(2001) 01 MP CK 0050

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1811 of 1992

Mohit Enterprises APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2001) 122 STC 321

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : P.M. Choudhary, for the Appellant; S. Mukati, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.

1 The petitioner by filing this writ under Articles 226 and 227 of the Constitution of India, seeks quashing of sales tax assessments for the period September 16, 1987 to March 31, 1989, Revenue Recovery Certificate dated December 11, 1991 (annexure P4), cancellation of sales registration certificate dated February 13, 1991 (annexure P9) and the order of revisionary authority dated August 24, 1992 (annexure P11). Yet another relief in the nature of issuance of writ of mandamus is claimed for disposal of revision filed arising out of three assessment orders.

2. Petitioner is a dealer engaged in the business of sale and purchase of hydrogenated oil at Indore. It is a registered dealer both under the State Sales Tax Act as also Central Sales Tax Act.

3. The petitioner was assessed to sales tax for the period September 16, 1987 to December 31, 1987. This assessment was essentially in respect of one transactions with another dealer--Kitchan aid Indore. This resulted in deciding the issue against the petitioner and as a consequence led to issuance of demand

of tax amounting to Rs. 5,24,460. The petitioner felt aggrieved of the assessment orders (three in numbers) filed three revisions to Additional Commissioner, Indore. The petitioner also applied for stay of execution of demand and implementation of assessment orders which were impugned in these revisions. However, the revisionary authority then did not decide the revision nor stay application. In the meantime, on the other hand, the sales tax authorities gave effect to the assessment orders and issued RRC (Revenue Recovery Certificate dated December 11, 1991) (annexure P4) for the recovery of Rs. 5,24,460. Yet another adverse action was taken by the authorities against the petitioner for cancellation of registration certificate dated February 13, 1991 (annexure P9). The petitioner, therefore, filed a revision against an order cancelling their registration certificate to the Deputy Commissioner, Sales Tax, Indore. This revision was dismissed on August 24, 1992 (annexure P11). It is then petitioner filed this petition, inter alia, challenging the impugned assessments (though sub judice in revisions), issuance of RRC, and lastly the order dismissing the revision and upholding the cancellation of registration certificate.

4. During pendency of this petition, on October 7, 1999, the Revisionary Court decided three revisions (copy of these three orders filed on December 13, 2000). By these orders, the revisions were allowed and orders of assessments which are impugned in this writ were set aside. The cases have been remanded to the assessing officer for making fresh assessment in the light of observations made by the revisionary authorities.

5. Heard Shri P.M. Choudhary, learned counsel for the petitioner and Shri S. Mukati, learned Government Advocate for respondents.

6. Having heard the learned counsel for the parties and having examined the entire record of the case, I am inclined to allow this writ. It is essentially on the ground of subsequent event which came into existence pending this petition. When the revisionary authority allowed the revision and set aside the assessment orders, the issue that was raised in the petition no longer survived. In other words, the impugned demand (RRC) and the cancellation of certificate by the revisionary court was essentially based on the assessment orders which had decided the issue against the petitioner. When the assessment orders itself were set aside by the competent revisionary authority, then in that event, this Court has to quash the RRC and the cancellation of certificate for the simple reason that basis for issuance of these two impugned orders, namely, RRC and cancellation of certificate has been totally wiped out. The fresh assessment to be made consequent upon the passing of the revisionary order will give fresh cause of action to the authorities to issue demand if occasion so arises. As the situation exists now, the impugned orders cannot stand and has to be quashed.

7. Accordingly and in view of aforesaid discussion, the petition succeeds and is allowed. Impugned RRC, dated December 11, 1991 (annexure P4), cancellation of registration certificate dated February 13, 1991 (annexure P9) and the order

of revision dated August 24, 1992 (annexure P11) are quashed by issuance of writ of certiorari.

No costs. Security amount, if deposited by the petitioner, be refunded.