(1980) 09 MP CK 0008

In the Madhya Pradesh High Court

Case No : M.C.C. No. 19 of 1977

Noshirwan and Co. APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 12-09-1980

Acts Referred:
Constitution of India, 1950 — Article 20

Citation : (1982) 49 STC 167

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; S.C. Bagadiya, for the Respondent

Judgement

G.G. Sohani, J.—By this reference u/s 44 of the M.P. General Sales Tax Act, 1958, hereinafter called the Act, the Board of Revenue has referred the following questions of law for the opinion of this Court :

(1) Whether, under the facts and circumstances of the case, the order imposing penalty u/s 17(3) of the M.P. General Sales Tax Act, 1958, was legal and proper, notwithstanding the fact that the retrospective amendment made to Section 17(3) under the M.P. General Sales Tax (Amendment and Validation) Act, 1971, was not actually in force during the period when the default was committed, in view of Article 20(1) of the Constitution of India?

(2) Whether the Tribunal was justified in holding that it was debarred from considering the constitutional validity of the contention of the appellant that penalty u/s 17(3) of the M.P. General Sales Tax Act, 1958, as amended by the M.P. General Sales Tax (Amendment and Validation) Act, 1971, could not be levied by reason of provision under Article 20(1) of the Constitution of India as the amended section was not actually in existence at the time when the default was committed ?

2. The material facts giving rise to this reference briefly are as follows: The assessee is a dealer in automobiles, tractors and their accessories, and the

assessment year in question is 1966-67. Penalty was imposed on the assessee u/s 17(3) of the Act by the Regional Assistant Commissioner of Sales Tax, Indore, by his order dated 19th March, 1971. On appeal, the order passed by the Regional Assistant Commissioner imposing penalty was confirmed. The assessee, therefore, preferred second appeal before the Board. The learned President of the Board held that the assessee was liable, to pay penalty, but reduced the quantum of penalty. Aggrieved by the order passed by the Board, the aforesaid questions of law have been referred to this Court at the instance of the assessee.

3. The learned counsel for the assessee contended that under the provisions of Article 20 of the Constitution no person can be subjected to a penalty greater than that which could have been inflicted under the law in force at the time of commission of the offence. It was contended that no penalty was imposable for late filing of return or for delay in payment of tax when the wrongful acts were alleged to have been committed by the assessee. It was, therefore, contended that no penalty should have been imposed on the assessee notwithstanding the fact that retrospective operation had been given to the provisions of the amended Section 17(3) of the Act. It was also contended that the amended provisions of Section 17(3) were ultra vires the Constitution.

4. Before we proceed to answer the questions referred to us, it would be useful to refer to the relevant provisions of the Act. Section 17(3) of the Act was amended by the M.P. General Sales (Amendment and Validation) Act, 1971, hereinafter referred to as the amending Act. By Section 6 of the amending Act, Sub-section (3) of Section 17 of the Act was amended to read as follows :

(3) If-

(a) a dealer fails without sufficient cause to comply with the requirements of a notice issued under Sub-section (1); or

(b) a registered dealer fails without sufficient cause to furnish under Sub-section (1) his return for any period in the manner and by the date prescribed thereunder or while furnishing return, fails to furnish along with the return the proof of payment, as required by Sub-section (1-A); or

(c) a registered dealer fails to furnish return, (sic)

the Commissioner may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one-fourth of the amount of the tax, which may be assessed on him u/s 18, or where no tax is payable, a sum not exceeding Rs. 100.

By Section 10 of the Act, the amendment to Section 17(3) was made retrospective in effect and it was provided that the aforesaid Section 5 of the amending Act shall be deemed to have formed part of the principal Act from the commencement thereof. It may also be stated that under the unamended provisions of the Act, it was held by this Court in Pyareld, S/o Basorelal v. State of M. P. [1971] 28 STC 130 (SC) that no penalty was imposable for delay in filing of return and payment of tax.

5. Now, the Board, in our opinion, has rightly observed that it has no jurisdiction to entertain any objection to the vires of any provision of the Act. The question of vires of any provision of the Act cannot be gone into even in a reference before this Court. As Section 17(3) of the Act was given retrospective operation, the Board was justified in holding that the order imposing penalty was legal and proper. A similar view was taken by a Division Bench of this Court in Fairdeal Motors v. Commissioner of Sales Tax, M.P. (M.C.C. No. 304 of 1976 decided on 16th October, 1979) [1982] 49 STC 164 (SC) and we see no cogent reason to differ from that view.

6. For all these reasons, our answers to the questions are in the affirmative and in favour of the department. Parties shall bear their own costs of this reference.