Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 24/08/2026

(1983) 07 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 110 of 1982

J.K. Textiles — APPELLANT

Vs

Additional Sales Tax Officer — RESPONDENT

Date of Decision : 08-07-1983

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1984) 57 STC 95

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

Bench : Division Bench

Advocate : R.G. Waghmare and R.R. Waghmare, for the Appellant; S.R. Joshi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, J.—This is a petition under Article 226 of the Constitution of India.

2. The material facts giving rise to this petition briefly are as follows : The petitioner is a partnership firm carrying on business of sale and purchase of cotton waste yarn at Indore. For the assessment year 1971-72 the petitioner filed return and the respondent assessing authority, by its order dated 13th February, 1975, passed an order of assessment. Thereafter the respondent, acting in exercise of its powers u/s 19(1) of the M. P. General Sales Tax Act, 1958 (hereinafter referred to as the Act), issued notice to the petitioner to show cause why the petitioner should not be reassessed. The petitioner showed cause but by the order dated 28th May, 1976, the respondent reassessed the petitioner. On appeal the Appellate Assistant Commissioner remanded the case to the respondent for deciding it in accordance with the directions contained in the order passed by the Appellate Assistant Commissioner. Thereafter, the respondent examined the matter in the light of the order of the Appellate Assistant Commissioner and restored the order of assessment dated 13th February, 1975. However, the respondent again issued notice (annexure G) to the petitioner on 26th December, 1981, u/s 19(1) of the Act to show cause as to

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jk-textiles-appellant-hash-additional-...

why the petitioner should not be reassessed. The petitioner contends that the respondent has no jurisdiction to issue the notice (annexure G) after the expiry of five years from the date of original assessment. The petitioner has, therefore, filed this petition.

3. In the return filed on behalf of the respondent, it was contended that the notice (annexure G) issued by the respondent was valid and that the period of limitation would commence from 3rd May, 1977, when the order of reassessment was passed, whereby the original assessment dated 13th February, 1975, was restored. It was urged that the notice (annexure G) having been issued within the period of five years from 3rd May, 1977, the respondent had jurisdiction to issue the notice.

4. Shri Waghmare, the learned counsel for the petitioner, contended that the notice issued by the respondent u/s 19(1) of the Act was barred by limitation as it was issued after the expiry of five years from the date of the original order of assessment. Reliance was placed on the decision of this Court in Jeewakkhan Musabhai v. Commissioner of Sales Tax, M. P. (1970) 3 VKN 51. In reply Shri Joshi, the learned Government Advocate, relied on the decision in Commissioner of Sales Tax, M.P. v. H. M. Esufali 1973 MPLJ 858 (SC).

5. Having heard the learned counsel for the parties, we have come to the conclusion, that this petition deserves to be allowed. The only question for consideration is whether the notice (annexure G) was issued within the period provided by Sub-section (1) of Section 19 of the Act. As held by this Court in J eewakkhan''s case (1970) 3 VKN 51 the expression "order of assessment" occurring in Section 19(1) of the Act cannot be regarded as including within its meaning an order of reassessment. We respectfully agree with that decision. The decision in Esufali''s case 1973 MPLJ 858 (SC) is distinguishable on facts. In that case, the question for consideration before the Supreme Court was whether the assessing authority had power to make a'' best judgment assessment u/s 19(1) of the Act. It was in that context that the Supreme Court held that reassessment was nothing but fresh assessment. The question of limitation did not arise directly or indirectly in that case. That question directly arose in J eewakkhan''s case (1970) 3 VKN 51 and no decision taking a view contrary to that taken in J eewakkhan''s case. (1970) 3 VKN 51 was brought to our notice. It must, therefore, be held that for initiating reassessment proceedings for the second time, time commences to run from the date of the order of assessment and not from the date of order of reassessment. In this view of the matter, the reassessment proceedings in this case initiated by notice (annexure G) dated 26th December, 1981, must be held to be without jurisdiction.

6. For all these reasons, this petition is allowed. The notice dated 26th December, 1981 (annexure G), the proceedings for reassessment commenced thereafter and the order of reassessment passed in that behalf, are all quashed. Parties shall bear their own costs of this petition. Security amount, if any, shall be refunded to the petitioner.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jk-textiles-appellant-hash-additional-...