(2014) 02 MP CK 0089

In the Madhya Pradesh High Court

Case No : Writ Petition No. 954 of 2006

M/s. Shivaji Udyog APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 18

Citation : (2014) 02 MP CK 0089

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

Bench : Division Bench

Advocate : Pavan Dwivedi, for the Appellant; Raghvendra Dixit, Govt. Advocate, for the Respondent

Judgement

S.K. Gangele, J.—The petitioner has filed this petition against the orders dt. 31.8.2005 (Annexure P/1), dt. 29.1.2005 (Annexure P/2) and dt. 29.1.2005 (Annexure P/3). The petitioner is a proprietorship concern. It has been in the business of manufacturing of oil and oil cake. The dispute in the present petition is for the assessment year 1993-94 in regard to payment of tax and entry tax. Assistant Commissioner, Commercial Tax, Gwalior completed the original assessment proceeding u/s 18 of the M.P.G.S.T. Act, 1958 vide order dt. 8.6.1998. The petitioner was granted certain exemption in the shape of tax paid deduction. On enquiry, it was found that the petitioner had shown purchases as tax paid from bogus firms and received the benefit of tax paid purchases, hence, reassessment proceedings were initiated u/s 19(1) of the Repealed Act read with Section 28(1) of M.P. Commercial Tax Act, 1994.

2. The reassessment authority accepted the purchase made by the petitioner from eight dealers and remaining five dealers'' purchases were found bogus and consequently the authority imposed a tax alongwith penalty and total demand of tax of Rs. 1,26,890/- was raised against the petitioner. Against the aforesaid order, the petitioner preferred a revision. The authority remanded the matter. Thereafter, again the order of re-assessment was passed on 29.1.2005. Again

the petitioner preferred a revision petition against the aforesaid order dt. 29.1.2005, that was dismissed vide order dt. 31.8.2005.

3. Learned counsel for the petitioner has submitted that the findings recorded by the authority that the petitioner made purchases from bogus firms are illegal and contrary to law. The petitioner submitted all the vouchers. He further submitted that the proceedings of re-assessment were not completed within time, hence, the authority had no jurisdiction to pass the order.

4. The assessing authority on re-assessment has specifically held that the petitioner had shown purchases from five firms, which were not in existence and the firms themselves submitted application for cancellation of their registration, which were cancelled. The object of the petitioner was to show wrong entry and conceal payment of tax. The findings are based on proper appreciation of evidence. Revisional authority again re-appreciated the findings. Hence, in our opinion, the findings can not be interfered in the writ jurisdiction.

5. The next question is in regard to limitation.

6. The original assessment of the petitioner was completed by the Assistant Commissioner, Commercial Tax u/s 18 of the M.P.G.S.T. Act, 1958. Earlier the period of re-opening of assessment was two years. State Government extended the limitation of re-opening vide notification dt. 20.12.2000 up to 30.4.2001 and further amended the aforesaid notification vide another notification dt. 30.4.2001 and the period of 30.4.2001 was substituted up to 31.5.2001. The aforesaid notification was issued u/s 27(9) of M.P. Commercial Tax Act 1994. The impugned order was passed on 3.5.2001, hence, it was within limitation. Consequently, the argument advanced by the learned counsel for the petitioner that reassessment was beyond limitation deserves to be rejected.

7. We have perused the impugned orders dt. 29.1.2005 (Annexure P/2) and dt. 29.1.2005 (Annexure P/3). The authority has imposed penalty of Rs. 56,404/- and Rs. 4,338/-. At the time of imposing penalty, no reasons have been assigned by the authority, hence, the order of imposing penalty is a non-speaking order.

8. 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.

9. 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.

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.

