

(1982) 05 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 217 of 1977

Simplex Structural Works

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-05-1982

Acts Referred:

Income Tax Act, 1961 — Section 37, 37(1)

Madhya Pradesh General Sales Tax Act, 1958 — Section 8(1), 8(3)

Citation : (1982) 30 CTR 143 : (1982) ILR (MP) 742 : (1983) 140 ITR 782 : (1983) 12 TAXMAN 176

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : H.S. Shrivastava, for the Appellant; B.K. Rawat, for the Respondent

Judgement

G.P. Singh, C.J.—This is a common reference made by the Income Tax Appellate Tribunal in respect of two assessees, M/s. Simplex Structural Works and M/s. Simplex Engineering Company, for the assessment year 1973-74. The questions of law relating to the case of M/s. Simplex Structural Works [R. A. No. 46 (Jab.)/76-77] are as follows:

"1. Whether, the Tribunal was right in law in disallowing, while determining the business income of the assessee, Rs. 42,600 paid as penalty u/s 10(d) read with Section 10A of the Central Sales Tax Act ?

2. Whether, on the facts and in the circumstances of the case, and particularly in view of the finding by the Sales Tax Officer that the penalty of Rs. 42,900 was imposed u/s 10A at the difference of the tax at the prescribed rate minus the rate of tax paid by him (the assessee), was the Tribunal right in law in holding that, what was paid, was not in fact sales tax, but penalty ?"

2. The question of law pertaining to M/s. Simplex Engineering Co. [R. A. No. 47 (Jab.)/1976-77] are as below :

"1. Whether, the Tribunal was right in law in disallowing, while determining the

business income of the assessee, Rs. 7,825 paid as penalty u/s 10(d) read with Section 10A of the Central Sales Tax Act and Rs. 3,650 u/s 8(2) of the M. P. General Sales Tax Act?

2. Whether, on the facts and circumstances of the case, and particularly in view of the finding by the Sales Tax Officer that the penalty of Rs. 11,475 was imposed under sections 10A and 8(2) supra, at the difference on the tax at the prescribed rate minus the rate of tax paid by him (the assessee), was the Tribunal right in law in holding that, what was paid, was not in fact sales tax, but penalty ?"

3. Both the assessees are registered firms. They derive income from steel fabrication works. In the assessment of sales tax payable by M/s. Simplex Structural Works, a penalty amounting to Rs. 42,900 was imposed by the STO u/s 10A read with Section 10(d) of the Central Sales Tax Act, 1956. Similarly, in the case of M/s. Simplex Engineering Co., the STO imposed Rs. 7,825 as penalty u/s 10A read with Section 10(d) of the Central Sales Tax Act and Rs. 3,650 as penalty u/s 8(2) of the Madhya Pradesh General Sales Tax Act, 1958. The assessees claimed that these penalty amounts paid by them should be allowed as business expenditure u/s 37(1) of the I. T. Act, 1961, in the computation of their total income. There is no dispute that in both the cases the penalties imposed were equal to the difference between the tax at the full rate and the tax at the concessional rate. The ITO did not allow the amounts of penalty as business expenditure u/s 37(1). In appeal, the AAC took a contrary view and allowed these amounts as business expenditure. In further appeal, the Tribunal did not agree with the AAC and held, following the decision of the Supreme Court in Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, , that the amounts of penalty could not be treated as a business expenditure allowable u/s 37(1).

4. Section 8(1) of the Madhya Pradesh General Sales Tax Act provides for concessional rate of tax on the sale or purchase by a registered dealer of any raw material for the manufacture of other goods for sale in the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India. But if any raw material purchased by a registered dealer u/s 8(1) is utilised for a different purpose, Section 8(2) makes him liable for penalty. The minimum amount of penalty u/s 8(2) is the difference between the amount of tax payable at the full rate and the amount of tax payable at the concessional rate. The maximum penalty is one and one-quarter times the amount of tax payable at the full rate. Similarly, Section 8(1)(b) of the Central Sales Tax Act read with Section 8(3) provides for concessional rate of tax when a sale in the course of inter-State trade or commerce is made to a registered dealer of goods specified in his certificate of registration as being intended for re-sale by him or for use by him in the manufacture or processing of goods for sale. If a person, after purchasing any goods at a concessional rate of tax u/s 8(1), fails without reasonable cause to make use of the goods for any of

the aforesaid purposes, he becomes liable to punishment u/s 10(d). Instead of prosecution, however, penalty may be imposed on such a person u/s 10A. Minimum penalty is not prescribed by this section. Maximum penalty is one and a half times of the tax at the full rate.

