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In the Madhya Pradesh High Court

Case No : Writ Petition No. 3999 of 2003

Satija Motors Pvt. Ltd. Station Road, Chhindwara and Another — APPELLANT

Vs

Additional Commissioner, Commercial Tax, Jabalpur and Another — RESPONDENT

Date of Decision : 23-08-2007

Acts Referred:
- Constitution of India, 1950 — Article 226, 227
- Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 69

Citation : (2008) 3 MPJR 18

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Advocate : H.S. Shrivastava, with Mr. Sandesh Jain, for the Appellant; Rahul Jain, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

By filing this petition under Article 226/227 of the Constitution of India, the Petitioners have challenged the order dated 3.1.2003 (Annexure P-7) passed by the Additional Commissioner, Commercial Tax, Jabalpur in Revision No. 57/2002 by which the order dated 14.12.2001 (Annexure P-5) passed by the Assistant Commissioner of Commercial Tax, Chhindwara has been affirmed.

The short question involved in this petition is, whether any case for imposition of penalty for the assessment year 1.4.1996 to 31.3.1997 is made out against the Petitioner or not.

The Petitioner No. 1 claims to be a Company registered under the Companies Act and is having its registered office at Chhindwara. The Petitioner No. 2 claims to be Director of the Petitioner No. 1 Company. The Petitioner company is registered dealer under the Madhya Pradesh Vanijyik Kar Dhiniyam 1994 (for short Adhiniyam). It carries on the business of manufacture and sale of tractor trollies and other motor vehicles and parts thereof. In the return for the assessment year 1996-97 it claimed sale of trollies as tax free goods. During the assessment proceedings the Petitioners produced accounts, audit reports and relevant papers before the Assessing Officer and submitted explanation for claiming exemption from payment of tax on the tractor trolly. The Petitioner''s explanation was not accepted on the ground that in the order of assessment of the Petitioners'' return of the earlier year 1995-96 it has already been held that the tractor-trollies are not exempted and are taxable @ 4%.

The Petitioners aforesaid claim for exemption gave rise to initiate penalty proceedings against it u/s 69 of the Adhiniyam. The Petitioners replied to the notice stating therein that it has correctly disclosed all the facts in regard to the total sales and put its legal claim regarding tax free sales of tractor trollies. It is further stated that by truly and correctly explaining all the facts, on the basis of Entry No. 94 of Schedule I, the exemption was claimed.

The Petitioners'' explanation was not accepted by both the authorities below and a penalty of Rs. 6,79,055/- was imposed on the Petitioners by observing that it was within the knowledge of the Petitioners that the tractor-trolly is not covered under the exempted goods in view of the assessment order passed for the assessment year 1995-96 in respect of the Petitioners'' case itself, in the circumstance the Petitioners are liable for penalty.

Having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

It is not the case of the Respondents that the Petitioner had submitted false return or has furnished false particulars of his sales. On the other hand as it is clear from the impugned orders that the Petitioner submitted details of the sales on the tractor trolly and claimed exemption on it by raising a legal plea. The authorities imposed the penalty on the ground that though in the assessment order of the earlier year 1995-96 the Petitioners'' plea was already rejected, still he claimed exemption which amounts to deliberate non-payment of the tax and filing false return. But having gone through the order of the assessment of the year 1995-96, I find that this finding is perverse in view of the fact that the assessment order pertaining to the year 1995-96 was passed on 30.3.1999, much after the filing of the return for the year 1996-97 which were filed on 29.11.1997 by the Petitioner. Thus, the finding recorded by the authorities that in spite of the assessment order pertaining to the year 1995-96 in which the Petitioners'' similar plea was rejected the Petitioners had taken the same plea and knowingly not deposited the tax for the tractor trolly is based upon misconception.

In order to attract imposition of penalty u/s 69 of the Adhiniyam, the authorities are required to record a satisfaction that a dealer has concealed his turnover or the aggregate amount of purchase prices in respect of any goods or has furnished false particulars of his sales or purchases in his return or returns for

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any year or part thereof or has furnished a false return or returns for such period. On going through the impugned orders, I find absolutely no concealment of turnover or furnishing of false particulars of sales or furnishing of false return by the Petitioners. The Petitioners have not even attempted to do so. On the other hand they disclosed the entire facts correctly and raised a legal plea seeking exemption on the tractor trolly Taking a legal plea that the sales of tractor-trolly being not taxable would not make the return a false return. See Dadabhoy''s New Chirmiri Ponri Hill Colliery Company Private Ltd. v. Commissioner of Sales Tax, M.P. (sic) 44 STC 100 MP.

In case of Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, the Supreme Court while dealing with penalty provision u/s 43 of the M.P. General Salex Tax Act 1958 held that unless the filing of an inaccurate return is committed by a guilty mind the section cannot be invoked for imposing penalty and where an Assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable include it, it would not be right to condemn the return as a false return inviting imposition of penalty. In case of Hindustan Steel Ltd. Vs. State of Orissa, , the Supreme Court has held that 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 It imposed unless the party obliged either acted deliberately in defiance (sic) was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

In view of the aforesaid discussion it cannot be held that the Petitioner was of guilty mind or has submitted false returns.

Accordingly, the petition deserves to be and is hereby allowed. The impugned order dated 3.1.2003 (Annexure P-7) passed by the Additional Commissioner and the order dated 14.12.2001 (Annexure P-5) passed by the Assistant Commissioner are hereby quashed. No orders as to cost.

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