(2014) 08 MP CK 0115

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12669/2011

Monte Carlo Construction Ltd. APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2014) 08 MP CK 0115

Hon'ble Judges : Rajendra Menon, J;Alok Verma, J

Bench : Division Bench

Advocate : Mukesh Agrawal, Learned Counsel, Advocate for the Appellant; Rahul Jain, Learned Dy. Advocate General, Advocate for the Respondent

Judgement

1. This writ petition was filed in the year 2011 and in the writ petition, the following reliefs were claimed ;

?7.1 to hold the procedure prescribed under Section 46 of the MP VAT Act 2002 read with Rule 60 of VAT Rules 2006 as regulating the procedure of filing of appeal and its summary rejection as ultra vires and liable to be struck down as arbitrary, ultra vires and unconstitutional since the procedure established is unfair, unjust and unreasonable as there is no power with the appellate authority to waive or reduce the quantum of pre deposit in appropriate cases of undue hardship;

7.2 quash the assessment orders dated 09.03.2011 (P/2 & P3) passed by the respondent no. 2 under Entry tax and VAT Act as being without jurisdiction ;

7.3 pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case."

2. As far as the relief claimed vide Paragraph-7.1 challenging the validity of Section 46 of the M.P. VAT Act, 2002 is concerned, learned counsel prays for withdrawal of this prayer and accordingly, it is not necessary now to go into the said question.

3. We have heard learned counsel for the parties, have gone through the pleadings and documents available on record, so also the material available vide I.A.No. 10378/2014 and the orders passed annexed thereto as Annexure-IA/1 & IA/2.

4. Facts, in brief, go to show that for the purpose of payment of VAT and Entry Tax based on a inspection and search conducted in the petitioner''s premises, an enquiry report dated 17.9.2010 was prepared and based on this enquiry report, proceeding for assessment of Entry Tax and VAT for the assessment year 1.4.2006 to 31.3.2007 was undertaken and the impugned orders Annexure-P2 & P3 dated 9.3.2011 have been passed in the matter of assessing the liability on the petitioner with regard to VAT and Entry Tax.

5. Petitioner has challenged these two orders in this writ petition and the respondents have raised a preliminary objection to say that as against the order passed by the Assessing Officer under Section 21 of the VAT Act, 2002, remedy of appeal is available to the petitioner, therefore, the writ petition is not maintainable.

6. Petitioners say that as they have challenged the constitutional validity of the appellate provision as proved under Section 46 of the MP VAT Act, the petition is maintainable.

7. However, we need not to go into this question because of certain subsequent developments that have came on record as is evident from Annexure-IA/1 & IA/2 filed along with I.A.No. 10378/2014. It is seen that while these matters were pending, separate assessment proceedings under Section 20 of the MP VAT Act 2002 for the same period 2006-07 was undertaken and separate assessment orders were also passed by the competent Assessing Officer. Against the orders of assessment passed under Section 20 of the Act, the petitioners filed appeals before the appellate authority and the appellate authority remanded the matter back to the Assessing Officer for reconsideration. In this regard, records indicate that the Assessing Officer originally passed the order on 22.6.2009, after assessment under Section 20, they were challenged in appeal and the appellate authority remanded the matter back vide order dated 26.9.2011. Based on the remand order, fresh assessment proceedings were held for the same assessment year in the matter of assessment of Entry Tax and VAT and vide orders Annexure-IA/1 & IA/2 dated 31.12.2012, separate orders of assessment have been passed for VAT and Entry Tax. Accordingly, now, for the same assessment year i.e. 1.4.2006 to 31.3.2007 with regard to payment of VAT and Entry Tax, two orders are available. They are Annexure-P2 & P3 dated 9.3.2011 and Annexure-IA/1 & IA/2 dated 31.12.2012.

8. We have gone through all the four orders and we find that in the orders impugned in this writ petition Annexure-P2 & P3 passed under Section 21 of the VAT Act, assessment is undertaken and the same is based on the enquiry report dated 17.9.2010 and in the assessment orders passed on remand vide Annexure-

IA/1 & IA/2 on 31.12.2012, the assessment has been done for the same period not only based on the enquiry report dated 17.9.2010 but also on the basis of other material and documents that came on record in the assessment proceedings. That being so, once the subsequent assessment orders dated 31.12.2012 have been passed for the same assessment year and this assessment order is based not only on the enquiry report dated 17.9.2010 but also the material like account books and other documents that came on record, the respondents/ department is now required to proceed in the matter based on the subsequent orders of assessment passed i.e. 31.12.2012 Annexure- IA/1 & IA/2 and no action in pursuance to the earlier assessment orders Annexure-P2 & P3 dated 9.3.2011 passed under Section 21 of the Act can be enforced now against the petitioner, once the regular assessment under Section 20 has been concluded and based on the same material ie enquiry report dated 17.9.2010, a fresh assessment order is passed after the assessment was done on the basis of the remand order.

9. In view of the aforesaid, the petition is allowed. The orders impugned Annexure-P2 & P3 dated 9.3.2011 passed under Section 21 of the MP VAT Act pertaining to imposition of VAT and Entry Tax for the year 1.4.2006 to 31.3.2007 are quashed and liberty is granted to the parties to proceed on the basis of the assessment order passed in the same assessment year vide Annexure-IA/1 & IA/2 dated 31.12.2012.

10. With the aforesaid, this petition stands disposed of.

Certified copy as per rules.

