(2014) 01 MP CK 0038

In the Madhya Pradesh High Court

Case No : Value Added Tax Appeal No. 2 of 2010

Rakesh APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Citation : (2014) 73 VST 472

Hon'ble Judges : S.K. Gangele, J;D.K. Paliwal, J

Bench : Division Bench

Advocate : Nandita Dubey, Advocate for the Appellant; Raghvendra Dixit, Government Advocate, Advocate for the Respondent

Judgement

1. Heard on I.A. No. 11101 of 2010, an application for condonation of delay. There is four days'' delay in filing the petition.

2. Looking to the facts mentioned in the application, application (I.A. No. 11101 of 2010) is allowed and the delay in filing the appeal is hereby condoned.

3. Looking to the facts of the case, with the consent of the parties, appeal is heard and disposed of finally at motion hearing stage.

4. The appellant has filed this appeal against the orders dated January 15, 2010 (annexure A/1), dated April 3, 2007 (annexure A/5) and dated April 10, 2008 (annexure A/6).

5. The appellant is a driver of Tanker No. MP-06/E-5308. He had been working with M/s. Aman Trading Company, Morena. On March 30, 2007, the police, on check, found that four tankers were parked near Dhoulpur. When drivers of the tankers were questioned, two drivers were ran away and on inspection it was found that in three tankers rice bran oil was being transported. Fourth tanker was empty. The appellant Rakesh, driver of Tanker No. MP-06/E-5308 in his statement, which was recorded on March 3, 2007, deposed that he had been transporting rice bran oil after loading the same from Kanpur to Morena and a

person was sent to check-post for collecting the documents, however, the tanker was taken to Police Line Morena, but he did not went to the police station because he had a fear that he may be beaten. On April 3, 2007, the owner of the company, Mr. Anil Jain, attended the office and tendered his consent to deposit the penalty and tax. He further deposed that all the papers were given to the driver, however, he did not produce the same due to mistake.

6. The authority considering all the evidence on record found that there was intention to evade the tax and no documents were available in the vehicle when the vehicle was checked. On the aforesaid finding, he imposed tax of Rs. 32,400 and 3.5 times penalty of Rs. 1,13,400. Against the aforesaid order, an appeal was filed, which was dismissed and thereafter a second appeal was filed, which was also dismissed.

7. All the authorities have recorded the finding that when the tanker was checked no documents were found and the driver ran away. Subsequently, after three days, the owner of the firm came to the office and he had made a statement that the documents were with the driver. In our opinion, the authorities rightly disbelieved the subsequent statement because if there were documents, those could have been produced before the authority at the time of checking and if any one had gone to the check-post, he could have returned back within 3-4 hours with papers, however, after three days, the owner informed that he had the papers. The papers could be arranged subsequently looking to the lapse of time. In such circumstances, the authority has rightly imposed the tax.

8. The authority imposed maximum penalty of 3.5 times. No reasons have been assigned for imposing the penalty.

9. The honourable Supreme Court in Hindustan Steel Ltd. Vs. State of Orissa, has held as under in regard to imposition of penalty u/s 12(5) of the Orissa Sales Act (14 of 1947) (page 214 in 25 STC):

"7. Under the Act penalty may be imposed for failure to register as a dealer: section 9(1) read with section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

10. The honourable Supreme Court in Kesar Enterprises Ltd. Vs. State of U.P. and Others, has held that imposition of penalty is a quasi-judicial function and the rules of natural justice would be applicable in the proceedings of imposition of penalty. The honourable Supreme Court has held as under (para 21, page 290 in 10 GSTR):

"31. ... Undoubtedly, an action under the said rule is a quasi-judicial function which involves due application of mind to the facts as well as to the requirements of law. Therefore, it is plain that before raising any demand and initiating any step to recover from the executant of the bond any amount by way of penalty, there has to be an adjudication as regards the breach of condition(s) of the bond or the failure to produce the discharge certificate within the time mentioned in the bond on the basis of the explanation as also the material which may be adduced by the person concerned denying the liability to pay such penalty. Moreover, the penalty amount has also to be quantified before proceedings for recovery of the amount so determined are taken ..."

11. From the aforesaid judgment of the honourable Supreme Court, it is clear that in a quasi-judicial function application of mind to the facts as well as to the requirement of law is necessary. In the present case, the authority has not assigned any reason that why penalty of 3.5 times was imposed against the petitioner. In our opinion, it was necessary for the authority to assign proper reasons in imposing the penalty.

12. Consequently, the petition is partly allowed. The imposition of tax by the authority is hereby upheld, however, the order of penalty is set aside. The matter is remanded back to the authority to pass a proper order in regard to penalty after considering all the facts of the case. No order as to costs.

