(1984) 09 MP CK 0013

In the Madhya Pradesh High Court

Case No : Petition No. 156 of 1983

Segan Plastics APPELLANT

Vs

State of M.P. and Another RESPONDENT

Date of Decision : 17-09-1984

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 39

Citation : (1987) 64 STC 345

Hon'ble Judges : G.L. Oza, Acting C.J.;V.D. Gyani, J

Bench : Division Bench

Advocate : Goyal, for the Appellant; R.C. Mukati, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, Ag. C.J.

1. This is a petition filed by the petitioner challenging an assessment made by the Assistant Sales Tax Officer and affirmed in revision by the Deputy Commissioner of Sales Tax, Ujjain Range, Ujjain.

2. The facts necessary for decision of this petition are that for the period 1st July, 1978, to 30th June, 1979, returns were filed by the petitioner and assessment was completed by the Assistant Sales Tax Officer. There is some dispute raised about the proper opportunity also but ultimately in this petition the main contention urged is about the jurisdiction of the Assistant Sales Tax Officer and, therefore, those matters are not relevant. Against the order passed by the Assistant Sales Tax Officer dated 28th August, 1981, the petitioner preferred a revision before the Deputy Commissioner of Sales Tax, Ujjain Range, on 23rd October, 1981. This revision was filed u/s 39 of the M.P. General Sales Tax Act. It was contended before the Deputy Commissioner that earlier assessments were done by the Sales Tax Officer and, therefore, the Assistant Sales Tax Officer had no jurisdiction to assess the petitioner. The Deputy Commissioner by his order dated 12th November, 1982, rejected the revision petition and maintained the

order passed by the Assistant Sales Tax Officer and it is against this that the present petition is filed.

3. It was contended by the learned counsel for the petitioner that u/s 3 of the Act there are number of taxing authorities indicated in the section and u/s 30 powers have been conferred on the Commissioner of Sales Tax to delegate the functions to any one of the officers appointed u/s 3. It is contended that under Rule 68 of the M.P. General Sales Tax Rules it is provided that the Commissioner could only delegate powers as have been enumerated in this section and the relevant clause is Rule 68(7)(c) and it was contended that under this provision it has been provided that the power will be delegated to Assistant Sales Tax Officer in cases in which the gross turnover of the year preceding the period of assessment does not exceed rupees six lakhs. It is, therefore, contended that up to this limit under this Rule 68(7)(c) the Commissioner is authorised to delegate the powers to the Assistant Sales Tax Officer but in fact by orders of the Commissioner which have been filed and which are not disputed, the power delegated to the Assistant Sales Tax Officer is only in respect of the dealer whose gross turnover of the year preceding the period of assessment does not exceed rupees four lakhs and it is contended that it is on this basis that the previous assessments were made by the Sales Tax Officer and not by the Assistant Sales Tax Officer. It was, therefore, contended that the Assistant Sales Tax Officer had no jurisdiction to assess in the present case as the gross turnover of the preceding year was more than rupees four lakhs. Learned counsel placed reliance on the decisions in Ramnath Sharma v. State of Madhya Pradesh [1984] 17 VKN 173 (MP) and Commissioner of Sales Tax, U.P. v. Sarjoo Prasad Ram Kumar [1977] 10 VKN 49 (SC). Learned counsel also referred to the decisions in Bhagwan Devi Saraogi and Others Vs. Income Tax Officer, ''E'' Ward and Others, and Continental Commercial Corporation Vs. Income Tax Officer and Another, to contend that the question of jurisdiction is a matter which goes to the root of the matter and, therefore, could be raised even at a later stage.

4. Learned Government Advocate appearing for the respondent-State did not dispute the facts nor it is disputed that the order passed by the Commissioner of Sales Tax delegating the functions to the Assistant Sales Tax Officer limits the jurisdiction of the Assistant Sales Tax Officer to the assessment of dealers whose gross turnover of the year preceding the period of assessment does not exceed rupees four lakhs. It is also not disputed that the gross turnover of the preceding year in the case of the petitioner was more than rupees four lakhs but the only contention advanced by the learned Government Advocate is that this objection about jurisdiction was not raised before the Assistant Sales Tax Officer nor it was precisely raised before the Deputy Commissioner of Sales Tax when he was hearing the revision petition.

