
(2013) 10 MP CK 0201
In the Madhya Pradesh High Court
Case No : W.P.No. 2658 of 2013

M/s. Vikash Rexine House

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 72 VST 420

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

Bench : Division Bench

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

Judgement

1. Heard. The petitioner has filed this petition against the orders dt. 20.12.2012 (Annexure P/1) and dt. 20.12.2012 (Annexure P/2).
2. By the aforesaid orders, tax of Rs. 55,96,038/- and Rs. 11,72,772/- including the penalty has been imposed against the petitioner under the provisions of M.P. VAT Act, 2002 (hereinafter referred to "VAT Act").
3. The petitioner is a registered dealer under the provisions of VAT Act. He was awarded registration TIN No. 23935302638. The dispute in the present petition relates to the assessment years of 1.4.2007 to 31.3.2008 and 1.4.2008 to 31.3.2009. The petitioner had submitted return regularly and he also paid the tax payable by him under the VAT Act. He was assessed for both the periods vide orders of assessment dt. 25.5.2010 and 28.1.2010. Subsequently, an audit objection was raised by the Audit Officer that a tax @ 4% was imposed, however, the rate of tax on coir matrix was 12.5% because in accordance with Entry No. 25 of Part 2 of Schedule II published u/s 9(1) the VAT Act, the coir and coir products in which coir matrix was not included, the rate of tax was 5% and the rate of tax on coir matrix would be 12.5% treating as a part of residual entry of Part 4 of Schedule II. The petitioner pleaded that he purchased the coir products from M/s. Bamore Foam Pvt. Ltd. and sold the same.

4. From the facts of the case, it is clear that the petitioner submitted the tax return and he was assessed accordingly and he had paid the tax. Subsequently, u/s 21 of the VAT act, proceedings of reassessment were initiated and a show cause notice had been issued and thereafter the tax was imposed against him. It is mentioned in the show cause notice that a tax @ 12% was liable to be imposed against the petitioner because he had sold the coir matrix. In regard to merits of the case that whether the petitioner had sold the coir matrix or coir product, it is the finding of fact and it could be decided by the appellate authority after considering the facts of the case but in the present case the authority has also imposed penalty of 3.5 times in exercise of powers u/s 21(2) of the VAT Act. The aforesaid section reads as under:-

The Commissioner shall, where the omission leading to assessment or reassessment made under sub-section (1) is attributable to the dealer, impose upon him a penalty not exceeding 3.5 times the amount of tax so assessed or reassessed but shall not be less than three times the amount of tax assessed.

5. In accordance with the aforesaid Section, if the omission is attributed to the dealer, the penalty can be imposed. In the present case, the petitioner submitted his return and thereafter assessment was made. Subsequently, the auditor pointed out that the assessment was not made at the proper rate.

6. 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 Tax 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.

8. Division Bench of this court in Bhanu Pratap Singh Vs. State of Madhya Pradesh and Another, has held as under in regard to imposition of penalty in

exercise of powers u/s 28(1) of the Commercial Tax Act, 1994:-

8. The learned counsel appearing for the petitioner submitted that the dealer had already deposited the amount of tax, but the Commercial Tax Officer refunded the amount to the petitioner and the liability of tax was not denied by the petitioner. Apart from this, there was no omission on the part of the dealer in refunding the amount and it was in fact error on the part of the Commercial Tax Officer who directed for refund of the tax, then such penalty could not have been imposed.

9. From the aforesaid judgments of the Court, it is clear that the penalty could be imposed when 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.

10. In the present case, the petitioner submitted the return and thereafter the assessment order was passed. The authority accepted the return and imposed tax at particular rate. Subsequently, it was found by the auditor that the petitioner was liable to be assessed @ 12.5 % on sale of certain product. In that circumstances, it could not be held that the petitioner acted deliberately in defiance of law or guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. In such circumstances, imposition of penalty is against the law.

11. Consequently, the appeal is partly allowed. The impugned orders dt. 20.12.2012 (Annexure P/1) and dt. 20.12.2012 (Annexure P/2) in regard to imposition of penalty are hereby quashed. With regard to imposition of tax, the petitioner is at liberty to file an appeal in accordance with law. With the aforesaid, appeal is disposed of accordingly. No order as to costs.