
(2006) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3187 and 3188 of 2002

Satna Cement Works and others

APPELLANT

Vs

Divisional Assistant Commissioner, Commercial Tax and
others

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 10A

Citation : (2006) 3 MPLJ 442

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

**Advocate : Sumit Nema, for the Appellant; Harish Agnihotri, Government
Advocate, for the Respondent**

Final Decision : Allowed

Judgement

Dipak Misra, J.

These two writ petitions being interlinked and interconnected and the issues that emerge having insegregable facet with each other they were heard analogously and are disposed of by this common order. For the sake of clarity and convenience the facts in W.P. No. 3187/2002 shall be adumbrated in detail and a brief resume of facts indicating the main thrust of the matter of the other writ petition shall be stated at the appropriate time.

The petitioner No. 1 is a Public Limited Company registered under the Companies Act, 1956 as Birla Corporation Limited and its cement division is styled as Satna Cement Works. Petitioner No. 2 is the shareholder of the company and has joined the company as a petitioner as his interests are also affected. It is pleaded that the Assessing Officer imposed the penalty of Rs. 1,30,858/- for the financial year 1995-96 and the said penalty was imposed u/s 10-A of the Central Sales Act, 1956 (for brevity "the Act"). The said order came to be passed on 25-8-2000 as per Annexure-P/1.

It is contended in the petition that the State Government issued a Notification No. A-7-15-2001-ST-V(99), dated 5-1-2000 whereby it promulgated a scheme known as Madhya Pradesh Bakaya Rashi Saral Samadhan Yojna, 2000 (for brevity "the Scheme"). According to the Scheme certain payments including penalty upto 31st March, 1997 or for the period prior to that which is due for payment as on 1st April, 2001 could be settled in the prescribed method. The petitioners in pursuance of the said notification submitted an application on 30th January, 2002 seeking settlement of the amount imposed as penalty. The Divisional Assistant Commissioner, Commercial Tax, respondent No. 1 herein, determined the amount of settlement of arrears at Rs. 39,257/- as contained in Annexure-P/5. On receipt of the said order the petitioners deposited the amount by "challan" dated 7-3-2002 and forwarded a copy to the respondent No. 1 vide application dated 19/20-3-2002. In the said application prayer was made as the amount that has been settled has been deposited within the stipulated time frame Form No. III accepting the deposit be issued in favour of the petitioners. The said application was rejected by the respondent No. 1 on 8-4-2002 on the basis of that a consolidated order imposing penalty for three years i.e. 1995 to 1998 was issued and a demand of Rs. 7,18,573/- was raised and hence, it could not be settled. The said order has been brought on record as Annexure-P/7.

It is contended in the petition that the demand of penalty u/s 10-A of the Act was raised for three years by consolidated order dated 25-8-2001 instead of passing three separate orders and the amount of penalty has been separately quantified for each year and in view of severability the petitioners cannot be deprived of the benefit when a scheme has been floated by the State Government. It is also contended that had a consolidated demand been made for three years the conception of separability would not have been attracted as it might not have been possible to demarcate the demands for settlement as the demand relating to the year 1997-98 is not covered under the Scheme for the purpose of settlement. It is put forth that once an order has been passed accepting the settlement and deposits have been made, it is inappropriate on the part of the authority to reject the prayer for not accepting the same on an extremely hypertechnical ground. In this backdrop prayer has been made for issue a writ of certiorari for quashing of the order contained in Annexure-P/7, dated 8-4-2000 and to accept the amount as the settled amount and further to issue a writ of mandamus to issue Form III accepting the application for settlement.

4A. A counter affidavit has been filed by the answering respondents contending, inter alia, that there is an alternative and efficacious remedy for the petitioners to approach the Commissioner, Commercial Tax under Clause 8 of the Scheme and, therefore, the present petition deserves to be dismissed. It is the further stand in the return that penalty was imposed and various irregularities were noted and accordingly proceeding for imposition of penalty was initiated u/s 10-A of the Act. It is put forth that taking into consideration the irregularities a consolidated order imposing penalty to the tune of Rs. 7,18,573/- has been

passed on 25-8-2000 and the said order has been assailed in an appeal by the petitioner which is pending for adjudication before the authority. It is not disputed that the petitioners had filed an application for settlement under the Scheme for two years i.e. 1995-96 and 1996-97 but did not mention the factum that they had preferred an appeal before the appellate authority though such mention of fact was imperative under Clause 5(i) of the Scheme. It is the stand of the respondents that the penalty was assessed, quantified and imposed for the first time in the year 2000 and was not meant for any specific period but in fact, was imposed for the violation of certain provisions of the Act. The penalty imposed by the answering respondents, as pleaded, did not relate to any specific year or period but was imposed on the ground of abuse and misuse of the declaration form issued to the petitioners. Emphasis has been laid on the factum that the order imposing penalty is a consolidated one and hence, it cannot be bifurcated year-wise to extend the benefit of the scheme.

I have heard Mr. Sumit Nema, learned counsel for the petitioners and Mr. Harish Agnihotri, learned Govt. Advocate for the respondents.

It is propounded by Mr. Nema that though the order imposing penalty is a singular one but the amount quantified is year-wise and hence, there cannot be any impediment in segregating them to apply the scheme in question. It is urged by him that the purpose of mentioning that an appeal has been preferred is that the appeal would not be adjudicated and on the proof of settlement the appeal itself, would be treated to be withdrawn. Submission of Mr. Nema is that the competent authority vide Annexure-P/7 has declined to entertain the prayer on the ground that the imposition of penalty also includes the year 1997-98 and on no other ground. The learned counsel has further submitted that the stand taken in the return by the order imposing the penalty is not for a specific period but for declaration of form issued by the petitioners has no legs to stand.

