

(1970) 11 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 222 of 1969

Pyarelal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) JLJ 277 : (1971) MPLJ 249 : (1971) 28 STC 130

Hon'ble Judges : Bishambhar Dayal, C.J;G.P. Singh, J

Bench : Division Bench

Advocate : M. Adhikari, D.C. Bhamore and K.K. Adhikari, for the Appellant; K.K. Dube, Government Advocate, for the Respondent

Judgement

G.P. Singh, J.

This order will dispose of Miscellaneous Petitions Nos. 222 and 223, both of 1969. These petitions under Article 226 of the Constitution are directed against the assessment of sales tax for the years 1963-64 and 1964-65.

The petitioner in these petitions is one Pyarelal who is a manufacturer of wooden furniture. In the relevant accounting years the main business of the petitioner consisted of selling the furniture manufactured by him to the Defence Department (M.E.S.) through the Garrison Engineer, Jabalpur, who had given him certain contracts for the supply of furniture. According to the petitioner he did not sell any furniture to the public and the aggregate of payments received by him from the Garrison Engineer constituted his turnover for the relevant years.

In the assessment year 1963-64, the petitioner filed four quarterly returns. The return for the 1st quarter was late by eight days; the return for the 2nd quarter was in time; the return for the 3rd quarter was late by 43 days; and the return for the 4th quarter was in time. The total turnover shown in the returns, which related exclusively to the sales made to the Garrison Engineer, was Rs. 2,00,629.11. Some bills were also submitted by the dealer after the filing of

return. The Sales Tax Officer did not accept the accounts of the assessee and made a best judgment assessment. He assessed the total sales to the Garrison Engineer at Rs. 2,91,385.91. He also held that in the absence of proper accounts maintained by the assessee, the possibility of sales to other departments or customers could not be ruled out. The gross turnover of the assessee was, for this reason, determined at Rs. 3,20,000. In addition to the tax assessed on this turnover, the petitioner was made liable to penalties of Rs. 100, Rs. 3,500, Rs. 200 and Rs. 20 respectively under Sections 17(3), 43(1), 27(2) and Rule 69-A of the Madhya Pradesh General Sales Tax Act, 1958. The petitioner went up in revision before the Deputy Commissioner of Sales Tax, who accepted the contention that there was a mistake in assessing the sales made to the Garrison Engineer and reduced the figure of such sales to Rs. 2,32,387.00. But he also held that the petitioner must have been making sales to the public and on that basis the gross turnover was fixed at Rs. 2,40,000. The penalty imposed u/s 43(1) was reduced from Rs. 3,500 to Rs. 1,000. Penalties imposed under other sections were maintained.

In the assessment year 1964-65, the petitioner furnished four quarterly returns. The returns for the first and last quarters were filed in time. The return for the 2nd quarter was late by 11 days and that of the 3rd quarter by 16 days. The total turnover shown in the returns was Rs. 1,34,413 which related exclusively to the sales made to the Garrison Engineer. During the assessment proceedings the petitioner himself produced certificates regarding supplies to the Garrison Engineer, which showed that the total turnover of sales in that respect amounted to Rs. 1,83,905.79. This figure was accepted so far as sales to the Garrison Engineer were concerned; but as the petitioner's accounts were not regularly kept, the Sales Tax Officer assessed the turnover to his best judgment at Rs. 2,50,000. In addition to tax, penalties of Rs. 2,000, Rs. 200, Rs. 20 and Rs. 20 were imposed respectively under Sections 43(1), 27(2), 17(3) and Rule 69-A of the " Act. In revision, the gross turnover was reduced to Rs. 2,25,000. The penalty u/s 43(1) was also reduced to Rs. 1,500, but other penalties were maintained.

It is not disputed that the petitioner did not maintain proper accounts during the relevant years and the Sales Tax Officer was, therefore, justified u/s 18(4)(d) of the Madhya Pradesh General Sales Tax Act to assess the petitioner to the best of his judgment. But it was argued by the learned counsel for the petitioner that there was no material on which it could have been held that the petitioner made any sales to the public and, therefore, the best judgment assessments to the extent they proceeded on the basis that sales were made to the public were arbitrary.

