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**(1984) 08 MP CK 0027**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 637 of 1982**

M.P. Textile Traders and Agents

APPELLANT

Vs

Commissioner of Sales Tax and Another

RESPONDENT

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**Date of Decision : 29-08-1984**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation : (1985) 59 STC 365**

**Hon'ble Judges : V.D. Gyani, J;P.D. Mulye, J**

**Bench : Division Bench**

**Advocate : Choudhary, for the Appellant; G.S. Solanki, Deputy Government Advocate, for the Respondent**

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## **Judgement**

P.D. Mulye, J.—The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India in the matter of M. P. General Sales Tax Act, 1958 with a prayer to quash the order dated 5th May, 1982 passed by the Deputy Commissioner of Sales Tax, Indore (annexure P3).

2. The facts giving rise to this petition may be stated, in brief, thus: The petitioner is a registered partnership firm which is a registered dealer under the M. P. General Sales Tax Act, 1958 and carries on business in cement, iron hoops, cloth, etc., at Sheelnath Camp, Indore.

3. The petition relates to the assessment period from 1st April, 1972 to 31st March, 1973. In the course of assessment proceedings before the Assistant Sales Tax Officer, Indore, the petitioner raised an issue regarding levy of tax on iron hoops (iron strips) and claimed that the same can be taxed only at the concessional rate of 3 per cent on the ground that they were declared goods. The assessing authority, as per annexure PI, which is an order dated 11th May, 1975 rejected the contention of the petitioner and levied tax at the enhanced rate of 7 per cent. Another grievance of the petitioner was that he could not submit the periodical sales tax returns because of dilapidated financial condition of the petitioner-firm, though out of the tax of Rs. 13,696 which was recoverable,

according to the Department; he had deposited Rs. 1,200 only. However, the Assistant Sales Tax Officer while agreeing with the financial position of the petitioner-firm has levied a penalty of Rs. 2,000 u/s 17(3) of the said Act without assigning any reasons which is illegal and excessive.

4. Against the said order he filed revision before the Deputy Commissioner of Sales Tax on the ground that there was a reasonable cause for not submitting the returns because the petitioner was financially tight. The respondent found as a fact that the petitioner is higher figure than the earlier years (sic). However, he too maintained the order of the Assistant Sales Tax Officer regarding the levy of penalty of Rs. 2,000 and also held that as the matter relates prior to 1st April, 1973 the petitioner was bound to pay sales tax at the rate of 7 per cent on iron hoops (iron strips) for which he placed reliance on the decision of the Board of Revenue reported in (1978) 11 VKN 155 (Govindji Jamunadas v. Sales Tax Commissioner) and thus dismissed the revision petition (annexure P3). Hence this petition.

5. The learned counsel for the petitioner submitted that the case of Govindji Jamunadas v. Sales Tax Commissioner (1978) 11 VKN 155 had come up in a reference before a Division Bench of this Court, which by its order dated 23rd July, 1981, considering the conflict of opinion expressed in the various judgments of this Court, referred the matter for the decision by the Full Bench. Accordingly the Full Bench by its decision reported in [1983] 53 STC 120 (Govindji Jamunadas v. Commissioner of Sales Tax, M. P.) came to the conclusion that iron hoops, which are steel strips of different sizes rivetted and painted and used for tying bales of cloth, are declared goods falling within Section 14(iv)(d)(iv) of the Central Sales Tax Act, 1956, and are taxable at 3 per cent under entry 5 of Part I of Schedule II to the M. P. General Sales Tax Act, 1958 which applies to assessments even prior to 1st April, 1983. He, therefore, submitted that in view of this Full Bench decision the petitioner could not be levied with a tax of 7 per cent on the iron hoops (iron strips) and that he was liable to pay sales tax thereon only at the rate of 3 per cent.

6. The learned Deputy Government Advocate in view of this Full Bench decision frankly submitted that he is unable to support the impugned orders passed by the Assistant Sales Tax Officer as also by the Deputy Commissioner of Sales Tax. He, therefore, in fairness submitted that the petitioner is liable to pay sales tax at 3 per cent only on the iron hoops (iron strips). He, therefore, submitted that the impugned orders now cannot be sustained in law.

7. As regards the penalty of Rs. 2,000 learned counsel for the petitioner submitted that the Assistant Sales Tax Officer as also the Deputy Commissioner of Sales Tax having found that it is on account of the crippled financial condition of the petitioner-firm that the periodical returns could not be filed in time, the penalty has been levied without assigning any reasons and in support of this submission he placed reliance on the Supreme Court's decision reported in Hindustan Steel Ltd. Vs. State of Orissa, wherein it has been held that an order

imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. j

8. The learned counsel for the petitioner, therefore, submitted that in the present case the sales tax authorities having found on this point in favour of the petitioner that he had a valid ground for not submitting the returns have thus committed an illegality in imposing the penalty of Rs. 2,000 without assigning any reasons or discussing the point raised. He, therefore, submitted that the order levying penalty of Rs. 2,000 also deserves to be quashed.

9. So far as this levy of penalty is concerned the learned Deputy Government Advocate submitted that the finding with regard to financial condition of the petitioner, if any, is irrelevant as liability of the tax is on the petitioner to discharge the same within the time provided by law. He further submitted that as a matter of fact the petitioner having received this amount of sales tax from the customers he ought to have filed the returns within the statutory period and should have paid the amount of tax due. He, therefore, submitted that the penalty has been properly levied and no interference therewith is called for in absence of any error of law.

10. However, after hearing the learned counsel and after going through the record we are of opinion that it is not the finding either of the Assistant Sales Tax Officer or the Deputy Commissioner of Sales Tax that the petitioner had in fact recovered sales tax from the customers and had deliberately refused to deposit the same with the sales tax authorities. It is, therefore, difficult to agree with the learned Deputy Government Advocate on this point in absence of any evidence or material placed on record to that effect. It is also clear from the impugned order that no reasons have been assigned for imposing the penalty nor any mala fides as such have been attributed to the petitioner. Therefore, even though the respondents had the authority and the jurisdiction to levy penalty, depending on facts and circumstances of every case, they have not in the present case applied their mind judiciously nor have they taken all the relevant circumstances into consideration for imposing the penalty of Rs. 2,000 which consequently cannot be sustained in law.

11. In the result this petition is allowed with no order as to costs. The impugned orders annexure A passed by the Assistant Sales Tax Officer, Indore, and the

impugned order annexure C passed by the Deputy Commissioner, Sales Tax, Indore, are quashed. It is declared that the iron hoops (iron strips) are declared goods and the respondents" have no authority or power to levy tax at a rate more than 3 per cent. The respondents are further directed not to levy tax at the enhanced rate of 7 per cent and treat the sale of the iron hoops as sales of declared goods, entitled to levy of concessional rates. The petition is disposed of accordingly. The amount of security deposit, if any, on verification be returned to the petitioner.