5. A perusal of the schemes of the aforesaid provisions of the State Act and the Central Act go to show that a registered dealer gets the benefit of concessional rate of tax if he purchases the goods for the purposes mentioned in Section 8(1) of the State Sales Tax Act and Section 8(3) of the Central Sales Tax Act. In case he is unable to utilise the goods for these purposes after purchasing them at a concessional rate of tax, he becomes liable to penalty. The maximum amount of penalty under the State Act is one and one-quarter times the amount of tax payable at full rate, and under the Central Act one and a half times the amount of tax payable at the full rate. We are, however, here concerned with cases where the amount of penalty imposed is only the difference between the tax payable at the full rate and the tax payable at the concessional rate. Had the assessee purchased the goods without giving out that they were purchasing the goods for the purposes for which the concessional rate is admissible, they would have been required to pay the tax at the full rate as part of the price and the amount of tax so paid would have been undoubtedly allowed to them as business expenditure u/s 37(1) of the I.T. Act. The only distinction in the cases before us is that the assessees gave out at the time of purchase that they intended the goods for purposes for which concessional rate of tax is allowed; but as they did not utilise the goods for those purposes, they were later made to pay as penalty the difference in tax which they would have been required to pay had they purchased the goods without making the representation that the goods were needed for the said purposes. Properly understood, when the penalty imposed u/s 8(2) of the State Act or u/s 10A of the Central Act is only the difference between the tax payable at the full rate and the tax payable at the concessional rate, the real nature of such a penalty is merely the balance amount of sales tax which ought to have been paid by the assessee at the time of purchase of goods. Although termed as penalty the amount so paid is really sales tax and should be allowed as business expenditure u/s 37. The decision of the Supreme in the case of Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, , does lay down that infraction of the law is not a normal incident of business and that if penalty is incurred for contravention of any specific statutory provision, it cannot be said to be a commercial loss falling on the assessee as a trader. This decision, however, does not prohibit us from examining the true nature of penalty imposed in a given case. If the amount of penalty is such an expenditure which the assessee would have been required to incur, even if he had not broken the law, such an expenditure cannot in true sense be termed as penalty for infraction of the law. As pointed out by us, the assessees here would have been required to pay the tax at the full rate as part of sale price had they, at the time of making the purchases, disclosed the purpose for which the goods were used, The amount of tax so paid would have been allowed as

business expenditure u/s 37. The penalties imposed u/s 8(2) of the State Act and u/s 10A of the Central Act in the cases before us do not require the assessee to pay more than what they should have paid as tax in obedience to the law. It is this factor which distinguishes these cases from the Supreme Court case of Haji Aziz and Abdul Shakoor Bros. Vs. The Commissioner of Income Tax, Bombay City II, . The learned standing counsel for the Department also relied upon a decision of a Division Bench of this court in Commissioner of Income Tax Vs. Malwa Vanaspati and Chemical Co. Ltd., , which lays down that penalty paid u/s 8(2) of the State Act cannot be allowed as a business expenditure u/s 37(1) of the I.T. Act. In that case, however, the penalty imposed u/s 8(2) was not merely the difference in the tax at the full rate and the tax at the concessional rate. The learned judges specifically observed that the assessee did not produce any material to show that the penalty imposed u/s 8(2) was the minimum and comprised only of the difference in tax between the amount of tax at the full rate and the amount of tax at the concessional rate. The decision of this court in Commissioner of Income Tax Vs. Malwa Vanaspati and Chemical Co. Ltd., , therefore, cannot be applied to the facts of the instant case.

6. For the reasons given above, we answer the questions as follows :

Simplex Structural Works (R.A. No. 46/76-77):

1. The Tribunal was not right in law in disallowing the expenditure of Rs. 42,900 paid as penalty u/s 10A of the Central Sales Tax Act.
2. The Tribunal was not right in law in holding that what was paid as penalty was not really balance of sales tax.

Simplex Engineering Co. (R.A. No. 47/76-77):

1. The Tribunal was not right in law in disallowing Rs. 7,825 paid as penalty under the Central Act and Rs. 3,650 as penalty under the State Act.
 2. The Tribunal was not right in law in holding that the aforesaid amounts were not really balance of sales tax.
7. There will be no order as to costs of this reference.