

(1983) 02 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.P. No. 175 of 1983

Iron Steel Stock Holders Association

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 02-02-1983

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 226

Citation : (1985) 58 STC 205

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : M.S. Chowdhary, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard Shri M. S. Chowdhary, learned counsel for the petitioner, on the question of admission.

2. In this petition the petitioner has prayed that the order passed by the respondent No. 2, the Commissioner of Sales Tax, M. P., Indore refusing to exercise jurisdiction vested in him u/s 39(1) of the M. P. General Sales Tax Act (for short "the Act") be quashed and the Commissioner be directed to restore the revision proceedings and after hearing the petitioner dispose of the same in accordance with law. The petitioner has also prayed that the respondents be directed to refund the tax levied and collected from it without the authority of law being tax paid and collected under mistake of law. The petitioner during the relevant years carried on the business in sale and purchase of iron and steel goods. It was duly registered under the Act. The petitioner was assessed to sales tax for the assessment years 1965-1966 to 1971-72 on the basis of the returns filed by the petitioner. According to the petitioner sales tax was imposed on the turnover relating to sale of galvanized plain and corrugated iron sheets at the rate of 6%, 7% and 8% according to the rates in force for the relevant periods and the amount of tax was realised from the petitioner. This Court in the case of

Commissioner of Sales Tax, M.P. v. Phoolchand Hirachand Kothari (M.C.C. No. 17 of 1978 decided on 21st August, 1980) held that the galvanized plain and corrugated iron sheets are declared goods covered by Clause (iv) of Section 14 of the Central Sales Tax Act and have to be taxed at concessional rate of 3%. After the said decision of this Court the petitioner submitted an application before the Commissioner of Sales Tax purporting to be u/s 39(1) of the Act requesting him to exercise his revisional powers suo motu and to refund the tax illegally collected from the petitioner on the turnover of galvanized plain and corrugated iron sheets for the aforesaid assessment years. The Commissioner of Sales Tax passed an order which was communicated to the petitioner by letter dated 24th June, 1982 (annexure P. 16) by the Assistant Commissioner holding that the application submitted by the petitioner was examined and the Commissioner did not find any suitable reason to suo motu exercise the revisional powers of the Commissioner u/s 39(1) of the Act. Aggrieved by the said order passed by the respondent No. 2 the petitioner has submitted this petition praying for the aforesaid reliefs.

3. Having heard learned counsel for the petitioner at length we have come to the conclusion that this is not a fit case for invoking the extraordinary powers of this Court under Article 226 of the Constitution. It is true that as- held in L. AR. Arunachalam Pillai and Sons v. State of Tamil Nadu [1980] 45 STC 109 (FB), The Board of Revenue, Madras Vs. Raj Brothers Agencies, , relied upon by the learned counsel for the petitioner, it was open to the petitioner to move the Commissioner to exercise his powers suo motu u/s 39(1) of the Act. However, the Commissioner has not refused to exercise jurisdiction u/s 39(1) of the Act on the ground that the petitioner has no right to apply to the Commissioner to exercise his powers suo motu but he has rejected the application of the petitioner on the ground that there were no suitable reasons for the exercise of the suo motu powers u/s 39(1) of the Act. In Paper Products Ltd. v. Assistant Commissioner, Commercial Taxes [1973] 32 STC 208 on which strong reliance was placed by the learned counsel for the petitioner, also it is held that it is open to an assessee" or the Revenue to bring to the notice of the revising authority any error made by the subordinate authorities. It is upto the revising authority to consider whether the case is a fit one for exercising its revisional jurisdiction. As in the instant case the Commissioner has held that it is not a fit case in which the revisional powers vested in the Commissioner should be exercised suo motu in our opinion it is not a fit case for invoking of the extraordinary powers of this Court under Article 226 of the Constitution.

4. As regards the alternative relief of a direction to the respondents to refund the amount of tax paid by the petitioner, the learned counsel for the petitioner conceded before us that a remedy of a suit is available to the petitioner.

5. In the circumstances considering the fact that the petitioner was assessed on the basis of returns voluntarily filed by him and the assessment of the petitioner were completed long back, in our opinion it is not a fit case for ordering refund of

the amount of tax paid by the petitioner in a petition under Article 226 of the Constitution.

6. The petition is, therefore, dismissed summarily without notice.