(2014) 09 MP CK 0082

In the Madhya Pradesh High Court

Case No : Writ Petition No: 14038/2014

Evergreen Construction	APPELLANT
Vs	
State of M.P.	RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2014) 09 MP CK 0082

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Mukesh Agrawal, Advocate for the Appellant; Rahul Jain, Deputy Advocate General, Advocate for the Respondent

Judgement

1. Calling in question tenability of order-dated 27.6.2014 ? Annexure P/1, imposing Value Added Tax on the petitioner for the period 1.4.2011 to 31.3.2012, petitioner has filed this writ petition.

2. Petitioner has been awarded a contract by Reliance Infrastructure Limited (hereinafter referred to as ?RIL?) and is engaged in manufacturing and supply of Ready Mix Concrete to RIL. For the said purpose, petitioner is only required to purchase ?sand? after payment of royalty. The other material required for making the Concrete Mixture like stone, cement etc are not purchased by the petitioner, but they are supplied free of cost to the petitioner by RIL. It is the case of the petitioner that right from the year 2008, petitioner is carrying out the aforesaid contract activity and till 2010 no tax was being recovered from the petitioner, but from the Financial Year commencing from 1.4.2011, tax is being imposed. It is pointed out that earlier when such a tax was imposed, petitioner filed an appeal and in the appeal the imposition of tax was quashed by the Appellate Authority, based on the principle of law laid down by the Kerala High Court in the case of Construction Company and Another Vs. State of Kerala, . It is said that this appellate order in the case of the petitioner, filed as Annexure P/2, has attained finality and inspite thereof ignoring the same, as again tax is being imposed, without taking recourse to the remedy of appeal, this writ

petition has been filed seeking quashment of the assessment order.

3. Shri Rahul Jain, learned Deputy Advocate General, objected to the maintainability of this writ petition and argued that when a statutory appeal is available to the petitioner before the Appellate Authority, the petitioner should approach the Appellate Authority.

4. Shri Mukesh Agrawal, learned counsel for the petitioner, submits that for filing the appeal the petitioner is required to pay the pre-deposit, but in the facts and circumstances of the case when the issue is already resolved by the Appellate Authority and when the petitioner is not liable to pay any amount and if he is relegated to take recourse to the remedy of appeal, it is argued that atleast exemption from payment of pre-deposit should be granted and in support thereof, learned counsel invites our attention to an order passed in the case of M/s Ram Kumar and Suresh Kumar Vs. State of Madhya Pradesh, Writ Petition No. 12196/2012, wherein on 3.9.2012, a Coordinate Bench of this Court granted exemption from payment of pre-deposit amount in the matter of filing an appeal under the VAT Act.

5. After considering the rival contentions, we are of the considered view that when a statutory remedy of appeal is available, the petitioner should take recourse to the said remedy and it would be for the Appellate Authority to consider the grievance of the petitioner.

6. As far as the question of payment of pre-deposit amount is concerned, in view of the statutory requirement contemplated under sections 45(6) and 46 of the VAT Act, as is applicable in the State of Madhya Pradesh, payment of the pre-deposit is a pre condition, but looking to the peculiar facts and circumstances of the case and particularly the fact that once in the Appellate Order passed recently on 1.2.2014 ? vide Annexure P/2, appeal of the petitioner has been allowed, we deem it proper to grant liberty to the petitioner to submit a bank guarantee with regard to the pre- deposit amount.

7. Accordingly, this petition is disposed of on the following terms:-

A) On the petitioner?s filing a certified copy of this order alongwith furnishing the requisite bank guarantee within a period of 30 days, the Appellate Authority shall take the same on record and decide the appeal on merits in accordance with law, and shall not dismiss it on the ground of delay.

B) As the limitation for filing of the appeal will only expire today, we condone the delay of 30 days in filing of the appeal.

C) It may further be clarified that the order passed in this case with regard to grant of exemption and applicability of sections 45(6) and 46 of the VAT Act, has been passed strictly in view of the peculiar facts and circumstances of the case and shall not be treated as a precedent. ??

8. With the aforesaid observations, the petition stands disposed of.

9. CC as per rules.

