(2014) 07 MP CK 0265

In the Madhya Pradesh High Court

Case No : WP 3893/2014

Jain Chhatrawas APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Madhya Pradesh Value Added Tax Act, 2002 — Section 20(6)(a), 25(1)(a), 6, 9(1)
Madhya Pradesh Vilasita, Manoranjan, Amod Evam Vigyapan Kar Adhiniyam, 2011 — Section 10, 2(1)(l)

Citation : (2014) 07 MP CK 0265

Hon'ble Judges : S.K. Palo, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Pavan Dwivedi, Advocate for the Appellant; Raghvendra Dixit, GA, Advocate for the Respondent

Judgement

1. They are heard.

2. This petition has been filed challenging the orders Annexures P/4,P/5 and P/6.

3. Petitioner has been running a marriage garden. He did not pay the tax in accordance with the provisions of the Madhya Pradesh Vilasita, Manoranjan Amod Evam Vigyapan Kar Adhiniyam, 2011 (for brevity, the "Adhiniyam"). After inspection of the marriage garden of the petitioner, it was found that income of the petitioner''s marriage garden was more than five lacs during the assessment period 1/4/2011 to 26/07/2012, hence, he was liable to pay the tax. A show cause notice was issued to the petitioner. Petitioner himself submitted account books and pleaded that his income from the marriage garden was Rs. 6,80,500/-, hence, he was not liable to pay the tax. Aforesaid contention was rejected by the Authorities and tax of Rs. 61,864/- under best assessment method was imposed against the petitioner for the period 1/4/2011 to 31/3/2012. A penalty of Rs. 1,23,728/- was also imposed against the petitioner under the provisions of section 20(6)(a) of the Madhya Pradesh VAT Act, 2002. An amount of Rs. 20,182 was also imposed as tax for the period 1/4/2012 to

25/7/2012 with penalty of Rs. 40,364. Aforesaid order was challenged by the petitioner in appeal. That has also been dismissed by the authority.

4. Contention of the learned counsel for the petitioner is that income of the petitioner was less than Rs. five lacs, hence, he was not liable to pay the tax. Counsel for the petitioner further submits that penalty could not be imposed against the petitioner.

5. In regard to income of the petitioner, the authority has mentioned the detailed facts in the order. It is mentioned in the order that several marriage gardens were inspected by the authorities and the rent of the marriage gardens was near about Rs. one lac to Rs. five lacs per day. Petitioner only mentioned that he had received an amount of Rs. 6,80,500/- between the period 1/4/2011 to 31/3/2012 and an amount of Rs. 2,22,000/- for the period 1/4/2012 to 25/7/2012 and the entries mentioned by the petitioner were not relied by the authorities.

6. We have perused the findings of facts recorded by the authorities. The findings are based on proper appreciation of facts. Hence, the findings are in accordance with law.

7. It is an admitted fact that the business of the petitioner is covered u/s 2(1)(l) of the Adhiniyam. It is also a fact that petitioner did not register himself in accordance with section 10 of the Adhiniyam.

8. Section 20(6)(a) of the Madhya Pradesh VAT Act, 2002 provides for penalty. The section reads thus :

If upon any information which has come into his possession, the Commissioner is satisfied that any dealer, being liable to pay tax in respect of any period has failed to apply for registration, the Commissioner shall within one calender year from the date of completion of the proceedings under sub-section (1) of Section6 proceed, in such manner as may be prescribed, to assess such dealer and assess him to tax to the best of his judgment in respect of the whole of such period and shall impose upon him, by way of penalty, a sum two times of the amount of tax so assessed.

9. It was obligatory on the part of the petitioner to register himself for the assessment year 1/4/2011 to 31/3/2012. Admittedly, the petitioner was not registered, hence, he has made himself liable for penalty.

10. Hon''ble Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, has held as under in regard to imposition of penalty u/s 12(5) of Orissa Sales Act (14 of 1947) :-

7. Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of a

quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

11. Hon''ble Supreme Court in Kesar Enterprises Ltd. Vs. State of U.P. and Others, has held that imposition of penalty is a quasi judicial function and the rules of natural justice would be applicable in the proceedings of imposition of penalty. Hon''ble Supreme Court has held as under :-

31. Undoubtedly, action under the said Rule is a quasi-judicial function which involves due application of mind to the facts as well as to the requirements of law. Therefore, it is plain that before raising any demand and initiating any step to recover from the executant of the bond any amount by way of penalty, there has to be an adjudication as regards the breach of conditions (s) of the bond or the failure to produce the discharge certificate within the time mentioned in the bond on the basis of the explanation as also the material which may be adduced by the person concerned denying the liability to pay such penalty. Moreover, the penalty amount has also to be quantified before proceedings for recovery of the amount so determined are taken.

12. In the present case, the authority has imposed the maximum penalty of two times of the amount of tax assessed. However, no reasons have been assigned in imposing maximum penalty.

13. Looking to the aforesaid facts of the case and the nature of the amount of tax, in our opinion, it would be just and proper if the impugned penalties are reduced to the amounts equal to the amounts of the tax assessed, i.e. Rs. 61,864/- and Rs. 20,182/-, totalling Rs. 82,046/-.

14. Hence, the impugned orders passed by the Authorities are modified to the extent that imposition of tax is hereby upheld, however, the penalties, a sum of two times of the amounts of tax assessed, is reduced to the amount of tax assessed, i.e. Rs. 61,864/- and Rs. 20,182/-.The total liability of the petitioner is at Rs. 1,64,092/- (Rs. one lac, sixty four thousand ninety two only).

15. Petition is disposed of with the aforesaid.

16. No order as to costs.