To appreciate the argument raised by the learned Counsel we now advert to the material relied upon by the sales tax authorities in making the assessment. Pursuant to the orders of the Sales Tax Officer, the Sales Tax Inspector inspected the business premises of the petitioner on December 15th and 17th, 1966, and

recorded the statement of the petitioner on 17th December, 1966. In his statement the petitioner said that he manufactured all kinds of furniture which he supplied to the M.E.S. He admitted that he occasionally sold fuel-wood, saw-dust, etc. This probably referred to the sale of the waste products of his main business. He also admitted that previously he used to manufacture and sell sofa sets, etc. As regards the accounts, the petitioner said that the accounts were maintained as directed by his lawyer and they were also kept with the lawyer. The inquiry report of the Inspector disclosed that the petitioner admitted that he sold sofa sets and other furniture to the public. Six pairs of sofa sets were also found in the shop. It was also reported that the petitioner carried on business also in some name other than the one under which he was registered as a dealer. According to this report the yearly turnover was estimated between Rs. 3,50,000 and Rs. 4,00,000. In our opinion, the inquiry report of the Sales Tax Inspector and the statement of the petitioner made to him were sufficient materials to hold that the petitioner's business was not limited to supplying furniture to the Garrison Engineer and that he was also making sales to the public. Now, it cannot be disputed, as was admitted by the petitioner himself to the Inspector, that the petitioner sold waste products of his industry, such as saw-dust, fuel-wood, etc., to the public. These sales were not included in the sales made to the Garrison Engineer. Similarly, the petitioner himself admitted that previously he sold sofa sets, etc. Now, sofa sets were not supplied to the M.E.S.; therefore, the petitioner must have sold sofa sets to the public. It is true that the statement of the petitioner was not clear as to whether he sold sofa sets also in the relevant accounting years; but the petitioner never made any attempt to explain his statement made to the Inspector and his statement, together with the presence of sofa sets in his shop and report of the Inspector, gave rise to a reasonable probability that the petitioner did, in fact in the accounting years, sell sofa sets to the public.

The learned Counsel has relied upon *Raghubar Mandal Harihar Mandal Vs. The State of Bihar*, and *State of Kerala Vs. C. Velukutty*, in support of his submission that even in making a best judgment assessment, the assessing authority cannot indulge in pure guess-work and make an assessment without any evidence or material at all. There can be no dispute with this proposition of law submitted by the learned Counsel. But these cases and the cases referred to in them, viz., *Commissioner of Income Tax v. Laxminarain Badridas* [1937] 5 ITR 170 (P.C.) and *Dhakeswari Cotton Mills v. Commissioner of Income Tax* [1954] 26 ITR 775 (S.C.) also establish that in making a best judgment assessment, the assessing authority is not fettered by the technical rules of evidence and can act on local knowledge or repute or on material which may not be receivable as evidence in a court of law and that there is necessarily certain amount of honest guess-work and in that sense some arbitrariness in the matter. The question in each case is whether the assessment is the result of "wild" guess-work or "honest" guess-work, or, in other words, whether the assessment made bears a "reasonable nexus to the available material and the circumstances of the case". In cases

which clearly fall beyond the line of permissible guess-work or arbitrariness, the assessment made must certainly be set aside. But in an inquiry of this nature one may sometimes come across cases which fall on the fringe where it may be difficult to decide whether the guess-work has been "wild" or "honest". In such cases, this Court will not interfere under Article 226, as the error, if any, in making the assessment will not be apparent on the face of the record. Having regard to these principles of law, we are not prepared to hold that the assessments impugned in these petitions bore no reasonable connection to the circumstances of the cases and the material available in them.

It was also contended by the learned Counsel for the petitioner that the Sales Tax Officer did not disclose to him the inspection report of the Inspector and he had no opportunity to meet the adverse allegations contained in it. This argument cannot be accepted. The assessment order in each case was passed long after the receipt of the Inspector's report and there were many hearings in-between on which the petitioner attended. It is unlikely that he did not know the contents of the report. No complaint of this nature was made to the Deputy Commissioner in revision and even in the petitions filed in this Court there is no clear averment that the petitioner had no knowledge of the inspection report and no opportunity to meet it. We are, therefore, not satisfied that the inspection report of the Inspector was utilised by the Sales Tax Officer without affording any opportunity to the petitioner to explain it.

The next contention of the learned Counsel for the petitioner was that the imposition of penalty u/s 43(1) was not proper. However, on the findings reached by the Sales Tax Officer and the Deputy Commissioner, there cannot be any doubt that there was deliberate concealment of the turnover and the return furnished was knowingly false. Even the sales made to the Garrison Engineer, which were all known to the petitioner, were not fully disclosed and no explanation was offered for the non-disclosure. In the circumstances, we do not find any ground to interfere with the penalty imposed u/s 43(1).