Mr. Harish Agnihotri, learned Govt. Advocate for the respondents/State relying on the assertions made in the counter affidavit has contended that the tenor of the order passed in Annexure-P/1 is to be seen that penalty was imposed because of irregularities and hence, a singular order came to be passed which cannot be segregated. The learned counsel for the State has submitted that it was obligatory on the part of the petitioners to mention about preferring of an appeal and that having not been done it tantamounts to suppression and hence, benefit has been rightly denied.

The first question that emerges for consideration is whether non-mentioning of appeal in the application amounts to such an act by which petitioners should be deprived of consideration of their application. Clause 5(i) of the Scheme stipulates that if any appeal is pending it should be mentioned in the application with the undertaking that he is taking the benefit of the scheme floated by the State Government and the appeal preferred by him would deemed to be disposed of. The aforesaid condition, submits Mr. Nema, has a purpose to know the fate of appeal and also to bind down the assessee. In the case at hand due to

inadvertence the petitioner did not mention about the factum of filing of appeal and in any case that would not be an impediment for consideration as that cannot always be treated as a condition precedent. The learned counsel submitted that he has deposited the amount by entering into a settlement and he had no intention to prosecute the appeal. On a perusal of Clause 5 (ii) of the Scheme it is evincible that the mode and method of calculation has been provided in case where appeal or revision has been finalised. There is no stipulation about the matters which have been remanded for the purpose of reassessment of provisions of the Scheme would not be applicable. If Clause I and II are read conjointly it would be crystal clear that the mentioning of appeal has a purpose but simultaneously it cannot be construed that if the said fact is not mentioned the application cannot be considered. The matter would have been different had the petitioner's appeal been disposed of and he had been conferred the benefit which would have been in contravention of or contrary to Clause 5(n) of the Scheme. This is not the fact situation in the case at hand. In view of the aforesaid, I am disposed to think that non-mentioning of the appeal does not create any impediment for consideration of the application preferred by the petitioners. Quite apart from the above, Mr. Nema has fairly submitted that the appeal may be treated to be withdrawn.

The second aspect that arises for consideration is whether the Scheme would be applicable to the case at hand or not. Submission of Mr. Agnihotri is that penalty was imposed because of irregularities committed by the assessee and the said imposition does not relate to any specific period. If the submission of Mr. Agnihotri is understood in proper perspective it would mean that the purpose for imposing penalty is the genus and the such genus does not permit any kind of bifurcation and, therefore, the question of applying the Scheme does not arise. The aforesaid submission has a basic fallacy. On a perusal of Annexure-P/1, the order imposing penalty, the respondent No. 1 has unequivocally dealt about the irregularities qua for different years. He has determined the quantum for the year 1995-96, 1996-97 and 1997-98 separately and has imposed the penalty taking into consideration the said amount. The amount of penalty per year is totally different. The orders could have been passed singularly or analogously. The authority has chosen to pass an analogous order but simultaneously he has taken care to determine the quantum and imposed the penalty. The spacious plea of the respondent that no specified period has been taken into consideration while imposing penalty is sans substratum inasmuch as the order is quite vivid that the periods different and the amounts are different. The common thread running through relates to irregularities. The irregularities may be the same but the amount of imposition of penalty is separate. Submission of Mr. Agnihotri is that common thread has to take dominant role and quantum should be treated to be lump-sum. In my considered opinion, the aforesaid submission is to be taken note of exclusively for the purpose of rejection since it is not only unacceptable but the common sense also does not give consent to the same. The scheme has been floated to confer the benefit for granting benefit to the

assessee for a specified period relating to tax and penalty. In the return it is not disputed that the said Scheme is not applicable to penalty, and rightly so. That being the purpose the reason for imposing for penalty being the same in respect of subsequent year which is not covered by the Scheme and which has been dealt with in common order would not debar or create a remora for the assessee to file an application for settlement.

Another thing requires to be noticed is that, the petitioner had filed the application and the benefit was conferred. When grant of certificate was sought a different order came to be passed on the aforesaid grounds. The impugned order only states that as a consolidated order was passed it is not possible to settle. In the absence of any other reason, I am inclined to think the said order is unsustainable, as I have already held that the reason behind the imposition of penalty is not the governing or pivotal factor but the real fulcrum is quantum of penalty and the segregation as regards the same year-wise. As in the present case despite the consolidated order the year and the quantum are separable the doctrine of separateness would get attracted for availing the benefit of the scheme. It is not out of place to state here that there has been no quarrel over the quantum or for the benefit granted.

In view of the aforesaid premises the inevitable result is quashment of Annexure-P/7 passed by the respondent No. 1 and accordingly, it is so directed. As a natural corollary the further direction to the respondent No. 1 would be to grant the requisite certificate to the petitioner under the Scheme and it is so ordered.

In W.P. No. 3188/2002 a similar prayer has been made except the fact it relates to the year 1996-97 in respect of the demand of Rs. 2,63,080/- was created and on settlement a figure was arrived at Rs. 78,924/- which was deposited by the assessee. As the grounds raised in the petition as well as in the return are same the reasons ascribed above would apply to the said case and accordingly, the impugned order contained in Annexure-P/7 stands quashed. All other directions issued earlier would squarely apply to this writ petition.

Consequently both the writ petitions are allowed without any order as to costs.