

(2013) 10 MP CK 0207

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10969 of 2013

M/s. Adhunik Transport Organization Limited

APPELLANT

Vs

Assistant Commissioner, Commercial Tax and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 200 ECR 446 : (2014) 45 GST 58 : (2014) 3 MPLJ 433 :
(2013) 66 VST 319

Hon'ble Judges : Shantanu Kemkar, J;M.C. Garg, J

Bench : Division Bench

Advocate : Sumit Nema, for the Appellant; Sudhanshu Vyas, Learned Panel
Lawyer, for the Respondent

Judgement

Shantanu Kemkar, J.—The petitioner-transporter was transporting in its vehicle bearing registration No. RJ06GA-1534 a road roller of M/s. Atlas Copco India Limited from Nasik (Maharashtra) to Yamuna Nagar (Haryana). The Anti Evasion Bureau of the Commercial Tax Department stopped the truck for inspection and found that the relevant Transit Form No. 59 was not being obtained from the entry check post of the State of Madhya Pradesh, and that, there was no seal of the nearest Commercial Tax Office on the challan/document. In the circumstances, an opinion was formed by the Anti Evasion Bureau that an attempt was being made by the petitioner to transport road roller by evasion of tax. Thereafter, the Assessing Officer imposed a penalty of Rs. 21,20,265/- on the petitioner vide order dated 15.02.2010. The said order was challenged by the petitioner before the Deputy Commissioner, Commercial Tax, Indore. The appeal suffered dismissal vide order dated 29.01.2011. Aggrieved by the said order dated 29.01.2011, the petitioner filed second appeal before the M.P. Commercial Tax Appellate Board, Bhopal, (For short "the Appellate Board"). The Appellate Board vide its order dated 02.11.2012 allowed the appeal in part and remanded the matter to the Assessing Officer with following observations and directions:-

2. In compliance of the order passed by the Appellate Board, the Assessing

Officer issued notice to the petitioner as also to the purchaser of the road roller, to whom it was to be delivered by the petitioner asking them for producing the relevant information and documents to establish the plea of the petitioner that the goods were not for sale in M.P. and were out to out goods.

3. The petitioner submitted reply/explanation dated 24.04.2013 (Annexure P/8) to the notice issued by the first respondent and also prayed for short time to be granted for getting the requisite documents and information from the third party i.e. M/s. S.P. Singla Contractors, who had purchased the road roller from M/s. Atlas Copco India Limited, Nasik. However, the prayer was denied and vide its order dated 27.04.2013 (Annexure P/10) the Assessing Officer maintained its earlier order of penalty by observing thus:-

4. After passing of the aforesaid order dated 27.04.2013 (Annexure P/10), on 03.05.2013 the petitioner received the relevant documents from the third party M/s. S.P. Singla Contractors by Registered A/D. The said documents along with a covering letter dated 20.05.2013 (Annexure P/11) in the form of request for rectification u/s 54 of the Madhya Pradesh Valued Added Tax Act, 2002, (For short "VAT Act") was submitted by the petitioner. The petitioner also filed a copy of letter dated 29.04.2013 (Annexure P/9) sent by the said M/s. S.P. Singla to the Assessing Officer. The petitioner vide its letter dated 20.05.2013 (Annexure P-11) made a prayer that in the interest of justice the mistake be rectified and a fresh order be passed after considering the documents which have been received by it from the third party. The said prayer for rectification was rejected by the Assessing Officer vide order dated 25.07.2013 (Annexure P/13) by observing that no ground is made out to hold that there is any mistake in the order dated 27.04.2013. Feeling aggrieved, the petitioner has filed this petition.

5. Shri Sumit Nema, learned counsel for the petitioner has argued that the learned first respondent has committed error in not exercising the powers of rectification provided u/s 54 of the VAT Act. He argued that after passing the order by the first respondent, the relevant documents were received by the petitioner, and as such when they were submitted along with the prayer for rectification of mistake, the same should have been taken on record instead of holding that such a prayer is not tenable. In support of his submission, he placed reliance on the judgment of the Supreme Court in the case of Honda Siel Power Products Ltd. Vs. Commissioner of Income Tax, . Alternatively he prayed that since the documents are very relevant for the just decision of the controversy, the same may be directed to be taken on record and to be considered by the Assessing Officer and for that purpose the matter may be remanded back to the Assessing Officer for deciding the matter afresh.

