(2014) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : W.P. No. 178/2008

Krishna and Company — APPELLANT

Vs

State of M.P. — RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Citation : (2014) 07 MP CK 0013

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

Bench : Division Bench

Advocate : N.K. Gupta, Advocate for the Appellant; Vivek Khedkar, Dy. Advocate General, Advocate for the Respondent

Judgement

1. Heard.

2. The petitioner has filed this petition against the order dt. 14.11.2006 passed in Revision No. 14/Gwl/2006 (State) and No. 7/Gwl/2006 (entry tax), and also against the order of assessment dt. 27.1.2005.

3. Initially an order of assessment was passed against the petitioner. He filed a revision and the matter was remanded back. The premises of the petitioner was searched and it was found that the petitioner was liable to pay tax. The petitioner did not have registration in the department. He had sold boulders and the authority on the basis of search quantified the quantity. The petitioner did not produce books of accounts before the authority and the authority granted the benefit of Rs. 10,35,371/- to the petitioner and held that the petitioner was liable to pay tax of Rs. 2,84,129/-.

4. The revisional authority appreciated the finding of facts and granted rebate to the petitioner. It is a fact that the petitioner did not produce accounts books, the petitioner did not have registration with the department and he was in the business of sell of gitti. In such circumstances, in our opinion, the order passed by the revisional authority in regard to assessment of tax liability of the petitioner of Rs. 2,84,129/- is in accordance with law.

5. The authority also imposed a penalty of cost of Rs. 6,00,000/-. The authority further observed in the order that the petitioner filed an application for registration before the department, however, the permanent registration was not issued by the department because it was found that the petitioner did not have stone crusher, hence, he was not in the business of manufacture of gitti. The authority himself recorded a finding that the petitioner was not at fault, however, the authority imposed penalty on the ground that the petitioner did not have registration and he had been selling the gitti.

6. Hon''ble Supreme Court in Kesar Enterprises Ltd. Vs. State of U.P. and Others, has held that while deciding the liability of payment of tax and imposition of penalty, the authority perform a quasi judicial function and it has to consider all the aspects of the matter and Hon''ble Supreme Court 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.

7. Looking to the principle of law laid down by the Hon''ble Supreme Court and the finding recorded by the revisional authority in para 13 of the order dt. 14.11.2006 (Annexure P/1) as mentioned above in this order, in our opinion, the imposition of penalty against the petitioner is illegal.

8. The entry tax has also been imposed against the petitioner by the revisional authority, however, the amount of the tax is Rs. 3005/-.

9. Looking to the meager amount of the entry tax, it would not be just and proper to adjudicate the liability of the petitioner against the entry tax.

10. Consequently, the petition is partly allowed. The impugned order dt. 14.11.2006 (Annexure P/1) in regard to imposition of penalty is hereby quashed, however, imposition of tax by the revisional authority is hereby upheld.

11. No order as to costs.