5. Learned counsel for the petitioner, on the other hand, contended that before the Assistant Sales Tax Officer the petitioner did not get adequate opportunity and before the Deputy Commissioner in revision it was contended that the

assessments of earlier years were made by the Sales Tax Officer and it was in this manner that the question of jurisdiction of the Assistant Sales Tax Officer was raised before the revising authority and it was contended that the decisions on which reliance is placed clearly lay down that this question of jurisdiction goes to the root of the matter and, therefore, can even be raised at the stage of the petition before this Court.

6. Rule 68(7)(c) clearly provides :

68. Delegation of Commissioner''s powers.-The Commissioner shall not delegate any powers other than those enumerated below, in respect of the section/ rules mentioned in column (2) of the Table below, nor shall he delegate any power thereunder specified in column (3) of the said Table to any officer below the rank or contrary to the conditions specified and mentioned in the corresponding entry in column (4) thereof :-

____ S. No. Section/ Description Designation of rule of powers officer and conditions of delegation (1) (2) (3) (4) ____ 7. 18, 19 and 22 To make an assessment or reassessment of tax or to impose penalty or to grant further time to pay such tax and/or penalty or to allow the payment of tax and/or penalty in instalments and to exercise all other powers under Sections 18, 19 and 22,- (c) in respect Assistant Sales Tax of a dealer Officer (subject to whose gross the condition that turnover of if at any stage, the year during any asses- preceding the sment proceeding period of ass- in respect of any essment does dealer the Assist- not exceed ant Sales Tax1 rupees six Officer finds that lakhs or who the turnover of has no turn- such dealer during over liable the year of to assessment assessment has for the period already exceeded preceding the or is likely to period of exceed rupees six assessment. lakhs, he shall not complete the assessment proce- eding but shall submit the procee- ding to the Sales Tax Officer having jurisdiction over the dealer.)

It is, therefore, Clear that under Rule 68 read with Section 30 the Commissioner could delegate powers to the Assistant Sales Tax Officer to the extent as has been provided in Rule 68(7)(c). It is also clear that for the relevant period the order of the Commissioner delegating the powers to the Assistant Sales Tax Officer was only to the extent of dealers whose gross turnover of the year preceding the period of assessment does not exceed rupees four lakhs and it is also not in dispute that so far as the petitioner is concerned, for the period of assessment which is in dispute in the preceding year the gross turnover was more than rupees four lakhs. Under these circumstances, it is not in dispute that the Assistant Sales Tax Officer had no jurisdiction to pass the impugned order of assessment. A Division Bench decision of this Court in Ramnath Sharma v. State of Madhya Pradesh [1984] 17 VKN 173 considered this question and it was held :

As the question of jurisdiction of the assessing authority is a question which goes to the root of the matter, it deserves to be examined first. Clause (c) of Sub-rule (7) of Rule 68, as has been quoted above, provides that the ASTO will be competent to make an assessment where the taxable turnover of the year preceding the period of assessment does not exceed Rs. 4 lakhs. From the order of assessment, it is not possible to find out what is the taxable turnover of the year preceding the year of assessment. In fact, this assessment order is not an assessment order for any year nor the assessing authority has attempted to split the assessment in order to show what will be the taxable turnover in the year preceding the year of assessment. It is a wholesale assessment for about ten years and the assessing authority has found it to be of over Rs. 12 lakhs. It is not disputed that wherever the taxable turnover exceeds Rs, 4 lakhs, the authority will be the STO and not the ASTO. It is, therefore, apparent that the ASTO has gone beyond jurisdiction in passing the order of assessment. The contention of the learned Deputy Government Advocate that it was for a period of over ten years and therefore if the turnover is divided, by 10, it may fall within the limit of the jurisdiction of the ASTO. It cannot be accepted because the assessment order does not disclose that the ASTO assessed yearwise separately so that on the basis of that, it could be found out as to what was the taxable turnover in the year preceding the year of assessment. Under these circumstances, in our opinion, it is not necessary also to go into the question of limitation so far as the revising authority is concerned.

In this view of the matter, therefore, the orders passed by the Assistant Sales Tax Officer and the Deputy Commissioner could not be maintained.

7. The petition is, therefore, allowed. The order of assessment passed by the Assistant Sales Tax Officer and the order passed by the Deputy Commissioner in revision are hereby quashed and it is directed that the papers be sent to the Sales Tax Officer, Ujjain, who will consider the matter afresh and proceed to make assessment in accordance with law. In the circumstances of the case, parties are directed to bear own costs. Security amount, if deposited, be refunded to the petitioner.

