
(1963) 12 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 286 of 1963

Haji Latif Abdulla

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 16-12-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1965) ILR (MP) 364 : (1964) JLJ 285 : (1964) MPLJ 246 : (1964) 15 STC 182

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

The circumstances in which this application under Articles 226 and 227 of the Constitution of India has been filed are that on 7th June, 1956, the Sales Tax Officer, Raipur, made an order holding that no tax was payable by the petitioner inasmuch as out of the entire gross turnover of Rs. 8,12,114-13-3 as determined by him Rs. 10,234-5-9 represented sales to the registered dealers, goods of the value of Rs. 4,07,651-6-3 were transferred to the head office in Calcutta and the branch office at Nipani, and Rs. 3,94,229-1-3 represented the price of sales made in the course of inter-State trade. The Commissioner of Sales Tax thought that this order of the Sales Tax Officer was prejudicial to the interests of the revenue. He therefore issued a notice to the petitioner in Form No. XXV on 11th April, 1958, for revising u/s 22-B of the C.P. and Berar Sales Tax Act, 1947 (hereinafter referred to as the Act), the order dated 7th June, 1956. The petitioner's objection to the validity of the notice and other objections to the revision of the order dated 7th June, 1956, were rejected by the Commissioner, who on 6th June, 1958, made an order setting aside the order dated 7th June,

1956, of the Sales Tax Officer and remanding the case for a fresh assessment in accordance with the directions given by him. The petitioner then filed an appeal before the Board of Revenue, which was dismissed on 28th October, 1958. Its application u/s 23(1) of the Act for stating the case to this Court was also rejected by the Board of Revenue. Thereupon the petitioner filed an application in this Court u/s 23(2)(b) of the Act for a direction to the Board to state the case and refer to this Court certain questions of law arising out of the Board's order of remand. This application u/s 23(2)(b) was allowed by us on 20th March, 1962, and the Tribunal was directed to state the case and refer to this Court two questions of law. That reference is still pending in this Court.

It appears that while the Tribunal has yet to state the case as directed by this Court on 20th March, 1962, the Sales Tax Officer recommenced assessment proceedings pursuant to the order of remand made by the Commissioner of Sales Tax on 6th June, 1958, and passed an order on 25th June, 1963, assessing the petitioner to sales tax amounting to Rs. 12,078-75 nP. and imposing on it a penalty of Rs. 2,000.

The petitioner's contention is that the Sales Tax Officer had no jurisdiction to make an order of assessment during the pendency of the reference u/s 23 of the Act, and that in any case he should have stayed the assessment proceedings till the disposal of the reference when it was brought to his notice that the reference was pending in this Court. The petitioner also complains that as all along he remained under the bona fide impression that the assessment proceedings would not be resumed until after the reference was answered by this Court he could not produce before the Sales Tax Officer the material he intended to for showing that no sales tax was payable by him. The prayer of the applicant is that the order of assessment dated 25th June, 1963, passed by the Sales Tax Officer be quashed.

Having heard learned counsel for the parties we have reached the conclusion that this application must be dismissed. Shri Dharmadhi-kari, learned counsel for the applicant, argued that the order passed by the Commissioner on 6th June, 1958, remanding the case to the Sales Tax Commissioner for a fresh assessment could not be regarded as a final order when a reference in respect of that order u/s 23 of the Act was pending in this Court and consequently the Sales Tax Officer could not derive any authority to commence any assessment proceedings under the order of the Commissioner. We are unable to accede to this contention. There is nothing in Section 23 to indicate that if a reference to this Court on certain questions of law arising out of the Tribunal's order is made then the operation of the Tribunal's order is held in abeyance or that the reference itself operates as a stay of any proceedings under the Tribunal's order. On the other hand, the provision in Sub-section (7) of Section 23 that tax ordered by the Tribunal to be paid shall, notwithstanding the making of an application u/s 23(1) or any reference in consequence thereof, be payable, points to the fact that the operation of the order of the Tribunal is not suspended if there is a reference to this Court on questions of law arising out of that order. If, as we think, that

notwithstanding the making of a reference the order of the Tribunal remains operative and effective for the time being, then it follows that the Sales Tax Officer had jurisdiction to resume the assessment proceedings as" directed by the Commissioner by his order dated 6th June, 1958. It cannot therefore be contended that the assessment order made by him on 25th June, 1963, was without jurisdiction.

At the same time, we must observe that in the present case, though the Sales Tax Officer was not legally bound to stay the assessment proceedings till the disposal of the reference pending in this Court, both judicial propriety and decorum required that he should have awaited the decision of this Court on the reference. The Tribunal has not yet stated the case, though required to do so as far back as 20th March, 1962. The fact that a reference was pending in this Court was brought to the notice of the Sales Tax Officer by the petitioner. In these circumstances the ugly haste with which the Sales Tax Officer resumed assessment proceedings and passed the assessment orders furnished material to the petitioner for the comment that the object of the taxing authorities in making the assessment without stating the case to this Court was only to thwart the reference. We are not disposed to think that the Sales Tax Officer believed that if by the answers rendered by this Court in the reference the remand order becomes illegal, still the order of assessment made by him on 25th June, 1963, would stand. If he acted in the making of the assessment order with this idea, then he was clearly mistaken. The anxiety of any Sales Tax Officer to make an order of assessment is understandable, but this anxiety should not be allowed to overreach the limits of judicial propriety and ethics bordering on contempt. In the present case, while making the assessment order, which will certainly not stand if the order of remand made by the Commissioner becomes illegal according to the answers that may be given in the reference, the Sales Tax Officer has only driven the petitioner to the necessity of filing an appeal against the assessment order passed by him. All these proceedings would be to no purpose if the answers that may be given to the questions propounded in the reference cut at the very root of the order dated 6th June, 1958, of the Commissioner and the assessment order made by the Sales Tax Officer on 25th June, 1963. We are informed by the petitioner that the appeal filed by it against the order of assessment dated 25th June, 1963, is still pending and the petitioner has not made the requisite deposit of tax for the admission of the appeal. In these circumstances, we think it would but be proper for the taxing authorities to see that no order of any kind, including an order of the rejection of the appeal for default in payment of the requisite tax deposit, is passed till the reference is answered by this Court. Before us the learned Government Advocate stated that this would be done. Shri Dharmadhikari submitted that as the petitioner could not produce before the Sales Tax Officer the material he intended to for showing that he was not liable to pay sales tax as he remained under the impression that the assessment proceedings would not be resumed until after the disposal of the reference a direction should be given to the appellate

authority that the petitioner be allowed to produce this material. No such direction can be given by us in these proceedings, but we have no doubt that when the appeal filed by the petitioner comes up for hearing and the petitioner makes a prayer for being allowed to produce additional material it will receive proper and due consideration at the hands of the appellate authority.

For these reasons this petition is dismissed. We leave the parties to bear their own costs. The security deposit shall be refunded to the petitioner.