

(1989) 04 MP CK 0009
In the Madhya Pradesh High Court
Case No : M.C.C. No. 53 of 1986

Commissioner of Sales Tax

APPELLANT

Vs

Vimalchand Prakash Chand

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 17(3), 38(5), 43(1)

Citation : (1990) 77 STC 422

Hon'ble Judges : G.G.Sohani, Acting C.J.; S.D. Jha, J

Bench : Division Bench

Advocate : S.R. Joshi, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

G.G. Sohani, Ag. C.J.

1. By this reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as "the Act"), the Board of Revenue has referred the following question of law to this Court for its opinion :

"Whether under the facts and the circumstances of the case, the Tribunal was justified in holding that penalty u/s 17(3) of the M.P. General Sales Tax Act, 1958, could not be imposed on the assessee at the appeal stage ?"

2. The material facts giving rise to this reference, briefly, are as follows : The assessee is a dealer in cotton. The assessee had submitted quarterly returns for the assessment year in question within time, but tax relating to second and third quarter was paid by the assessee after the expiry of the period prescribed therefor. The assessee later on filed revised returns. While framing assessment, the assessing authority also issued a notice to the assessee to show cause why penalty u/s 43(1) of the Act be not imposed. The assessee showed cause, but the assessing authority held that the assessee had concealed its turnover and a penalty u/s 43(1) of the Act was accordingly imposed. Aggrieved by that order, the assessee preferred an appeal. The Deputy Commissioner of Sales Tax held that in view of the fact that the assessee had filed revised return, penalty u/s

43(1) of the Act could not have been imposed on the assessee as laid down in [1974] VKN 353 (National Garage, Nagpur v. President, Board of Revenue, M.P.). The Deputy Commissioner, however, held that penalty u/s 17(3) of the Act could be imposed on the assessee and penalty was accordingly imposed on the assessee. The assessee thereupon preferred an appeal before the Board of Revenue. It was contended before the Board on behalf of the assessee that the Deputy Commissioner could not, while exercising powers u/s 38(5) of the Act, impose for the first time penalty on the assessee u/s 17(3) of the Act. This contention was upheld by the Board and the order passed by the Deputy Commissioner was set aside. Aggrieved by the order passed by the Board, the Department sought reference and it is at the instance of the Department that the aforesaid question of law has been referred to this Court for its opinion.

3. Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and against the Department. In [1983] 54 STC 332 ; [1983] VKN 275 (Food Corporation of India v. Commissioner of Sales Tax, Madhya Pradesh), it has been held by this Court that while exercising powers u/s 38(5) of the Act, the appellate authority has no jurisdiction to impose penalty for the first time. In view of this decision, the Board was justified in holding that the penalty u/s 17(3) of the Act could not have been imposed on the assessee for the first time at the appellate stage. Learned counsel for the Department contended that in view of the decision of this Court reported in [1987] 66 STC 164 (Babulal Agarwal v. Commissioner of Sales Tax, M.P.), the Deputy Commissioner was not right in holding that penalty u/s 43(1) of the Act could not have been imposed. The Department, however, did not choose to agitate that question before the Board and hence, that aspect of the matter cannot be considered at this stage.

4. For all these reasons, our answer to the question referred by the Board is in the affirmative and against the Department. In the circumstances of the case, parties shall bear their own costs of this reference.