(2005) 08 MP CK 0085

In the Madhya Pradesh High Court

Shri Ram Marble APPELLANT

Vs

Assistant Commissioner, Commercial Tax and Others RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:
Madhya Pradesh Commercial Tax Act, 1994 — Section 69, 69(2), 69(3)

Citation : (2008) 11 VST 411

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.—Though this matter was listed for admission keeping in view the nature of the order the matter is finally disposed of.

2. The petitioner, an assessee, under the Madhya Pradesh Commercial Tax Act, 1994 (for brevity "the Act") was proceeded for assessment under the said Act and eventually certain demands were made, the assessing officer issued a notice to show cause u/s 69 of the Act. In the said show cause it was mentioned about the total tax assessed and the amount deposited with the returns. The petitioner filed his show cause treating the same to have been issued under Sub-section (3) of Section 69. The assessing officer by the impugned order imposed the penalty by computing the tax component by four times. The assessee preferred a revision but the revisional authority came to hold that the assessing officer had passed the order u/s 69(2) and not u/s 69(3) of the Act and hence, there was no error in the order.

3. Mr. Nema, learned Counsel for the petitioner has contended that the notice to show cause was confusing inasmuch as though certain amount was mentioned an impression was given that 80 per cent was not deposited. It is put forth by him that Sub-section (3) of Section 69 of the Act deals with concealment whereas Sub-section (2) has a different contour. The learned Counsel has contended that the assessee would have filed a different explanation, prayed for

some other relief, had he known about the nature of show cause notice in an unequivocal manner. The learned Counsel for the petitioner has also submitted that the order passed by the assessing officer is absolutely laconic inasmuch as he has not ascribed any reason why he has imposed penalty except stating that the petitioner has tried to pave the path of evasion of tax.

4. Mr. Harish Agnihotri, learned Government Advocate for the State Government supported the order passed by the Revenue.

5. To appreciate the rivalised submissions raised at the Bar, it is appropriate to reproduce Section 69 of the Act. It reads as under:

Section 69 : Power of Commissioner or appellate or revisional authority to impose penalty in certain circumstances,--(1) If the Commissioner or the appellate or revisional authority, in the course of any proceedings under this Act is satisfied 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, as the case may be, in his return or returns for any year or part thereof or has furnished a false return or returns for such period, the Commissioner or the appellate or the revisional authority as the case may be, may initiate proceeding separately for imposition of penalty under this section.

(2) The proceeding under Sub-section (1) shall be initiated by the Commissioner or the appellate or revisional authority as the case may be, by issue of a notice in the prescribed form for giving the dealer an opportunity of being heard. On hearing the dealer, the Commissioner or the appellate or the revisional authority as the case may be, shall pass an order not later than one calendar year from the date of initiation of such proceeding or within such further time as allowed by the State Government, directing the dealer that, he shall in addition to the tax payable by him pay by way of penalty a sum which shall not be less than three times but shall not exceed five times of the amount of tax evaded.

(3) If the total tax shown as payable according to the return or returns and paid by a dealer for any period or part thereof is less than eighty per cent of the total tax assessed u/s 27 such dealer shall be deemed to have concealed his turnover or aggregate of his purchase prices or to have furnished false particulars of his sales or purchases in his return or returns or to have furnished a false return or returns for the purpose of Sub-section (1) unless he proves to the satisfaction of the Commissioner or the appellate or the revisional authority, as the case may be, that the concealment of the said turnover or the aggregate of purchase prices or furnishing of particulars of sales or purchases or furnishing of the false return or returns was not due to any fraud or gross negligence on his part.

6. On a scanning of the anatomy of the aforesaid provision, it is plain as day that Sub-section (1) deals with initiation of proceeding, Sub-section (2) prescribes certain condition-precedents and Sub-section (3) deals with affording of an opportunity to the assessee. The notice issued to the petitioner appears to be vague. The order passed by the assessing officer is also laconic. Though the

petitioner has been heard, order has not been passed in an appropriate manner. An order is to be informed by cogent and germane reasons keeping in view the spirit of the enactment. A penal provision has to be strictly construed. The assessing officer has not dealt with the aspect relating to penalty but has a spacious observation that the penalty was imposed on the basis of the assessment. In my considered view, the said order is vulnerable and affirmation thereof by the revisional authority is also susceptible and accordingly, the said orders are quashed. However, it is open to the assessing officer to proceed in accordance with law from the stage of issue of show cause. To elaborate: no further show cause shall be issued, as the petitioner is presently aware that the notice to show cause is u/s 69(2) of the Act. The petitioner shall file his show cause within a period of thirty days from the date of receipt of the order passed today and the assessing officer shall proceed in accordance with law.

7. The writ petition is allowed to the extent indicated above. There shall be no order as to costs. Carbon copy as per rules.

