(2004) 07 MP CK 0074

In the Madhya Pradesh High Court

Case No : L.P.A. No. 128 of 2003

Radhelal Basant Kumar APPELLANT

Vs

Assistant Commissioner of Commercial Tax and Others RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 19
Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 28, 81

Citation : (2006) 146 STC 666

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : P.M. Choudhary, for the Appellant; Amit Agrawal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Verma and S.K. Seth, JJ.—This is an appeal intra court preferred Under Clause X of the Letters Patent. The appeal is directed against the order passed by the learned single Judge on February 14, 2003 in W.P. No. 212 of 2003 between the parties. The appellant is a registered dealer under the provisions of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter referred to as "the Act" since repealed). The appellant carries on business of commission agent. For the assessment year 1994-95, appellant was assessed to sales tax by the assessing officer and the assessment order was passed on June 30, 1998 (annexure P/7).

2. Not satisfied with the assessment order, appellant preferred an appeal. That was allowed by the appellate authority by order dated November 10, 2000 and the assessment order was set aside and the matter was remanded back for the fresh assessment. The assessing officer made fresh assessment by order dated June 27, 2001 (annexure P/14) and on the basis of the documents filed along with the return, allowed certain deductions as claimed by the assessee. After the assessment order was passed, the departmental authority upon scrutiny found that certain documents filed by the petitioner showing that goods were returned

through transporters were fake inasmuch as those transporters are not in existence either at Calcutta or at Indore. When this fact came to the light, respondents issued show cause notice u/s 19 of the Act for reassessment of the earlier order of assessment passed on June 27, 2001. As a result, on the basis of fake documents, deductions were wrongly allowed and it was a case of deliberate evasion of tax on the part of the appellant.

3. Appellant filed a reply raising objection that initiation of the proceedings u/s 19 of the Act is void ab initio in view of the fact that the Act of 1958 was repealed by Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (hereinafter referred to as "the Adhin- iyam") and the provisions of the said Adhiniyam came into force with effect from April 1, 1995. The objection raised by the appellant was overruled by the assessing authority by order dated December 13, 2002 (annexure P/17) and it was ordered that the proceedings for reassessment shall continue.

4. Being aggrieved by the show cause notice and the order dated December 13, 2002, appellant preferred a writ petition, as mentioned hereinabove, which was dismissed summarily by the learned single Judge. Since the petition was dismissed in limine, therefore, we thought it fit to issue show cause notice to the respondents so as to solicit their reply. Reply on behalf of the State Government has been filed wherein it has been specifically stated that in view of the provisions contained in Section 81 of the Adhiniyam, no fault can be found or attributed to the initiation of the proceedings u/s 19 of the Repealed Act.

5. We have heard learned Counsel appearing for appellant and respondents at length. Perused the record.

6. After having heard learned Counsel for the parties, in the considered opinion of this Court, there is no merit and substance in the present appeal. Learned Counsel for appellant submitted that the reassessment can be made only u/s 28 of the Adhiniyam and, therefore, the initiation of proceedings u/s 19 of the Act is bad in law specially when the said Act stands repealed. We find no merit and substance in the said contention. Section 81 of the Adhiniyam deals with the repeal and saving. The repeal of the Act does not affect any right, privilege, obligation or the liability A acquired, accrued or incurred under the Repealed Act as it has been expressly saved. In the present case, the departmental authorities have found that certain deductions were erroneously allowed on the basis of the fake documents submitted by the appellant assessee. Thus, on the basis of the wrong deduction appellant certainly incurred a liability to pay the evaded tax under the Repealed Act, therefore, the departmental authorities were justified in proceeding against the appellant u/s 19 of the Act notwithstanding its repeal by the provisions of the Adhiniyam of 1994. Fraud vitiates everything. Learned single Judge has reproduced the reasons which led to the reopening of the assessment against the appellant and has dealt with this aspect extensively. In our considered opinion, no case is made out so as to warrant interference with the reasoned order passed by the learned single Judge. Accordingly, appeal fails

and it is hereby dismissed.

No order as to costs.

