decision of their Lordships of the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , where in their Lordships while discussing the canons of interpretation of tax statutes, have indicated that there should be a purposive approach. The relevant excerpt from this judgment, which reflects this light, is set out here in below :

The argument was based on a strictly literal reading of Section 52(2) of the Income Tax Act, but we do not think such a construction can be accepted. It ignores several vital considerations which must always be borne in mind when we are interpreting a statutory provision. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought.

10. We would now like to set out the relevant part of the notification :

Notification No. 1065-537-V-ST. Dated the 7th April, 1967. In exercise of the powers conferred by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), the State Government here by exempts in part, the class of goods mentioned in column (1) of the Schedule below from the payment of tax so as to reduce it to the rate of tax mentioned in column (2) thereof for the period specified in column (3) and subject to the restrictions and conditions specified in column (4) of the said Schedule :-

Schedule ____ Class of goods Reduced Period Restrictions rate and conditions subject to which exemption is granted. (1) (2) (3) (4) ____ All classes Three From 1st When sold by a of goods speci per cent. April, 1967 dealer registered fied in Schedule to 31st under the Madhya II of the March, 1968. Pradesh General Madhya Pradesh Sales Tax Act, General Sales Tax 1958 (No. 2 of Act, 1958, for 1959), to the which the rate Government of of tax exceeds Madhya Pradesh or three per cent. any of its depar- tments for the purpose of official use only against a certificate in writing in appended form. ____ Appendix

Certificate

Name of the issuing department of the State Government....

Name and address of office of issue....

To

....

Certified that the goods... *ordered for in our purchase order No... dated... *purchased from you as per your bill/cash memo stated below supplied under your challan No. ... dated... are purchased by or on behalf of the department of... for the purpose of official use only.

...

Signature, designation of autho- rised officer of department.

Date...

Seal of the authorised officer of the department.

*Particulars of Bill/Cash memo....

Note.-Authorised officer means an officer authorised to make a purchase on behalf of the Government).

*Strike out whichever is not applicable.

(It may be mentioned that it is an admitted position that the period of operation of this notification was extended from time to time and was in force at the relevant time).

11. Before we proceed to dilate on the interpretation of this notification, it would be desirable to have a look at Section 2(r) of the Act, which is set out asunder :

(r) ''Taxable turnover'' in relation to any period means that part of adealer'' s turnover for such period which remains after deducting there from-

(i) the sale price of goods declared tax-free u/s 10 or Section 12

(ii) the sale price of goods mentioned in Parts II to VI of Schedule II whichare in the nature of tax-paid goods in the hands of such dealer ;...

11.01. From the fore-quoted section, it is clear that the assessee is entitled to deduct the sale price of the tax-paid goods falling in the category mentioned in Clause (ii) of the section in his hands from his gross turnover and, thus, no ta:is chargeable on the sale price of tax-paid goods.

12. The notification, in question, is issued admittedly u/s 12 othe Act which so far relevant reads thus :

12. Saving.-(1) The State Government may, by notification and subject to such restrictions and conditions as may be specified therein, exempt whether prospectively or retrospectively, in whole or in part-

(i)...any goods or class of goods from the payment of tax under this Act....

12.01. If we read the notification in question along with Section 12 of the Act extracted hereinabove, it becomes clear that the purpose and intention of the notification, in question, is that concession in the rate of tax is on the good which are taxable in the hands of the assessee. Obviously, if no tax is charge ablat all, the question of concession in the rate does not arise. If an otherwise interpretation or construction is put, it would tantamount to this that even though no tax is chargeable on the sale price of the goods described in Section 2(r)(ii) of the Act, it would become chargeable if sold/supplied to the Government departments and, thus, there would be a head on clash between the two sections of the Act. It is an accepted canon of construction that a statute mustbe read as a whole and one provision of the Act should be construed with)reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. In short there should be a harmonious construction In consistency and repugnancy has to be avoided.

13. The upshot of the foregoing discussion is that if an assessee has sold supplied tax-paid goods of the nature falling within the scope of Section 2(r)(ii)of the Act, sale price of those goods shall be deductible from the gross turn over of the assessee; in other words that sale price would not form part of taxabl turnover and, therefore, the question of chargeability of the tax on the sale price of that part of the goods-that is the tax-paid goods falling within the scopeo Section 2(r)(ii) of the Act-does not arise. In other words, from the sale price of the goods sold/supplied to the Government departments the sale price of the'' tax-paid goods as described in Section 2(r)(ii) of the Act would be deducted.

14. We now turn to the value of the certificate in the form prescribed in the notification in question. On the very reading of the form of the certificate extracted hereinabove, it only certifies the purchase of the goods by the particular department of the Government for official use. It is not required to be mentioned in the certificate as to whether all the goods purchased or part of then is tax-paid goods of the nature described in Section 2(r)(ii) of the Act or not. Further on reading the parent part of the notification also it is not obtainable that irrespective of the fact whether the goods sold/supplied by an assessee to the Government includes tax-paid goods of the nature described in Section 2(r)(ii)of the Act, if is of facto on the furnishing of the certificate in the prescribed form, the tax to be assessed at concessional rate on the total sale price of those goods and the assessing authority is debarred from sorting out from that the sale price in respect of the tax-paid goods of the nature described in Section 2(r)(ii)of the Act.

15. In the above view of the matter, our answer to question No. 1 is :

The department despite the certificate prescribed under the notification, is competent to scrutinise whether it includes tax-paid goods and deduct the price of the tax-paid goods supplied to the Government for calculating the turnover on which the assessee would be entitled to a concession with regard to the payment of tax under the notification.

16. The reference is answered as indicated hereinabove. No order as to costs.

