
(2008) 03 MP CK 0058
In the Madhya Pradesh High Court

Goel Coal Co.

APPELLANT

Vs

Additional Commissioner of Commercial Tax, Assistant
Commissioner-1, Commercial Tax and State of Madhya
Pradesh

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) ILR (MP) 794 : (2008) 18 VST 28

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.—By this petition under Articles 226 & 227 of the Constitution of India the petitioner has challenged the order dated 20.12.2002 (Annexure P/2) passed by the Assistant Commissioner (I) Commercial Tax, Satna and also the order dated 23.9.2003 (Annexure P/4) passed by the Additional Commissioner of Commercial Tax, Jabalpur in Revision No. 83/R/2003.

2. The petitioner claims to be a partnership firm and a registered dealer engaged in the business of purchase and sale of coal.

3. The Assistant Commissioner initiated proceedings of reassessment against the petitioner u/s 14 of the Entry Tax Act, 1976 (for short 'Act). In the said proceedings it was held that during the period of 1.4.1995 to 31.3.1996 the petitioner purchased the goods from M/s Rewa Fuels Pvt. Ltd, Rewa and M/s Pawan Wires Pvt. Ltd., Panna and did not pay the entry tax on the purchases made by it while effecting the entry of the aforesaid goods. Accordingly, the petitioner was held liable to pay the entry tax to the tune of Rs. 4, 07, 712/-.

4. Feeling aggrieved, the petitioner filed a revision before the Additional Commissioner contending therein that the order passed by the Assistant Commissioner levying the entry tax is apparently illegal since in the bills/invoices

issued to it by the selling dealer, no specification and no rubber seal was put by the selling dealer to the effect that the goods are local goods and entry tax not paid. The Revisional Authority dismissed the revision vide order dated 23.9.2003 (Annexure P/4) holding that non affixure of the rubber seal by the selling dealer will not absolve the petitioner purchasing dealer from paying the entry tax as it would merely attract penalty to be imposed upon the selling dealer. Feeling aggrieved, the petitioner has filed this petition.

5. The case of the petitioner is that in view of Section 7 of the Act read with Rule 7 of the Entry Tax Rules, 1976 (for short ` Rules) the selling dealer was required to affix the rubber seal on the invoices to the effect local goods for the area, entry tax not paid. In the absence of such seal on the invoices he was not required and expected to establish more than to produce the invoices to show that they are not having rubber seal in confirmity of Rule 7 and by production of those bills he had prima facie discharged his burden to establish the fact that the goods sold by the selling agent were not of local origin and therefore, he was not liable to pay the entry tax. He having submitted such bills before the Assessing Officer the liability to pay the entry tax upon him could not have been fastened. In support the petitioner has placed reliance on the Full Bench judgment of this Court passed in the case of Mohansingh and Sons v. Commissioner of Sales Tax, M.P. (2004) 4 STJ 330 in which it has been held in paragraphs 15 & 16:

15. Whenever goods are sought to be moved from one local area to another, prima facie entry tax is liable to be paid by registered dealer who causes the entry. If he seeks exemption from deduction, it is for him to show that the taxable event had not occurred or that the goods had already moved from one local area into another and thereby enabling an inference that taxable event had occurred with liability in another registered dealer to pay tax. That burden can be discharged by the purchasing registered dealer by producing the bill he receives from the selling registered dealer which does not contain the rubber stamp endorsement as required by Section 7 of the Act and Rule 7 of the Rules to the effect that the goods are local goods and entry tax has not been paid. By not affixing the rubber stamp endorsement on the bill, the selling registered dealer makes an implied representation that the taxable event had already occurred with liability already created either in him or in a registered dealer who dealt with the goods previously and that application of proviso (iv) to Section 7(1) is invited. Absence of rubber stamp endorsement on the bill is entitled to some weight and it can be said that by producing such a bill, the assessee has discharged the burden on him.

16. Absence of rubber stamp endorsement cannot, of course, be conclusive. There may be a variety of reasons why the rubber stamp has not been affixed. One is that the goods are really not local goods and tax had been paid or tax liability had been incurred. Another is that seal had not been affixed on account of negligence or carelessness. The assessee certainly can take advantage of the prima facie import of absence of rubber stamp. It is then for the Revenue to

collect materials to indicate that the goods had not subjected entry into the local area and taxable event had not occurred earlier and that absence of rubber stamp is not deliberate and is accidental or negligent.

6. The case of the respondents is that the seller of the goods did not pay the entry tax as it was enjoying the benefit of exemption from payment of entry tax. In the circumstances, the petitioner cannot be absolved from its liability to pay the entry tax. According to the respondents, since there was a seal entry tax exempted goods the non affixure of seal as required under Rule 7 of the Rules would not absolve the petitioner for payment of entry tax.

7. Having heard the learned Counsel for the parties and after going through the bills of the alleged transaction, I am of the view that the contention of the petitioner deserves to be accepted. On a perusal of the bills, I find that though there is seal on it but the same is not in confirmity of the seal required to be affixed u/s 7 of the Act read with Rule 7 of the Rules. There is no mention to the effect that the goods are local goods for the area.

8. In the case of *Ranomal v. State of M.P.* (1985) 18 VKN 53 (M.P.) : 1984 MPLJ 585 it has been held by a Division Bench of this Court that the burden which rests on the dealer is discharged by producing a bill which does not contain rubber stamp endorsement in the nature required to be affixed by the selling dealer u/s 7, as absence of stamp is prima facie proof of the fact that the goods sold by the selling dealer were not of local origin and, therefore, had incurred liability to the entry tax in the hands of the selling dealer. In view of the law laid down in case of *Ranomal* (Supra) and *Mohan Singh* (Supra) the petitioner is entitled to take advantage of the prima facie import of absence of rubber stamp.

9. In the absence of any material collected by the respondents/Revenue to indicate that the goods had not subjected entry in to the local area and taxable event had not occurred earlier, in my considered view, the petitioner who had discharged his burden by producing the bills which had no rubber seal to the effect local goods for the area, cannot be held liable to pay the tax in the absence of any proof to the contrary.

10. Accordingly, the impugned order of reassessment and the order passed by the Revisional Authority holding the petitioner liable to pay the entry tax are liable to be and are hereby quashed. However, the assessing authority shall be at liberty to pass fresh order after collecting the material, if available by supplying the same to the petitioner and after affording opportunity to it to submit its reply.

11. The petition stands allowed. No orders as to the costs.