
(2006) 12 MP CK 0011
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4727 of 1999

Ghai Construction Company

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 27(6)

Citation : (2007) ILR (MP) 349 : (2007) 2 MPLJ 128

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : H.S. Shrivastava, with Sandesh Jain, for the Appellant; Ku. Jay Laxmi Ayer, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

The Petitioner is a contractor engaged in civil construction. It was awarded contract of construction of five minor railway bridges on Chhindwara Parasia Railway Line of the Central Railway vide letter dated 26-1-1995. Six months period was granted for completion of the work including the period of rainy season. After completion, the Petitioner made an application to the Assistant Commissioner of Commercial Tax, Itarsi on 27-12-1997 for assessment of the liability towards commercial tax. It was informed by the Petitioner that a sum of Rs. 55,313 on 4-10-1997 vide Chalan contained in Annexure C/1 has already been deposited. It is stated in the petition that the Petitioner-Firm had earlier executed certain work under Registration Certificate No. 005/HSD/2284/9 and after completion of the work by the end of 1993 it had applied for cancellation of the registration certificate and the same was cancelled on 1-4-1995.

The total work of construction in question was of Rs. 2,73,24,450/- and the sale price of the goods utilized in the execution of the works contract was worked out at Rs. 1,74,98,836.79 and after deducting the sale of tax paid goods the taxable

turn over was shown at Rs. 9,77,197.51 and the tax payable was shown at Rs. 55,313/-

The Respondent No. 2 did not accept the figures submitted by the

In the return, it has been contended by the Respondents that the Petitioner was not a registered dealer at the relevant time. He had already undertaken similar work in the past and was well acquainted with the requirement regarding its registration under the provisions of Commercial Tax Act. The Petitioner did not apply for registration though he was awarded a contract involving a huge money. Similarly, the Petitioner did not maintain the books of accounts in support of his claim, therefore, figures of total receipt in the sum of Rs. 2,73,24,450.65 has been accepted by the Assessing Authority on the basis of payment certificates. The figures of purchase made by the Petitioner in respect of Steel. Cement. Hardware. Timber. Sand and Metal are obtained from the purchase vouchers presented by the Petitioner. The Petitioner did not maintain regular books of accounts like ledgers or cash books. The Assessing Authority in these circumstances apportioned the total receipts in the ratio of 60% towards the cost of material and 40% towards the cost of labour, in view of the aforesaid and other details mentioned in the return, it is stated that the tax has rightly been levied and the penalty was rightly imposed. Moreover, taking into consideration the facts and circumstances, the revisional authority has already reduced the tax and penalty and no more interference is warranted in the case.

Shri Shrivastava, learned Sr. counsel relying upon the decision of the Supreme Court in the case of Hindustan Steel Ltd. v. The State of Orissa reported as 1970 (25) S.T.C. 211 contended that penalty should not be imposed merely upon proof of default in registering as a dealer. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances, it has been further contended in view of the Apex Court's decision in the case of Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, that before imposition of penalty the entirety of circumstances must reasonably point to the conclusion that the Assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. Accordingly, the imposition of penalty is not justified in the circumstances and the same is liable to be quashed.

On the other hand Ku. Jai Laxmi Aiyer. learned Panel Lawyer contended that the Assessing Officer on the basis of material before him made a proper assessment and it cannot be said that there was no basis for penalty.

After considering the submissions made by the learned Counsel for the

(i) Admittedly, the Petitioner was earlier engaged in the same kind of work and was having registration. It was cancelled on 1-4-1995 on its own application. Thus, the Petitioner was well acquainted to the requirement of registration when he received the work order on 22-6-1995 for construction work with an estimate

of Rs. 2,73,24,450/-. The relevant period for the purposes of tax was 22-6-1995 to 31-3-1996. It was contended by the Petitioner that since the period prescribed for completion of work was very short and he was required to complete the work within the prescribed period, he could not obtain registration. This was not believed by the Commercial Tax Officer who further did not accept the figures provided by the Petitioner. Accordingly, best judgment assessment was made and the tax was worked out at Rs. 1,15,938/-.

(ii) Section 27(6) of the M.P. Vanijyik Kar Adhiniyam, 1994 provides for penalty on satisfaction that the dealer has wilfully failed to apply for registration. This provision is reproduced below for convenience.

27(6)(a) - If upon any information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax in respect of any period has failed to apply for registration, the Commissioner shall within (one calendar year) from the date of completion of the proceedings under Sub-section (1) of Section 6 after giving the dealer a reasonable opportunity of being heard, proceed in such manners may be prescribed, to assess to the best of his judgment the amount of tax due from the dealer in respect of the whole of such period and the Commissioner may if he is satisfied that the dealer has wilfully failed to apply for registration direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum (not less than two times but not exceeding five times) of the amount, (b) In respect of periods subsequent to the period referred to in Clause (a), the amount of tax due from a dealer referred to in the said clause shall be assessed separately for each year.

(iii) After issuing a notice to the Petitioner, penalty was imposed in accordance with statutory provisions on the basis of the material on record. Since the Petitioner was well aware of the requirement of the registration and had made wilful default in getting itself registered despite work order of Rs. 2,73,24,450/-. the authority was well within its power to impose the penalty which was reduced in revision by Rs. 20,000/- after taking into consideration the entire facts and circumstances. The Hon'ble Supreme Court in the case of Commissioner of Sales Tax Madhya Pradesh v. H.M. Esuf Ali H.M. Abdul Ali, Indore reported as 1973 VKN (6) 240 has observed as under:

It may be seen that the Sales Tax Officer had material before him to find out how much turn over had escaped assessment during a period of 19 days. On the basis of that material he estimated the escaped turnover for the entire year, hence it cannot be said that there was no basis for estimate made by the Sales Tax Officer. It may be that his estimate was an over estimate or an under estimated but that cannot be said that the estimate was without any basis. In making that estimate there was an element of guess work which was inevitable in the circumstances of the case. If the Sales Tax Officer was compelled to adopt a rule of thumb which in a sense is an arbitrary rule, Assessee was entirely responsible for that situation.

Applying the aforesaid, the order contained in Annexure P/4. as modified vide Annexure P/6 is found be based on material on record and no fault can legally be attributed to the same.

In the result, the writ petition is found to have no substance and the same is hereby dismissed however, without order as to costs.

Writ petition dismissed