
(2001) 01 MP CK 0059
In the Madhya Pradesh High Court
Case No : M.P. No. 2013 of 1992

Prashant Electrodes	Vs	APPELLANT
Assistant Commissioner, Sales Tax and Another		RESPONDENT

Date of Decision : 03-01-2001

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 19

Citation : (2001) 122 STC 208

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : P.M. Choudhary, for the Appellant; S. Mukati, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—Challenge in this writ filed under Articles 226 and 227 of the Constitution of India is to reassessment notices (annexures P6, 7 and 8) dated August 22, 1992, issued by the Assistant Commissioner, Sales Tax, to the petitioner for the period October 1, 1986 to September 30, 1987, October 1, 1987 to September 30, 1988 and October 1, 1988 to March 31, 1989. The question, therefore is, whether these notices seeking to reassess the petitioner is legal or/and proper ? Facts in brief that led to issuance of these notices need mention infra.

2. Petitioner is a firm engaged in the business of manufacturing and sale of welding electrodes. It is a dealer duly registered as such under State as also Central Sales Tax Acts.

3. For the period October 1, 1986 to September 30, 1987 the petitioner was assessed by the assessing officer (Assistant Sales Tax Commissioner) by its order dated July 12, 1989 (annexure P2). While making the assessment, for this period, one of the main question was, whether the assessing officer was justified in not giving set-off to the petitioner on the tax-paid iron purchased by the petitioner in the light of Notification No. A-5-10-87-ST-V-(47) dated November

17, 1987. Since the contention of petitioner was not accepted by the assessing officer, the petitioner filed a revision being revision No. 65/ R/90 State to Additional Commissioner, Sales Tax, against the assessment order. In the revision, the contention of the petitioner was that in the light of notification dated November 17, 1987 they are entitled to get the benefit of set-off in relation to tax-paid goods which they purchased (iron) for manufacture of their goods. This contention found favour to revisionary authority and accordingly, revision was allowed by the Additional Commissioner by its order dated May 15, 1990 (annexure P3). The learned revisionary authority, while setting aside of an order of assessment held that petitioner is entitled to set-off at the rate of 2 per cent on the strength of aforesaid notification. It was also found as a fact that petitioner had purchased tax-paid goods (iron) at the rate of 4 per cent and for which bills had been filed. The revisionary authority, therefore, remanded the case to assessing officer for making fresh assessment after giving the petitioner the benefit of set-off as held by him. Accordingly, the assessing officer passed a fresh assessment order on June 27, 1990 (annexure P4) for the same period, i.e. (October 1, 1986 to September 30, 1987) in the light of findings rendered by the revisionary authority and granted the benefit of set-off while determining the taxing liability payable by the petitioner on their turnover for the period in question.

4. Likewise, for subsequent period, i.e., October 1, 1987 to September 30, 1988 and October 1, 1988 to March 31, 1989 the assessing officer passed two assessment orders on May 31, 1990 (annexures P5 and P6). In these two assessment orders, the petitioner was granted the benefit of set-off because by the time these two assessment orders were passed, the revisionary court had already passed the order arising out of assessment order for the earlier period. In effect, therefore, the petitioner got the benefit of set-off in all the three years assessment. In the first year by virtue of revisionary authority order and in other two subsequent period, without there being any specific direction by revisionary authority but on principle that was laid down by the revisionary authority.

5. However, on August 22, 1992, the assessing officer issued impugned three reassessing notices for the aforementioned periods. In substance, it was mentioned in the reassessment notices that the petitioner has been wrongly given the benefit of set-off and hence why not the said issue be not reassessed. It is against these notices, the petitioner has felt aggrieved and has filed this writ.

6. The State has tried to support the issuance of notices.

7. Heard Shri P.M. Choudhary, learned counsel for the petitioner and Shri S. Mukati, learned Government Advocate for respondents.

8. Learned counsel for the petitioner while assailing the legality of the impugned reassessment notices urged that these notices are per se without jurisdiction. According to learned counsel when the issue relating to set-off was finally decided in favour of the petitioner, by the revisionary authority then the

assessing authority has no jurisdiction to reagitate the same issue by issuing reassessment notices. Learned counsel urged that in fact the issue relating to set-off has attained finality when it resulted in merger in revisionary order. It was essentially on these lines the submission was for quashing of these notices.

9. In reply, the State counsel supported the notices.

10. Having heard the learned counsel for the parties and having perused the record of the case, I find force in the submission of learned counsel for the petitioner. In my considered view the petition has to be allowed resulting in quashing of impugned reassessment notices.

11. The issue whether petitioner is entitled to set-off was admittedly the subject-matter of revision at the instance of petitioner. It was also undisputed that eventually, the revisionary authority did decide this issue in favour of the petitioner and held the petitioner to be entitled to claim the set-off in the light of notification dated November 17, 1987. This order of revisionary authority was given effect to and consequently fresh assessment order was also passed and indeed had to be passed for the reason that State (department) did not question the correctness of revisionary order in the higher court/Tribunal. In other words, the revisionary authority order had become final and was thus binding on the assessing authority. In effect, therefore, the assessing authority had no jurisdiction to sit over the order of revision and again decide the same issue in the garb of reassessment. In other words, the assessing authority had no jurisdiction to reassess the petitioner on the issue of set-off but it could, if proper case of reassessment was made out, issue notice of reassessment for other issue. Admittedly, the reassessment notices which are impugned in this writ is founded only the issue of set-off and not on any other ground. They are, therefore, not legally sustainable.

12. Accordingly, in view of aforesaid discussion, the impugned notices of reassessments are without jurisdiction and hence cannot be given effect to. Petition is accordingly allowed. Impugned notices dated August 22, 1992 (annexures P6, P7 and P8) are quashed by writ of certiorari.

No costs. Security amount, if deposited, be refunded.