(2013) 01 MP CK 0171

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7650 of 2006

Shiv Industries APPELLANT

Vs

Commercial Tax Officer and Others RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) 61 VST 361

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

Bench : Division Bench

Advocate : Sanjay Mishra, for the Appellant; Rahul Jain, Deputy Advocate-General, for the Respondent

Final Decision : Disposed Off

Judgement

1 Heard finally. This writ petition under article 226 of the Constitution of India has been filed to quash order of penalty Rs. 2,03,830 imposed by assessing officer dated October 4, 2004 vide annexure P6, u/s 69(2) of the M.P. Commercial Tax Act, 1994.

2. In brief the facts of the case are that the petitioner is registered dealer under the provision of the M.P. Commercial Tax Act, 1994 and is dealing in the business of manufacturing and sale of water cooler, cooling pump, iron almirah, etc. The assessment of commercial tax for the period April 1, 1997 to March 31, 1998 was made by an order dated May 25, 2000 (annexure P5). On June 12, 1997, the business premises of the petitioner were inspected by the Commercial Tax Department/(respondents), the books of account and other related documents were seized during the course of inspection. The petitioner asked for copies of accounts book, etc., but the same were not supplied even after written demand by the petitioner on June 16, 1997, August 12, 1997 and dated August 13, 1997. The assessment was done on May 25, 2000 by the Commercial Tax Officer, Satna and for the penalty under the provision of section 69 of the M.P. Commercial Tax Act, 1994 separate proceeding were ordered to be initiated.

3. On October 4, 2004, the assessing officer, i.e., respondent No. 1 had initiated the penalty proceedings u/s 69(2) of the M.P. Commercial Tax Act, and Rs. 2,03,830 as penalty was imposed. The petitioner had preferred a revision before respondent No. 2, and submitted that against the original assessment order in which the taxable turnover was determined, was already a subject-matter of appeal before the appellate authority, hence the penalty imposed against the petitioner be set aside or be kept in abeyance till the appeal is decided by the Commercial Tax Appellate Board, Bhopal. However, the revisional authority had not considered the objection and dismissed the revision petition on June 25, 2005 vide order annexure P7. This order is under challenge on the ground that during pendency of appeal, such order could not have been framed because it was not found that the petitioner had deliberately concealed its turnover.

4. The petitioner has placed reliance on the judgment of S.R. Kalani and Co. Vs. C.L. Sharma and Another, , in which it has been held thus:

...Penalty u/s 43(1) can be imposed on an assessee only if the assessing authority is satisfied that the assessee has deliberately concealed his turnover or furnished a false return; and that too only after giving the assessee a reasonable opportunity of being heard. The proceedings u/s 43(1) being penal proceedings, the burden of proving the essential ingredients for imposition of the penalty is not on the assessee but on the Department. The assessment proceedings and penalty proceedings are different in their nature. The findings given in assessment proceedings are no doubt relevant and admissible in penalty proceedings, but they do not operate as res judicata for the reason that the considerations that arise in penalty proceedings are entirely different from assessment proceedings.

Therefore, the conclusion of the assessing authority in assessment proceedings that the return filed by the assessee is false or that he has concealed his turnover cannot be made sole basis for imposing penalty and the assessee is entitled to adduce evidence to show that no penalty ought to be imposed on him.

In the present case while passing penalty order the assessing authority disregarded all these principles. The assessing authority all along proceeded on the basis that it was for the petitioner to prove his innocence and not for the Department to prove the guilt; and that the finding reached by him in the assessment proceedings about the concealment of turnover and submission of false returns concluded the matter. Thus, the order of penalty passed by the assessing authority is patently in violation of provisions of section 43(1) of the Act and cannot be sustained.

As the appeal filed by the petitioner against the assessment order is till pending, it would be proper to stay further proceedings u/s 43(1) of the Act till the disposal of that appeal.

5. The learned counsel for the respondents could not point out that by order dated October 4, 2004 or order dated May 25, 2006 the authorities, were

satisfied that the petitioner had deliberately concealed his turnover or furnished a false return.

6. In the light of the law laid down in S.R. Kalani and Co. Vs. C.L. Sharma and Another, , the order dated October 4, 2004 passed by the assessing officer, i.e., respondent No. 1, the Commercial Tax Officer, Circle-I, Satna and order dated June 25, 2005 passed by respondent No. 2, i.e., the Divisional Deputy Commissioner of Commercial Tax, Satna, are hereby set aside and the matter is remitted back to the assessing officer, i.e., respondent No. 1, the Commercial Tax Officer, Circle-I, Satna for a fresh adjudication after extending/giving proper opportunity to the petitioner.

7. Consequently, with the aforesaid direction, the present writ petition is finally disposed of. No order as to costs. Certified copy as per rules.