
(2013) 01 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1322 and 1323 of 2008

Sharda Engineers and Contractors

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 62 VST 200

Hon'ble Judges : M.A. Siddiqui, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Mukesh Agrawal, for the Appellant; Vivek Agrawal, Government Advocate, for the Respondent

Judgement

1. This order shall decide W.P. No. 1322 of 2008 and W.P. No. 1323 of 2008 filed by the same party against imposition of Central sales tax for the period April 1, 1997 to March 31, 1998 and April 1, 1998 to March 31, 1999. Two revisions were preferred by the petitioner for the aforesaid two assessment years, both were dismissed by separate orders filed as annexure P5 in both the petitions, both the petitions are being decided by this common order as the factual position in both the cases are identical. For the convenience, facts are taken from W.P. No. 1322 of 2008. The sole contention of the petitioner before this court is that for the date of hearing, i.e., September 12, 2005, no notice was served to the petitioner though the order reveals that notice was served by affixture. The petitioner had moved an application, annexure P6, before the respondents for hearing of the revision but it was not decided. It is submitted that the procedure as provided under rule 86 of the Madhya Pradesh Commercial Tax Rules, 1995 for service of notice, summons and orders was not followed by the authorities for informing the date of hearing to the petitioner, in absence of which order, annexure P5, deserves to be set aside and the matter deserves to be remitted back to respondent No. 2, the revisional authority, for a fresh order. It is also submitted by the petitioner that before the assessing officer, the petitioner could not produce forms C and E1, as these forms were not available at the time of

assessment and the petitioner may be permitted to produce those forms before the revisional authority who can very well take cognizance of the aforesaid form for assessing the petitioner at the lower rate of tax.

2. Shri Agrawal, learned Government Advocate opposed the aforesaid contention and submitted that inspire of notice, the petitioner had failed to appear before the revisional authority. Before September 12, 2005, various notices were issued to the petitioner but he had failed to appear before the revisional authority so there is no reason to set aside the order, annexure P5 to remit the matter back.

3. From the perusal of the record, it appears that on September 12, 2005 the revisional authority had issued the notice to the petitioner which Was served by affixture. Rule 86(1) of the Madhya Pradesh Commercial Tax Rules, 1995 which is applicable in the present case provides thus:

(1) Notice or summons or order under the Act or any rules made thereunder may be served by any of the following methods:--

(i) by delivering or tendering to the addressee or his agent by hand of a copy of the notice or summons or order, or

(ii) by post:

Provided that if upon an attempt having been made to serve any such notice or summon or order by any of the abovementioned methods, the authority issuing it is satisfied that the addressee is evading the notice or summons or order or that for any other reason, the notice or summons or order cannot be served by any of the above-mentioned methods, the said authority shall cause such notice or summons or order to be served by affixing a copy thereof:--

(a) if the addressee is a dealer, on some conspicuous part of the dealer's office or the building in which the dealer's office is located or upon some conspicuous part of any place of the dealer's business last notified by the dealer, and

(b) if the addressee is not a dealer, on some conspicuous part of his residence or office or the building in which his residence or office is located,

and such service shall be as effectual as if it had been made on the addressee personally.

4. The aforesaid provision specifically provides that a notice is to be served by delivering or tendering to the addressee by hand or by post and in case the notice could not be served then the authority issuing the notice is required to record the satisfaction that the addressee is avoiding the notice or summons and the notice cannot be served by any of the abovementioned methods, then the authority can pass an order for service by affixture. In case the notice is served by affixture then it has to be pasted on conspicuous part of the building or business premises and due procedure as provided is to be followed but in the present case no service report by affixture has been filed by the respondents before this court. There is no order of the revisional authority to show that it was

satisfied that ordinarily a notice could not have been served by hand or by post and to direct service by affixture of the notice, in absence of which, the contention of the petitioner appears to be correct that no notice was served upon the petitioner and the matter was decided ex parte. In the aforesaid circumstances, we find it appropriate to set aside the order, annexure P5 and to direct revisional authority to hear and decide the matter afresh.

5. In so far as filing of the forms C and E1 before the revisional authority is concerned, this question has been decided by the Division Bench of this court in Aar Kay Agro Spring Industries v. State of Madhya Pradesh [2013] 62 VST 197 (MP) : [2011] 19 STJ 566 , in which the Division Bench following the law laid down by the apex court in Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, held that the assessee can be given opportunity to collect declaration forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down. The revisional authority can permit to file C form before it and to decide the matter in accordance with law.

6. In view of the aforesaid settled law, this petition is finally disposed of with the following directions: 1. The order, annexure P5, filed in both the cases dated September 12, 2005 is hereby set aside. The matter is remitted back to respondent No. 2 to decide the revision case bearing No. 434/Bhopal/05/Central and No. 435/Bhopal/05/Central afresh.

2. The petitioner herein shall appear before respondent No. 2 on March 1, 2013, for which no separate notice would be required to the petitioner. On the aforesaid date respondent No. 2 shall refer the file of the aforesaid two revisions and shall hear and decide the matter in accordance with law.

3. The petitioner herein, if advised so, may file forms C and E1 before respondent No. 2 on or before the aforesaid date and in case of filing such forms before respondent No. 2, along with an application in this regard, respondent No. 2 shall consider the application in accordance with law and shall take cognizance of the aforesaid forms for deciding the matter.

4. Respondent No. 2 shall make an endeavour to decide the matter finally as far as possible within a period of three months from the aforesaid date.

Considering the facts of the case, there shall be no order as to costs.