(2007) 03 MP CK 0089

In the Madhya Pradesh High Court

Crompton Greeves Limited APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 43(1)

Citation : (2007) 10 VST 102

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Judgement

Rajendra Menon, J.—Challenging the imposition of penalty to the tune of Rs. 2,09,489 by the Commercial Tax Department, the petitioner has filed this petition.

2. The petitioner-company is duly registered company under the provisions of the Companies Act 1956 vide registration certificate, annexure P2. The company is engaged in the business of manufacturing and distribution of various electronic goods including transformers. For the said purpose they have established a factory in Malanpur, District Bhind. For the assessment year April 1, 1993 to March 31, 1994 returns in accordance with the Madhya Pradesh General Sales Tax Act, 1958 was submitted by the petitioner to the assessing authority. Even though turnover and the factual aspect of the matter were correctly reflected in the returns filed by the petitioner-establishment, assessment of tax was made at the rate of eight per cent per annum on the ground that as per the Government notification issued on July 17, 1989, being Notification Number 16.6.1989-11 electrical goods were notified to be taxable at the rate of eight per cent per annum under the heading electrical goods, transformers were also included in parts 12 under the subheading passive components, parts and spares. Claiming the transformers manufactured by the petitioner to be falling in this particular head as per the notification petitioner paid tax at the rate of eight per cent per annum. The assessing authority found that this particular circular will not apply in the case of the petitioner, and it was found that the petitioners are liable to pay tax at the rate of twelve per cent per annum. It was the case of the Revenue

that as per the notification itself tax at the rate of eight per cent is to be collected subject to confirmation by the M.P. Electronic Development Corporation but in the present as there was no confirmation by the M.P. Electronic Development Corporation, tax at the rate of twelve per cent should have to be paid. Accordingly, the assessing authority, proceeding in the matter, assessed tax at the rate of 12 per cent per annum. After the order was passed by the assessing authority, vide annexure P5 on July 17, 1989 notice u/s 43(1) of the Madhya Pradesh General Sales Tax Act, 1958 was issued, vide annexure P8 dated May 2, 1997 indicating as to why penalty could not be imposed upon the petitioner for submitting false and fabricated return of tax. Petitioner submitted their reply to the competent authority and denied that they had filed any false return. However, the assessing authority initially passed an order assessing penalty at Rs. 6,28,435, on a revision being filed, the revisional authority has interfered with the matter and the amount of penalty has been reduced by 50 per cent. Inter alia, contending that the imposition of the penalty by the revisional authority by modifying the earlier order of the assessing authority is also unsustainable, the petitioners are entitled to total exemption from payment of any penalty, the petitioner seeks interference in the matter. The order passed by the revisional authority is annexure P1 dated March 15, 2004 and the order passed by the assessing authority is annexure P12 dated December 30, 2002.

3. Inviting my attention to the provisions of Section 43(1) of the Madhya Pradesh General Sales Tax Act, 1958 and a judgment referred by Division Bench of this Court in the case of Dadabhoy''s New Chirirniri Ponri Hill Colliery Co. Private Ltd. v. Commissioner of Sales Tax M.P. [1979] 44 STC 100 filed as annexure P13, learned Counsel for the petitioner argued that the Division Bench in the aforesaid case has held that when in the return filed there is no false statements or concealment of fact but some legal plea is raised and exemption is sought, the same will not amount to submission of false return and therefore provisions of Section 43(1) of the Act for imposition of penalty will not apply in such a case. It was argued by learned Counsel for the petitioner that in the present case the petitioner paid tax under the head of electrical goods, as there was no false statement made in the return, the case is not covered u/s 43 of the Act. Therefore, he seeks interference in the matter.

4. Smt Ami Prabal, learned Deputy Advocate-General for the respondents/State argued that in the present case, assessing authority and the revisional authority having assessed the tax and having found incorrect assessment made by the petitioner in the return by applying a lower rate of tax, the power exercised by the authorities concerned, does not warrant any interference and this petition is liable to be dismissed.

5. Having heard learned Counsel for the parties and on a perusal of the records, it is seen that there was no dispute with regard to factual aspect of the matter. It is admitted position that the petitioner submitted the return and paid tax at the rate of eight per cent per annum. It was case of the petitioners that they are

