(2014) 05 MP CK 0089

In the Madhya Pradesh High Court

Case No : W.P. No. 7054/2014

M/s. Mathole Laxhmandas Sahu and Sons APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Citation : (2014) 05 MP CK 0089

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Mukesh Kumar Agrawal, Learned Counsel, Advocate for the Appellant; Rahul Jain, Learned Deputy Advocate General for the Respondents/ State on advance notice, Advocate for the Respondent

Judgement

1. Calling in question the tenability of an order dated 27.12.2013 (Annexure P-1) passed by the assessing officer respondent No. 2, imposing penalty u/s 52 of the Madhya Pradesh Value Added Tax Act, this writ petition has been filed by the petitioner.

2. It is the case of the petitioner that against the original assessment order passed and the order of the assessing officer imposing the penalty an appeal is already pending before the appropriate appellate Board and during the pendency of the appeal, as penalty is being imposed and recovery is being done, this writ petition has been filed and in support of the contention that pending finalization of the appeal before the appellate authority, the penalty cannot be imposed or recovered, learned counsel for the petitioner has drawn our attention to an order dated 25.03.2014 passed by a coordinate Bench of this Court in W.P. No. 4336/2012 (M/s. Laxman Das Gunamal vs. State of M.P. and others) where it has been held by the learned coordinate Bench that so long as the second appeal is pending and the assessment order has not attained finality, the penalty proceedings is not permissible and the matter was remanded back to the second appellate authority to proceed and decide the second appeal expeditiously.

3. Keeping in view the aforesaid observations made by a coordinate bench, we

see no reason to take a different view in the present case also. Once an appeal is pending before the second appellate authority, it was not proper for the assessing officer to initiate proceedings for imposition of penalty u/s 52 of the MPVAT Act, once the appeal is pending consideration in second appeal and the assessment order had not attained finality.

4. Keeping in view the aforesaid, the order dated 27.12.2013 (Annexure P-1) is hereby quashed and the matter is remanded back to the second appellate authority with a direction to decide the appeal in accordance with law after hearing all concerned within a period of two months from the date of receipt of certified copy of the order and liberty is granted to the respondent no. 1 to proceed with the matter for imposition of penalty thereafter, if permissible under the law.

5. With the aforesaid, the petition is allowed and disposed of. No order as to costs.