The learned Counsel then challenged the penalty imposed u/s 27. The section reads as follows :

Section 27. (1) Every dealer whose turnover exceeds rupees fifty thousand in any year shall, for each sale made by him of goods exceeding rupees ten in value in the next succeeding year issue to the purchaser, a bill or a cash memorandum signed and dated by such dealer or his servant, manager or agent and showing such particulars as may be prescribed. Every such dealer shall also maintain a counterfoil or duplicate of each bill or cash memorandum issued by him, with signature, date and all other aforesaid particulars and shall preserve it for a period of not less than three years from such date :

Provided that the Commissioner may, subject to such conditions and restrictions as he may deem fit to impose, exempt any dealer or class of dealers, in respect of sale of any goods or class of goods from issuing a bill or a cash memorandum

to the purchaser or from showing some of the particulars or from maintaining a counterfoil or duplicate of each bill or cash memorandum issued by him.

(2) If any person to whom Sub-section (1) applies, contravenes the provision of the said sub-section, the Commissioner may, after giving such person a reasonable opportunity of being heard, direct him to pay a penalty not exceeding double the amount of the bill or the cash memorandum in respect of which such contravention has occurred or rupees fifty, whichever is less.

The particulars required to be entered in a bill or cash memorandum u/s 27 are prescribed by Rule 50, which reads :

Rule 50. Every dealer who is required under Sub-section (1) of Section 27 to issue a bill or cash memorandum shall specify in the bill or cash memorandum issued by him the full name and style, the address of his place of business and the number of his certificate of registration, the particulars of goods sold and the sale price thereof, and shall for each year serially number such bill or cash memorandum, and where the sale price is not less than Rs. 200 the dealer shall also enter in the bill or cash memorandum the full name and address of the buyer and his registration number, if any.

Before a dealer can be made liable to comply with Section 27 it has to be shown that in the previous year his turnover exceeded rupees fifty thousand. There was no evidence to show that in the year 1962-63 the dealer's turnover exceeded rupees fifty thousand and, therefore, it cannot be said to be established that the dealer was obliged to comply with the requirements of Section 27 in 1963-64. The imposition of penalty of Rs. 200 u/s 27(2) for non-compliance with Section 27(1) in the year 1963-64 was clearly erroneous. As regards the year 1964-65, this argument does not apply, for it is admitted that in 1963-64 the turnover exceeded rupees fifty thousand. But then it was argued that Section 27 applies only to retail sales made across the counter and not to sales made in bulk in pursuance of a contract for the supply of goods, such as that was entered into between the petitioner and the Garrison Engineer. We do not agree. The petitioner has admitted in his petition that after the furniture was prepared by him he used to deliver the same to the Garrison Engineer along with his bill and the payment used to be received after the bill was passed. Now, Section 27(1) requires a dealer to deliver to the purchaser a bill or cash memorandum showing the particulars mentioned in Rule 50 for each sale made by him of goods exceeding rupees ten in value and to maintain a counterfoil of each such bill or cash memorandum and to preserve it for a period of not less than three years. There is nothing in this rule to suggest that it does not apply to sales made in pursuance of a contract for supply of goods. Even a seller of goods in bulk like the petitioner can enter in the bills delivered by him to the purchaser the particulars mentioned in Rule 50 and can maintain and preserve counterfoils of the bills. The object behind the section is to facilitate enquiry into the total sales made by a dealer and to prevent tax evasion. That object holds good even when the dealer is not a retail vendor but supplier of goods in bulk. Thus, neither the

language of the section, nor the object behind it nor any consideration of practical difficulty in compliance with its requirements goes to suggest that Section 27(1) did not apply to a dealer like the petitioner. We are, therefore, of opinion that the petitioner in not maintaining the counterfoils of the bills of sales made by him in the year 1964-65, made himself liable to penalty u/s 27(2) and the penalty imposed cannot be held to be illegal.

The learned Counsel then challenged the imposition of penalty u/s 17(3) on the ground that on a proper construction the Act did not provide any penalty for late filing of return. Section 17(1) requires every registered dealer to "furnish returns in such form, in such manner, for such period, by such dates and to such authority as may be prescribed." By Section 17(3), a registered dealer who "fails without sufficient cause to furnish under the Sub-section [Section 17(1)] his return for any period" makes himself liable to penalty. Now, a return that is submitted late is also one that is furnished u/s 17(1) and, therefore, if a return is submitted late by a dealer, it cannot be said that the dealer has failed to furnish return u/s 17(1). For this reason, a dealer who has merely furnished his returns late cannot be subjected to penalty u/s 17(3). As the petitioner was made liable to penalty for late filing of his returns, it must be held that the penalties imposed u/s 17(3) were unauthorised.

The learned Counsel did not challenge the penalty imposed under Rule 69-A.

As a result of the aforesaid discussion, the petitions are partly allowed and the penalty imposed u/s 27(2) in the assessment orders for the year 1963-64 and the penalty imposed u/s 17(3) in the assessment orders for both the years are quashed. There shall be no order as to costs of these petitions. The security deposits shall be refunded to the petitioner.