
(2009) 02 MP CK 0037
In the Madhya Pradesh High Court

Satguru Cement P. Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 25 VST 14

Hon'ble Judges : Prakash Shrivastava, J; A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—By filing this writ under Article 226/227 of the Constitution of India, the petitioner (assessee/debtor) seeks to challenge the assessment order dated October 3, 2008 (annexure P6) passed by the assessing officer, i.e., Assistant Commissioner of Commercial Tax (R3) in assessment Case Nos. 33 of 2007 and 37 of 2007 under the provisions of the M.P. VAT Act, 2002 and M.P. Entry Tax Act, 1976 for the period from April 1, 2006 to March 31, 2007.

2. So the question that arises for consideration in this writ is whether any case is made out for quashment of impugned assessment orders (annexure P6) in writ jurisdiction under Article 226/227 of the Constitution of India.

3. The learned Counsel for the petitioner (assessee-dealer) with vehemence contended that the impugned assessment made by the assessing officer is prima facie arbitrary, capricious and bad in law. According to him, it is based on certain ex parte reports of investigation conducted by the Central excise authority, which could not have been made the basis. It is also urged that factual findings recorded by the assessing officer are equally unsustainable inasmuch as they are against the entries made in regular books of account maintained by the petitioner. It is essentially these submissions, which were pressed in service and elaborated by learned Counsel with reference to facts/evidence filed along with the writ petition by the petitioner running into more than 100 pages.

4. We heard the learned Counsel for the petitioner at length on facts and in the context of voluminous documentary evidence filed by the petitioner by way of annexures along with the writ petition with a view to appreciate the attack made by the petitioner to the impugned assessment. Having heard the learned Counsel for the petitioner and after perusing the record of the case, we are not inclined to entertain the writ on merits and while declining to interfere grant liberty to the petitioner to file appeal under the Act before the appellate authority specified therein against the impugned assessment order.

5. In our opinion, a writ court cannot be converted into an appeal court, i.e., appellate authority under the Act to examine the issues arising out of assessment order both on facts and law. It is neither permissible nor encouraged by the Supreme Court. Usually the assessee is called upon to file regular appeal before the appellate authority against an assessment order and challenge any addition made by the assessing officer while framing the assessment. It is for the appellate authority in the first instance to examine as to whether particular addition made by the assessing officer is proper or not. It is for this reason that the appellate authority is possessed of concurrent jurisdiction to examine the whole issue like an assessing authority. It can re-appreciate the facts so also the evidence. In other words, the appellate authority is always in a better position to examine all issues relating to facts and then record a finding as to whether a particular addition is proper or not. The issue then can be carried to the second appellate authority if law so provides any second appeal or to revisionary authority, as the case may be. It is after exhausting this channel provided in the Act so far as statutory remedies are concerned, that the issue can be taken to this Court in writ under Article 227 of the Constitution of India. This is the usual channel prescribed and resorted to by an aggrieved in case an assessee-dealer is aggrieved by an assessment order.

6. A writ court is not empowered to go into the factual matrix whether decided by the assessing officer or appellate authority. It can only examine the jurisdictional legal issues, which affect the merits of the case. The writ court cannot reverse as far as possible any factual finding of fact while hearing writ petition. This judicial restraint is always kept in mind while hearing writ petition whether writ is filed against an assessment order or its appellate/revisionary order. It is only when extreme perversity is brought to the notice of writ court on facts and/or law, which affects the very basis of order impugned, can the writ court take judicial notice of such error in its extraordinary jurisdiction. Indeed, this is the beauty of such extraordinary uncodified powers, which are though unlimited in its exercise but curbed by judicial verdicts while exercising in every case.

7. Coming now to the facts of the case, we are afraid, we cannot go into the factual matrix of the assessment order, which is running into 80 pages. The assessing officer has discussed and taken into considerations account books, entries, invoices, reports, affidavits and several other material while making

additions. A finding of addition is, thus, based on this exercise and hence, it cannot be either upheld or reversed by High Court in its limited writ jurisdiction. If we do it then it would amount to overstepping of our writ jurisdiction.

8. The learned Counsel for the petitioner attacked several factual findings contending that such findings are totally unsustainable. We cannot entertain these submissions in view of what we have observed supra. We cannot decide one finding recorded by the assessing officer in isolation. It is neither proper, nor permissible.

9. In view of foregoing discussion, we refrain from going into the factual matter nor we wish to mention the facts in our order.

10. We, thus, while declining to entertain the writ, grant liberty to the petitioner to file regular appeal before the appellate authority prescribed under the VAT Act. In case if any such appeal is filed by the petitioner as per the provisions applicable to appeals within 30 days from the date of this order then the appellate authority would decide the appeal on merits within a period of one year as an outer-limit strictly in accordance with law. The petitioner would be at liberty to apply for any interim orders pending appeal in accordance with law.

11. Subject to aforesaid, the petition fails and is dismissed in limine.

12. C.C. as per Rules.