(2013) 05 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No. 771 of 2004 with Writ Petition No''s. 763, 764 and 770 of 2004

Hindustan Lever Ltd. APPELLANT

Vs

Assistant Commissioner, Commercial Tax and Others RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 64 VST 241

Hon'ble Judges : Shantanu Kemkar, J;S.C. Sharma, J

Bench : Division Bench

Advocate : P.M. Choudhary, for the Appellant; Mini Ravindran, Deputy Government Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Shantanu Kemkar, J.—This order shall also govern disposal of Writ Petition Nos. 770, 764 and 763 of 2004, as according to the learned counsel for the parties, the facts and the question of law involved in all these writ petitions are identical. For the sake of convenience, facts are taken from Writ Petition No. 771 of 2004.

2. Challenging the order dated April 21, 2003 passed by the Additional Commissioner, Commercial Tax, Indore, dismissing the petitioner''s revision petition filed u/s 62 of the Madhya Pradesh Commercial Tax Act, 1994 in respect of the period from April 1, 1991 to March 31, 1992 (State), the petitioner has filed this petition under article 226/227 of the Constitution of India.

3. Brief facts necessary for disposal of this petition may be stated that the petitioner-company is engaged in the business of manufacture, marketing and selling in consumer products namely toilet soap, washing soap, face wash and detergents, etc. It has a depot at Indore in Madhya Pradesh, which is a registered dealer. It is being assessed by the State as well as Central sales tax under the provisions of relevant statutes. The case of the petitioner is that it had furnished all the returns in respect of its turnover liable to tax in the State of

Madhya Pradesh for the period from April 1, 1991 to March 31, 1992. The first two quarterly returns were submitted within the prescribed time and the other two quarterly returns were submitted with marginal delay of about four--six days. The tax was paid on the basis of the return. The assessment of the said period completed by order dated February 24, 1995 passed by the Assistant Commissioner, Commercial Tax, formerly known as Assistant Commissioner of Sales Tax. According to the petitioner, it had furnished all possible details before the assessing authority, but some of the details could not be furnished and an opportunity was sought from the authority so as to enable the petitioner to reconstruct the data, which was lost because of failure of the computer. The petitioner submitted as many as 1067 declarations, but as regards other declarations, though a list was filed for all the declarations, but the details could not be furnished. The assessing authority completed the assessment and passed the order dated February 24, 1995 rejecting the petitioner''s prayer to grant further time on the ground of limitation. The said authority rejected the petitioner''s claim for deductions in the absence of requisite declarations and determined additional demand of Rs. 12,33,339 in the State case and Rs. 1,07,56,526 in Central case.

4. Aggrieved by the aforesaid order dated February 24, 1995 (annexure P/1), the petitioner filed an appeal before the Appellate Deputy Commissioner, Commercial Tax. The Appellate Deputy Commissioner, Commercial Tax, Indore, allowed the petitioner''s appeal vide order dated January 29, 1996 (annexure P/3) and while remanding the matter directed the assessing authority to make aware the petitioner with the reasons for making best judgment assessments. He also directed to complete the fresh assessment, after giving a reasonable opportunity to the petitioner to submit explanation against the proposed additions.

5. In the fresh proceedings, the petitioner contended that all the requisite details and materials were already submitted at the time of making assessment and they are in File-B of the Department. However, the assessing authority rejected the petitioner''s contentions and maintained its earlier order dated February 24, 1995 vide order dated December 31, 1998 (annexure P/4). The said order was challenged by the petitioner once again before the first appellate authority, i.e., Appellate Deputy Commissioner, Commercial Tax, Divisions No. 1 and 2, Indore. The appellate authority disposed of the appeal filed by the petitioner vide order dated September 15, 1999 (annexure P/5) making the following observations:

6. Pursuant to the aforesaid order, the assessing authority passed a fresh order on June 28, 2002 by observing that except of calling B--file from the Department, no other document has been filed by the petitioner so as to enable him to take a different view. The said order dated June 28, 2002 (annexure P/6) passed by the assessing authority was once again called in question by the petitioner by way of a revision petition filed before the Additional Commissioner of Commercial Tax. Before the revisional authority, the petitioner filed an application (annexure P/9) making a prayer to the revisional authority to grant

the petitioner sufficient time to reconstruct the data relating to declaration so that the same can be submitted before the revisional authority.

7. The revisional authority, however, dismissed the petitioner''s revision vide order dated April 21, 2003 (annexure P/10). The revisional authority held that in the application the petitioner did not specify the period which will be required by it for reconstructing the data and submitting the details. By observing thus, the revision was dismissed maintaining the order passed by the assessing authority. Feeling aggrieved, the petitioner has filed this petition.

8. The respondents have filed the return and have justified the passing of the impugned orders by the assessing authority and the revisional authority. According to the respondents, the authorities had granted sufficient opportunity to the petitioner to submit the documents, but it failed to avail of the same.

9. Having considered the averments made by the parties in the petition and in the return and after considering the arguments advanced by their counsel, we find that the Appellate Deputy Commissioner, Commercial Tax, Indore, by order dated September 15, 1999 (annexure P/5) had specifically directed the assessing authority to look into the B-file of the cases and thereafter decide the matter on the merits. It was further observed that if B-file is not available then the appellant be directed to submit a duplicate copy of the information and declaration which were submitted by it. The aforesaid directions issued by the appellate authority have not been complied with by the assessing authority in its correct perspective inasmuch as no finding has been recorded by the assessing authority about the availability or non-availability of B-file. True it is the petitioner also did not submit the duplicate documents, but as it is clear from the order dated September 15, 1999, it was the duty of the assessing authority to have directed the appellant in case of non-availability of B-file, to submit duplicate. It appears that no such specific directions were issued by the assessing authority to the petitioner to submit the duplicates of the declaration and other relevant information. Thereafter, before the revisional authority, when the petitioner had submitted an application seeking time to produce the duplicates, the prayer should have been allowed, but it was denied on the ground that no specific period is mentioned in the application within which the petitioner would submit duplicate copy of the declaration and other relevant material. This specific time-limit if not asked for by the petitioner could have been fixed by the revisional authority itself.

10. In the circumstances, we are of the view that this petition deserves to be disposed of by setting aside the order passed by the revisional authority with a liberty to the petitioner to submit duplicate declarations and supporting material before the revisional authority within two months from the date of appearance of the petitioner before the revisional authority. The petitioner shall appear before the revisional authority on June 26, 2013.

11. The petition stands disposed of. C.c. within a week.