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(2003) 02 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 212 of 2003

Radhelal Basant Kumar — APPELLANT

Vs

Assistant Commissioner of Commercial Tax and Another — RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 19(1)

Citation : (2004) 138 STC 154

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

Bench : Single Bench

Advocate : P.M. Choudhary, for the Appellant;

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—By filing this writ under articles 226 and 227 of the Constitution of India, the petitioner seeks to question the legality of the reassessment notice issued u/s 19(1) of the M.P. General Sales Tax Act, 1958 dated June 25, 2002(annexure P-15). It was upheld by the Assistant Commissioner by his order, dated December 13, 2002 Annexure P-17), and hence, writ.

2. So the only question that arises for consideration is, whether reassessment notice issued for the period 1994-95 (April 1, 1994 to March 31, 1995) is legal or not ?.

3. It is not in dispute that the assessment for the year in question was completed on June 30, 1998 (annexure P 7) and later after remand by the Appellate court, it was completed on June 27, 2001 (annexure P 14). The reason for reopening of the assessment was also conveyed to petitioner alongwith the impugned notice. It is worth to quote in verbatim in Hindi :

izdj.k ds ijh{k.k ls ik;k x;k fd vkids }kjk dj fu/kkZj.k dh dk;Zokfg;k? fnuk?d 26-6-98 ls 29-9-98 esa tIrh ?ekad 10]11]12 ,oa 8 ds vkdkj ij tks vioapu dh izLrkouk vkids izdkj.k esa dh xbZ Fkh mlds ifjizs{; esa fyf[kr Lil"Vhdj.k izLrqr dj 66 fcy ,oa fcYVh;k? ,oa 66 i= dh izfr;k? izLrqr dh ,oa fuosnu fd;k x;k Fkk fd vk<r

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esa tks eky fc?h gsrq vk;k Fkk] mls okfil Hkst fn;k x;k gSA vr% bl ij djkjksi.k ugh afd;k tk ldrkA vkns''kksa dh izfr;k? Hkh izdj.k esa layXu dhA vius bl jkf''k dks Nqik;k gSA

izLrqr vfHkys[k dk lR;kiu V?kULiksVZ ls djk;k x;kA lR;kiu ds mijkar ;g rF; izdk''k esa vk;k gS fd vkids }kjk izLrqr lk{; feF;k ,oa QkM~MysaV gSA uk rks bl uke dh V?kaLiksVZ daiuh;k? dYdRrk esa gS uk gh dYdRrk bUnkSj V?kULiksVZ dEiuh] bUnkSj }kjk vkids }kjk fcfYV;ksa dk eky okfil Hkstk x;kA bl laca/k esa V? kaLiksVZ }kjk fy[khr esa LohdkjksfDr dh gSA ,slh fLFkfr esa vkidk izdkj.k fo/kku dh /kkjk 19?1? ds varxZr [kksyk tkdj dj fu:fir fd, tkus dh dk;Zokgh ,oa ''kkflr vkjksfir dh tkus dh dk;Zokgh D;ksa u dh tk,\\ izdj.k esa fu/kkZfjr fnukad dks mifLFkr gksdj viuk izfr mRrj izLrqr djsa vU;Fkk izdj.k esa ,d i{kh; fu.kZ; fy;k tkdj djkjksi.k ,oa ''kkfLr dh dk;Zokgh D;ksa ugha dh tk,\\

layXu % dYdRrk bUnkSj V?kULiksVZ dEiuh ds i= dh Nk;k izfr;k? ?dYdRrk bUnkSj V?kUliksVZ dEiuh 48 , ch jksM] nsokl ukdk bUnkSj?

4. In my opinion, aforesaid reasons are not only material and decisive but fully empowers the assessing authority to reopen the assessment. Indeed, it is a case where the petitioner filed certain documents (builty, invoices etc.) of transport companies in assessment proceeding in support of their case asserting those documents to be genuine. However, after the completion of proceedings, it was revealed on an inquiry made that all those documents (builty, invoices) are forged, and bogus. It was also revealed that no such transport company existed. It is on this basis, it was considered necessary and proper to make reassessment of those transactions which were based on such documents.

5. Submission of learned counsel for the petitioner was that once the inquiry was held with reference to the documents in an assessment proceedings, then there arise no occasion for the assessing authority to reopen the case by issuing impugned notices. I do not agree. It is a clear case where the nature of documents relied on by the petitioner came to know subsequent to passing of the assessment orders. In such a situation, the assessing officer was perfectly justified in reopening of assessment. When the very basis of original assessment is found to be based on bogus and forged documents, the assessing officer has every right to recall the orders based on such documents for making fresh inquiry. It seems to be a clear case where the petitioner made attempt to file bogus documents in original assessment proceedings and got the assessment done. Fraud vitiates the whole thing. The sanctity of assessment proceedings must be based on genuine and proper documents. If at a later stage, it is noticed that a particular document relied on by the assessing officer is a forged/bogus one, the assessment order based on such document can never be allowed to sustain. It has to go.

6. The assessing officer has given full and complete details of an inquiry conducted in relation to such documents. They are quoted in the reasons. They are equally communicated to the petitioner. It, thus, satisfies the requirement of

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statute dealing with the cases of reassessment. It is now for the assessing officer, to make reassessment after granting adequate opportunity to the petitioner.

7. Submission of learned counsel for the petitioner was that no notice under the repealed Act could be issued. I do not agree. It is a submission more in the nature of technical than that of substance-It cannot be disputed that the assessing officer has the power to reopen the assessment on the grounds mentioned therein. What is material and decisive in such case is, forming of an opinion on the basis of material collected against the petitioner (dealer). As held supra, there is enough and adequate material for issuance of impugned notice. Once, this condition is found to be satisfied, then mere mention of section either under Repeal Act or Commercial Tax Act in force is of no consequence because in both the Acts, the requirement of law is the same. No prejudice thus can be said to have been caused to the petitioner by mere mention of section and use of old forms. This Court is required to see the substance and not such technicality in the larger interest of parties.

8. Learned counsel for the petitioner then placed heavy reliance on decided cases reported in Commissioner of Income Tax Vs. Badri Bholaram, Auto Sales (Bombay) v. Commissioner of Sales Tax [1996] 29 VKN 295, : 14 VKN 45: 16 TCD 95, C. Sathiraju and Sons Vs. State of Andhra Pradesh, and Parikh and Sons v. Trade Tax Officer, Sector 6 [1998] 109 STC 631 (All.). I have gone through the ratio of each of the cases referred to and relied on in support of submissions. I am afraid, that all are distinguishable in view of aforesaid factual scenario emerging in this case and which is expressly taken note of by this Court supra. The facts first and then the law laid down. If the facts are found to be distinguishable then the case law, though there, does not help to solve the issue, such is the case here.

9. Yet another submission of learned counsel for the petitioner that order of the assessing officer having been merged in appellate court, the assessing officer had no right to issue impugned notice, has no merit. Firstly, the submission is factually incorrect, because, the appellate court in this case had set aside the assessment and remanded the case. It is then the fresh assessment order was passed. The question of merger did not arise.

10. In substance, therefore, the impugned notices are held to be legally and properly issued to the petitioner. They are based on cogent material and need to be probed further. The assessing officer should proceed to give effect to by making reassessment for the year in question expeditiously and keeping in view the relevant legal provisions after granting adequate opportunity to the petitioner. Let the proceedings be completed within the time prescribed under the Act and preferably within an outer limit of six months. State counsel to ensure supply of certified copy to concerned department.

11. Petition, thus, fails and is dismissed in limine.

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