(2006) 03 MP CK 0113

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1787 of 1993

M.P. State Co-operative Marketing Federation — APPELLANT

Vs

Municipal Corporation — RESPONDENT

Date of Decision : 23-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Municipal Corporation Act, 1956 — Section 135, 136, 137, 138, 139

Citation : (2006) 03 MP CK 0113

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Kapil Patwardhan, for the Appellant; Manish Nigam, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has sought quashment of impugned demand dated 22/8/1992 Annexure-P/2 and Annexure-P/4 dated 19/3/1993.

2. The petitioner is an Apex Co-operative Society and registered under the M.P. Cooperative Societies Act. According to the petitioner on 22/8/1992 a demand purporting it to be u/s 173 of the Municipal Corporation Act, 1956 (in short ''the Act'') for Rs. 61,010/- towards property tax for the period 1-4-1987 to 31-3-1992 was served on petitioners. This demand also included some other tax. Indeed the demand for property tax related to Rs. 48,860/-. The petitioner was asked to pay the said sum within 15 days. A copy of demand issued u/s 173 of the Act, has been placed on record as Annexure-P/1. Thereafter another demand dated 22/8/1992 (Annexure-P/2) u/s 174(1) of the Act for a sum of Rs. 35,641/- for the period of 1-4-1982 to 31-3-1987 was received by the petitioners.

3. The petitioners on receipt of the said demand submitted objection with the respondent and submitted that at no point of time for last ten years any notice was ever sent to the petitioner nor any assessment was made. Another objection

was also taken that on going through the demand notices it is not clear that on what basis the said demand has been calculated. A plea of limitation was also taken that since the demand relates to the year 1982 and it is being made after ten years, therefore, the demand is not in accordance with law. Copy of the objections which were filed is annexure-P/3.

4. The respondents replied to the objections containing that the demand has been based on proper assessment and hence it cannot be withdrawn. The petitioner was asked to pay Rs. 1,11,892/- vide Annexure-P/4 dated 19/3/1993.

5. It has been argued by learned Counsel for the petitioners that the impugned demand is in contravention to the provisions of the Act because there was no assessment and no notice of assessment was issued. Since no notice of assessment was ever issued, therefore, the question of inviting objection does not arise. It has also been putforth that the assessment order was ever communicated to the petitioner. Since there is no assessment order the impugned demand under Sections 173 and 174 of the Act is without jurisdiction. By inviting my attention to Section 173 of the Act which pertains to presentation of bill for taxes and other demands and by putting emphasis on the words least practicable delay in the said section, it has been submitted by learned Counsel that the demand w.e.f. 1/4/1982 cannot be made after the lapse of ten years. In support of his contention, learned Counsel has placed reliance on the following decisions:

(i) Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, ;

(ii) J.M. Baxi and Co. v. Commissioner of Customs AIR 2000 SC 3407(1); and

(iii) Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another, .

6. Per contra, learned Counsel for the respondents argued in support of the impugned order Annexure-P/4 dated 19/3/1993.

7. In the present case no return has been filed by the respondents refuting the averments made in the petition.

8. Having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed and the matter is sent back to respondents to re-decide the objections of the petitioner Annexure-P/3 dated 18/9/1992.

9. After the impugned demand Annexure-P/1 and P/2 received by the petitioners, objections were filed vide Annexure-P/3 dated 18/9/1992. A specific objection was raised that without following the procedure as contemplated u/s 146 of the Act there could not be any assessment. On going through the impugned order Annexure-P/4 dated 19/3/1993, it is perceivable that without mentioning the date when the assessment order was passed and without deciding the objections whether any notice u/s 146 of the Act was ever issued to the petitioners, in summary manner the objections have been rejected by saying that after deciding

the objections u/s 148 of the Act the demand u/s 173 of the Act was made. Since a specific objection in regard to sending of notice u/s 146 of the Act was made, it is imperative on the part of the respondent to decide the said objection by giving details in that regard in the impugned order Annexure-P/4 stating therein that when the notice was issued, when the objections were decided and on which date the assessment order was passed.

10. Section 135 of the Act deals with the imposition of property tax and according to which the property tax shall be charged, levied and paid for each financial year on land or building within the city. Section 137 of the Act speaks about the grant of discount to every person who paid the tax before due date. Section 138 provides for assessment and criteria to be taken into account while determining the annual letting value on any building. Thereafter Section 139 of the Act provides that the Commissioner may can for information regarding ownership of the land and building from owner/occupier. Section 141 of the Act speaks about the responsibility for payment of property tax by the owner in the manner indicated under the Act and the rules framed. Section 143 of the Act deals with the assessment on annual value and its duration. Section 146 of the Act speaks about the notice when valuation made for the first time is increased and Section 148 provides with deciding of objections of assessee. Since in the objections, it has been specifically stated that the procedure as contemplated under Sections 135 to 148 of the Act was not followed and the averments are not denied by the respondent by filing return nor there is any discussion in that regard in the impugned order Annexure-P/4 though the objections are specifically raised in Annexure-P/3, therefore, I am of the view that Annexure-P/4 dated 19/3/1993 issued by respondent cannot be allowed to remain stand and the same is hereby quashed. Since, this Court has quashed the impugned order Annexure-P/4 dated 19/3/1993, demand notices Annexure-P/1 and P/2 dated 22/8/1992 are also hereby quashed and the matter is sent back to the respondent to decide the objections of the petitioners afresh in the light of the above said order.

11. Resultantly, this petition is allowed to the extent indicated hereinabove with no order as to costs.

