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(2012) 07 MP CK 0033

In the Madhya Pradesh High Court

Case No : Writ Petition No. 743 of 2011

Surya Roshni Ltd. APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Citation : (2013) 3 MPHT 243 : (2013) 60 VST 250

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : Pawan Dwivedi, for the Appellant; Praveen Niwaskar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners has filed this petition against the order dated November 29, 2010 (annexure P/1) passed by respondent No. 2, Divisional Deputy Commissioner, Commercial Tax, Gwalior Division-1. By the aforesaid order, the petitioner was directed to deposit an amount of Rs. 11,08,037 as a tax. The authority has specifically held that the petitioner has purchased plant and machinery for the purpose of expansion of unit, however, it did not pay the entry tax on the aforesaid unit because the petitioner purchased the following materials (annexure P/2) details of which, are as under:

2. The petitioner is liable to pay tax at one per cent. The authority further held that there is a distinction between expansion capacity and establishment of new unit because the petitioner was in the activity of expansion, hence, it is liable to pay entry tax.

3. The aforesaid point has already been decided by a Division Bench of this court in the case of Perfect Pottery Co. Ltd. Vs. Commissioner of Sales Tax, , wherein the Division Bench of this court has held that the purchase of building materials for the purpose of repairs, renewal and maintenance, cannot be said to be an activity in the course of business and it is not liable to purchase tax.

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4. The findings of the Division Bench are as under (page 479 in 76 STC):

... for determining the question of liability to purchase tax, it would make no difference whether the activity of construction is undertaken to make the building available for starting the business or for expansion of business or for maintenance or continuance of business. The activity of construction is a condition precedent not only for starting business of manufacture or its expansion but also for continuance of the business of manufacture and such activity of construction cannot be said to be the business of assessee so as to make him liable to pay tax on the purchase of building material used in such building activity.

5. Similar principle has been reiterated by a Division Bench of this court in the case of Commissioner of Sales Tax, Madhya Pradesh v. Satna Cement Works, Satna [1984] 17 VKN2 60 wherein the Division Bench of this court has held as under:

That the building is expanded, it would only mean the building activity precedes the expansion of the business for which purpose the building is required. Therefore, the building materials, which were purchased for the construction of the buildings cannot be said to be in the course of business of the assessee and the levy of purchase tax on the purchase of building materials was not justified.

6. Hence, on the basis of aforesaid principle laid down by the Division Bench of this court, the petitioner is not liable to purchase tax and certainly it is not liable for entry tax because purchase of materials for expansion of business could not be said to be an activity in the course of business. Hence, the order passed by the authority is contrary to law.

7. The learned Government Advocate for the respondents-State also raised an objection in regard to the maintainability of the petition on the ground that there is an alternative remedy available to the petitioner. In our opinion, there is no adjudication on the facts in this petition. On the admitted facts, the authority has misconstrued the provisions of law. Hence, the writ petition could not be dismissed at this stage, when the return has already been filed by the respondents-State. Hence, the petition of the petitioner is allowed. The impugned order dated November 29, 2010 (annexure P/1) passed by respondent No. 2, Divisional Deputy Commissioner, Commercial Tax, Gwalior Division-1, is hereby quashed. No order as to costs.

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