entitled to pay tax at the rate of eight per cent per annum in view of the fact that they are entitled for the same and exempted from payment of tax as their unit is established in the backward area and having been issued with a eligibility certificate by the State Government in this regard. It was further their case that as per the notification issued by the State Government, the transformer was classified under the terms of electrical goods and on April 1, 1992, Government has reduced the tax on electrical goods, vide entry No. 12 under the notification issued, vide annexure P7. It is case of the petitioner that there is no deliberate concealment in the returns and the assessment made by the assessing authority on the basis of notification is not correct. Respondents do not dispute this factual aspect of the matter. It is the case of the respondents that the notification issued charging tax at the rate of eight per cent is on components indicated in the notification and is subject to confirmation by the M.P. Electronic Development Corporation. The petitioners have not obtained any confirmation certificate from this Corporation. Therefore, the transformer is to be treated as a component coming under serial number 15 of Schedule II at para 3 of the said notification dated March 31,1992 and therefore, the tax at the rate of twelve per cent is payable. It is clear from the aforesaid facts that in the notification two rates of tax were indicated; one payable at the rate of eight per cent per annum and another payable at the rate of twelve per cent per annum. The petitioner claimed exemption and sought payment of tax at the rate of eight per cent per annum whereas the assessing authority found that the tax has to be assessed at the rate of 12 per cent per annum and exemption claimed by the petitioner is not available to them. The question is as to whether under such circumstances it can be said that petitioner has filed a false or incorrect return for the evasion of tax. Therefore, penalty as contemplated u/s 43(1), is liable to be imposed?

6. Section 43(1) of the M. P. General Sales Tax Act reads as under:

Section 43. Power of Commissioner or appellate authority to impose penalty. -(1) If the Commissioner or the appellate authority, in the course of any proceedings under this Act is satisfied that a dealer has concealed his turnover or the aggregate of purchase prices in respect of any goods or has furnished inaccurate particulars of such sales or purchases, as the case may be, or has furnished a false return, the Commissioner or the appellate authority, as the case may be, may, after giving the dealer a reasonable opportunity of being heard direct that the dealer shall, in addition to the tax payable by him, pay by way of penalty a sum, which shall be,...

(Here italicised)

7. A perusal of the aforesaid Clause indicates that the power to recover penalty in accordance with the rates stipulated therein will arise only if it is found in a particular case that the assessee has submitted a false return or furnished inaccurate particulars.

8. That being so, the question is as to whether the return submitted by the

petitioner in the facts as narrated hereinabove can be termed as a false return.

9. The question as to what constitutes false return and under what circumstance penalty u/s 43(1) can be imposed, is considered by the Division Bench of this Court in the case of Dadabhoy''s New Chirimiri Ponri Hill Colliery Co. Private Ltd. [1979] 44 STC 100 and Chief Justice G.P. Singh (as he then was) in the aforesaid judgment in para 4 has observed as under:

...The point however, is whether, even in such a situation, it can be said that the assessee filed ''false returns'' within the meaning of Section 43(1) by claiming exemption in respect of sales to electrical undertakings. The form of return does not contain any column for exemption. The turnover and the sales were fully disclosed in the returns filed by the assessee. The sales to electrical undertakings in respect of which the assessee claimed exemption were also fully disclosed. The assessee took only a legal plea that the sales to electrical undertakings were not taxable. In our opinion, when the facts are fully disclosed in a return and are misstated, the raising of a legal plea of exemption cannot make the return a false return within the meaning of Section 43(1), even if the assessee knew that the plea of exemption was not sustainable. A return will be a false return when some statement of fact in the return is falsely made. But when the facts are fully and correctly disclosed, raising of a false legal plea cannot make the return false. The assessing authority can, in such cases, easily assess the correct amount of tax on the facts disclosed by the assessee after negativing the untenable legal plea. In Agricultural Implements Dealers Syndicate, Morena v. Commissioner of Sales Tax [1971] 27 STC 227, a Division Bench of this Court held that merely putting forward a legal plea in the return does not amount to making a false return. We fully agree with this view. As earlier stated, to make Section 43(2) applicable, falsity should be in the disclosure of facts required to be stated in the return and not in taking a legal plea.

(Here italicised)

10. In the present case, the petitioner has disclosed all the fact with regard to turnover and income from the sales and other aspect of the matter but claimed exemption by paying tax at the rate of eight per cent per annum on the basis of certain condition stipulated in the said notification. There is no material available to show that the petitioner had submitted a false return. Merely claiming exemption on the basis of a notification issued will not come within the purview of "making or submitting a false return". A false return, as indicated hereinabove by the Division Bench, will be one in which a false statement of fact is made but when all the facts are fully stated and disclosed, a false legal plea taken will not render the return to be a false return. The plea taken in this particular case by the petitioner claiming payment of tax at the rate of eight per cent per annum may be false legal plea taken by them for the purpose of claiming payment of tax at the lower rate. That being so, I am in full agreement with the contentions put forth by learned Counsel for the petitioner. This is not a case where it can be said that petitioner has submitted a false return within the meaning of Section 43(1)

of the Act.

11. Accordingly, in the facts and circumstances of the case, I find no justification for imposition of penalty on the petitioner. The petitioner has only taken a legal plea in the return for exemption, no case warranting imposition of penalty is made out. Accordingly, in the facts and circumstances of the case, this petition is allowed. The imposition of penalty order by the authorities as contained in annexures P1 and P12 dated December 30, 2002 are quashed.

12. Petition stands allowed and disposed of with the aforesaid order, without any order so as to costs.

