(2008) 01 MP CK 0015

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 849 of 2003, 2667, 2668 of 2004, 4722 of 2006

Jai Mahadev Traders, Gwalior — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 44(1)

Citation : (2008) ILR (MP) 765 : (2008) 2 MPJR 199 : (2008) 2 MPLJ 109

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : N.K. Jain, with Arvind Dwivedi, for the Appellant; Praveen Newaskar, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.

As common questions are involved in all these cases and as the legal questions are also identical, all the four petitions are being disposed of by this common order.

Petitioner in all these petitions have challenged various orders passed by the Commercial Tax Authority assessing the Commercial Tax on the petitioner establishment for various periods. Grievance of the petitioners are that initially tax was assessed and the assessment orders were passed for various period. Petitioner had purchased goods from registered dealer on which local tax were paid by the dealers and therefore, goods so purchased were exempted. However, after the assessment orders were passed the same is reviewed and re-assessment ordered on the ground that the certificate of registration of the dealer from whom purchase have been made by the petitioners are cancelled, retrospectively, assessment were re-opened and after re-opening of the assessment without granting proper opportunity to the petitioner, orders of re-assessment have been passed and the revision filed by the petitioners have also been dismissed without taking note of various irregularities committed in the matter of re-assessment. It is pointed out by Shri N.K. Jain, learned senior counsel that when the transaction in question for which re-assessment took place the certificate of registration of the dealer from whom purchase was effected had not been cancelled. Placing reliance to a judgment of a Division Bench of this Court in the case of Commissioner, Sales Tax vs. Govind Trading Co. Morena decided on 19th September, 1995 and reported in 16 TLD (1996) 185, Shri Jain submits that if on the date of transaction dealer was having a valid registration then on the ground of cancelling of registration on a subsequent date retrospectively, transaction made cannot be re-opened and tax assessed on the ground that registration of the dealer stood cancelled as on the date of transaction. Accordingly, Shri Jain submits that in all these cases action taken on the ground of retrospective cancellation of dealers registration is unsustainable. That apart it is emphasized by Shri Jain that order of re-assessment have been done without hearing the petitioner and without granting them any opportunity to give their say in the matter.

Respondents have filed the return and have refuted the aforesaid and it is only stated by them that finding irregularities in the matter, re-assessment was ordered and as after re-assessment, petitioner were granted opportunity of hearing during the proceeding of revision, there is no irregularities in the matter. It is pointed out by Shri Praveen Newaskar, learned Deputy Government Advocate for respondents that in some of the transaction registration certificate is cancelled prospectively and transaction in question were entered into after cancellation of the registration and therefore, contention of Shri N.K. Jain, learned counsel for petitioner is refuted.

I have heard learned counsel for parties and perused the records.

As far as re-opening of the assessment and proceeding to decide the same by re-assessment is concerned, records indicate that proper notice and opportunity of hearing have not been granted to the petitioner this itself is an infirmity. That apart in most of the cases it is seen that registration certificate of the registered dealer from whom petitioners had made purchases were cancelled retrospectively for example in W.P. 4722/06 petitioner M/s Jai Mahadev Traders had purchased certain goods from Laxmi Trading Co. Datia during the period of 26-3-1992 to 31-3-1992, during this period the licence and registration certificate of Laxmi Trading Co. Datia was not cancelled, the licence of this firm was cancelled retrospectively w.e.f. 12-8-1991 vide order dated 20-11-1992. Similarly the registration of one M/s Jagdamba Oil and Floor Mill, Dabra was cancelled on 12-11-1998 with retrospective effect, in doing so transaction entered into by the petitioner with this firm on 10-10-1991 and 11-10-1991 has been held to be with a unregistered firm. Similarly in the case of one M/s Manoj Kumar Dharamdas, Dal Bazar, Lashkar, Gwalior, the registration certificate was cancelled on 23-5-1992 retrospectively w.e.f. 11-8-1991 and in this process the transaction made by the petitioner with this firm on 26-3-1992 and 27-3-1992 has been held to be without payment of tax. These facts clearly demonstrate that there is some force in the contention advanced by Shri N.K. Jain, Sr. Advocate. The said question is considered and answered by a Division Bench of this Court in the case of Govind Trading Company (supra), in the aforesaid case which arose out of reference made by the Department u/s 44(1) of the M.P. General Sales Tax, 1958, question No. 2 referred for consideration reads as under:(2) Whether on the facts and circumstances of the case, the Tribunal was justified in holding that on the particular date of transaction the dealer had a valid registration certificate even though it was subsequently cancelled with retrospective effect.

After taking note of certain judgments rendered in earlier decision in the case of Commissioner of Sales Tax M.P. vs. Roshanlal Gulshanlal, Bhatapara, (1986) 19 VKN 420 the question was answered in para 9 by holding that cancellation of registration of a selling dealer retrospectively would not result in disallowing the deduction claimed by the purchaser if at the time when the transaction took place there was a valid certificate of registration with the selling dealer. It is held that the dealer is entitled to claim deduction irrespective of subsequent cancellation of registration of the selling dealer. Keeping in view of aforesaid principle, it has to be held that transaction made by the petitioners with the various selling dealers at a time when registration certificate of the selling dealers were valid would not effect the deduction claimed by the petitioner if the registration certificate of selling dealer is subsequently cancelled retrospectively. That being so Shri Jain is right in contending that deductions are disallowed on incorrect consideration. However, after scrutiny of the records it is found that in some of the cases the transaction have been effected after the registration was cancelled but in most of the cases transaction were made at the time when registration certificate was valid but was subsequently cancelled. That apart the question of knowledge of the petitioner with regard to cancellation of the certificate and bona fide of the petitioner in entering into the transaction on the assumption that the registration of the dealer is effective and claiming tax deduction on the said ground has to be considered at the time of re-assessment, as the re-assessment orders are passed mechanically without considering these factors that also without giving any opportunity of hearing to the petitioner, all these petitions have to be allowed and matters remanded back to the Re-assessing authority for consideration as indicated hereinabove and after granting opportunity of hearing to the petitioner and to claim exemption on the ground of bona fide belief of entering into the transaction and deciding the same in accordance with law. All these petitions are allowed orders of re-assessment passed by the assessing authority the orders of the revisional authority impugned in all these petitions are quashed. Matter is remanded back to the assessing authority to conduct re-assessment proceedings after taking note of the legal principle as indicated hereinabove and after granting opportunity of submitting their say to the petitioners. Petitioners are entitled to raise all objection as may be permissible under law and the assessing authority is directed to consider the same and decide it by speaking order. Petitioner shall appear before the assessing authority along with certified copy of this order, thereafter, assessing authority shall proceed in accordance with law.

All these petitions are allowed and disposed of with the aforesaid, without any order so as to costs.

