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**(2014) 02 MP CK 0047**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 5173 of 2009**

M/s. Agro Solvent Products Pvt. Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision : 03-02-2014**

**Acts Referred:**

Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 17 25(1)(a) 9(1)

**Citation : AIR 2014 MP 55 : (2014) 69 VST 365**

**Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J**

**Bench : Division Bench**

**Advocate : Pavan Dwivedi, for the Appellant; Vivek Khedkar, Dy. Advocate General for Respondents/State, for the Respondent**

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## **Judgement**

1. Heard. The question for consideration before this court in this Writ Petition is that whether the notification dt. 29th March 2000 (Annexure P/4), in which the class of goods mentioned as "Cattle feed and poultry feed" includes de-oiled cake and oiled cake or not.

2. The Commercial Tax Department vide notification dt. 29th March 2000 (Annexure P/4) issued in exercise of powers conferred by Section 17 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (hereinafter referred to as the "Act of 1994") fixed the rate of tax on Cattle feed and poultry feed @ 2% for the period w.e.f. 1st April, 2000 to 31st March 2004. The period was extended up to 31.3.2005.

3. The petitioner was in the manufacturing of soya oil and mustered oil. In the aforesaid process oil cake and de-oiled cake were also produced.

4. In the Schedule II of Part V at entry 51 of the Act of 1994, "Oil cake including de-oiled cake and soyameal" was mentioned and at entry 16 "Cattle feed, poultry feed and aquatic feed" was mentioned. A copy of the notification has been filed as Annexure R/1 alongwith the reply. Entry No. 16 mentioned in part V of Chapter 1 Schedule II is as under

16. Cattle feed, poultry feed and aquatic feed.

5. Against the aforesaid entry, rate of tax has been mentioned as 4%.

6. In the aforesaid schedule I, entry No. 51 has been mentioned, which is as under:-

51. Oilcake including defiled cake and soyameal.

7. Against the aforesaid entry rate of tax has been mentioned as 4%.

8. Vide notification dt. 29th March 2000 (Annexure P/4), exemption was granted in regard to tax on "Cattle feed and poultry feed" as 2%. The aforesaid notification was in regard to Class 2 mentioned in Column 2 in the schedule. When in the schedule there are two specific entries i.e. 16 and 51, then certainly notification would include Cattle feed, poultry feed and aquatic feed, but it does not include oil cake including defiled cake and soyameal because it is a different entry.

9. Hon''ble Supreme Court in *Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India (UOI) and Others*, after considering the earlier judgments of the Supreme Court reported in *Kartar Rolling Mills Vs. Commissioner of Central Excise, New Delhi*, *Eagle Flask Industries Limited Vs. The Commissioner of Central Excise, Pune*, and *Msc. Pvt. Ltd. Vs. Union of India (UOI) and Others*, has held as under:

It is a settled position in law that exemption notifications have to be strictly construed. A person claiming the benefit of exemption notification must show that he satisfies the eligibility criteria has specifically held that the exemption has to be construed strictly.

10. Learned counsel appearing on behalf of the petitioner has relied on the judgment of the Hon''ble Supreme Court in *Commissioner of Sales Tax Vs. Ram Chandra Asha Ram (Dead) through L. Rs.*, and pleaded that defiled cake includes cattle fodder. However, the aforesaid judgment is in different circumstances. In the present case, there are two types of entries and in the entries goods have been defined separately. Hence in our opinion, the authorities have rightly held that the exemption notification would not be applicable in the case of oil cake, defiled case and soyameal. The authorities have imposed maximum penalty. No reasons have been assigned by the authority in imposing the maximum penalty.

11. Hon''ble Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa*, has held as under in regard to imposition of penalty u/s 12(5) of Orissa Sales Act (14 of 1947):-

7. Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. 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. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

12. Hon''ble Supreme Court in Kesar Enterprises Ltd. Vs. State of U.P. and Others, has held that imposition of penalty is a quasi judicial function and the rules of natural justice would be applicable in the proceedings of imposition of penalty. Hon''ble Supreme Court has held as under:-

31. Undoubtedly, action under the said Rule is a quasi-judicial function which involves due application of mind to the facts as well as to the requirements of law. Therefore, it is plain that before raising any demand and initiating any step to recover from the executant of the bond any amount by way of penalty, there has to be an adjudication as regards the breach of conditions (s) of the bond or the failure to produce the discharge certificate within the time mentioned in the bond on the basis of the explanation as also the material which may be adduced by the person concerned denying the liability to pay such penalty. Moreover, the penalty amount has also to be quantified before proceedings for recovery of the amount so determined are taken.

13. Consequently, the petition is partly allowed. The impugned orders in regard to imposition of tax are hereby upheld, however, the orders regarding imposition of penalty are hereby quashed. The matter is remanded back to the authority to pass a proper order in regard to penalty after considering the observations made by this court. No order as to costs.