6. On the other hand, Shri Sudhanshu Vyas learned panel lawyer for the State argued that the Assessing Officer has rightly declined to interfere into the matter u/s 54 of the VAT Act as there was no clerical or arithmetic mistake nor there was any error arising from any omission. He argued that the judgment of the Supreme Court in the case of Honda Siel Power Products Limited (Supra) is

based upon entirely different facts and has no application to the facts of the present case. He also submitted that the petitioner did not file the documents inspite of giving sufficient opportunity for the same. In the circumstances, the Assessing Officer had no other option but to pass the order.

7. We have considered the submissions made by the learned counsel for the parties and perused the orders and annexures.

8. The first question which is requires to be considered in this matter is as to whether Section 54 of the VAT Act which deals with powers of rectification of mistakes by the Commissioner and the Appellate Board is attracted in the present case or not. For ready reference the relevant provisions of Section 54 of the VAT Act, are extracted below:-

54: Rectification of mistakes

(1) The Commissioner may--

(i) on his own motion at any time within one calendar year from the date of any order passed by him; or

(ii) on an application made by a dealer within one calendar year from the date of receipt of such application, rectify, in such manner as may be prescribed, such order for correcting any clerical or arithmetical mistake or any error arising therein from any omission:

Provided that,-

(i) the Commissioner shall not entertain any application by the dealer unless it is made within one year from the date of the order sought to be rectified:

(ii) no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund unless the Commissioner has given notice in the prescribed form to the dealer of his intention so to do and has allowed the dealer a reasonable opportunity of being heard.

(2)

(3)

(4)

(5)

Not relevant in the present case.

9. From the aforesaid provision, it is clear that the Commissioner may rectify its order for correcting any clerical or arithmetic mistake or any error arising therein from any omission. In the present case, we find there is neither any clerical nor any arithmetical mistake, there appears to be even no error arising from any omission. On the other hand in this matter till the passing of the impugned order, the relevant documents were not filed by the petitioner. Therefore the Assessing

Officer has rightly observed that the provision of rectification is not attracted in the matter. In the case of Honda Siel Power Products Limited (Supra), the Supreme Court while dealing with the matter in which the Income Tax Appellate Tribunal had inadvertently not referred to its earlier decision holding that enhanced depreciation was allowable even on notional increase in cost of Estate on the ground of fluctuation in exchange rates and despite fact that additional liability resulting from said fluctuation had not been paid by assessee and wrongly held that since there was no actual payment after fluctuation, assessee was not entitled to claim benefit u/s 43A and the tribunal having held that an error apparent from the record had crept in and the same should be rectified by acknowledging the mistake of not considering the judgment of coordinate bench of the Tribunal even when the same was cited and accordingly rectified its order by allowing assessee's claim, the Supreme Court upheld the order of the tribunal and set aside the order of the High Court in which the High Court held that it would not amount to rectification. However as observed above, facts of the present case are entirely different and therefore the law laid down by the Supreme Court has no application to the present case. In the circumstances, we are of the view that the Assessing Officer has committed no error in not exercising the jurisdiction of rectification in the facts of the present case.

10. As regards petitioner's contention that in the interest of justice and for just decision of the matter, the petitioner be accorded an opportunity to file documents which have been received by subsequently in order to prove its case that the road roller was being transported by it out to out and not for sale in M.P., we are of view that this prayer needs to be allowed to do complete justice in the matter. As noticed by us the relevant documents were not in the possession of the petitioner and after repeated efforts being made by the petitioner the same were made available to the petitioner by the third party only after passing of the impugned order by the Assessing Officer. It is also relevant to state that the Assessing Officer itself had issued notice on dated 16.04.2013 to the said third party to produce the documents and the same were sent by the third party to the Assessing Officer and also to the petitioner but only after the order was passed. In this background of the matter, in the interest of justice this prayer of the petitioner deserves to be allowed. In the circumstances, we set aside the order dated 27.04.2013(Annexure P/10) as also the order dated 25.07.2013 (Annexure P/13) passed by the Assessing Officer and remit the matter to the Assessing Officer for deciding the matter afresh taking into consideration the aforesaid documents. The petitioner to appear before the authority on 30.10.2013, with all the relevant documents.

CC within 3 days.