(2004) 01 MP CK 0065

In the Madhya Pradesh High Court

Turkhiya Chemicals APPELLANT

Vs

Upayaket Wanijykar RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 11 VST 45

Hon'ble Judges : Deepak Verma, J;Ashok Kumar Tiwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal under Clause X of letters patent is directed against order dated September 18, 2003, passed by the learned single Judge, in appellant''s Writ Petition No. 1121 of 2003.

Few facts material for deciding said appeal are mentioned herein below:

Appellant is a registered dealer under the provisions of the Madhya Pradesh General Sales Tax Act, 1958. Sales Tax Officer has passed an order of assessment against present appellant on September 1, 2000. Feeling aggrieved by said assessment order, present appellant preferred a revision before Deputy Commissioner, Commercial Tax, Indore, who is the revisional authority. Said revision came up for hearing on March 20, 2002. Since the appellant and his counsel both have remained absent on said date, revision was dismissed in default and for want of prosecution. Appellant herein filed an application for restoration of said revision before said authority on April 18, 2000, exercising its right under Rule 79(4) of the Madhya Pradesh Commercial Tax Rules, 1995. Said application came up for consideration before revisional authority on April 10, 2003. By a scanty and non-speaking order, appellant''s application for restoration of revision was dismissed by revisional authority on the said date. Feeling aggrieved by two orders, appellant preferred writ petition under article 226/227 of the Constitution of India before learned single Judge who after hearing counsel for the appellant came to the conclusion that the appellant had failed to make out good and sufficient ground showing its absence on March 20, 2002. Thus, authority had committed no error in rejecting appellant''s application for restoration of revision. The learned single Judge has also found that it was not a case where any indulgence should have been shown to appellant. Against this finding recorded by the learned single Judge and rejection of writ petition preferred by the appellant, it is in appeal before us.

2. After having heard learned Counsel for the parties and on perusal of record, we are of the considered opinion that too technical and strict view of the matter has been taken by concerned revisional authority as also by the learned single Judge. Strict rule of pleadings may not apply to proceedings pending before commercial tax authorities. A valuable right of hearing before passing any adverse order has been taken away from the appellant and yet liability has been fastened on it. Thus, looking to the matter from all angles we are of the considered opinion that impugned order passed by the learned single Judge as also that of the Deputy Commissioner, Commercial Tax, dated April 10, 2003 and order dated March 20, 2002, cannot be sustained in law. If appellant''s revision was to be decided ex parte, then at least same should have been considered on merits. It is also to be noted that when appellant on coming to know of dismissal of his revision, applied for restoration of the same then lenient view of the matter should have been taken so as to meet the ends of justice. From the conduct and attitude of the authority concerned, it appears that doors of justice were closed for present appellant at the threshold itself which does not appear to be proper and reasonable to us.

3. In the light of aforesaid discussion, we hereby set aside order passed by the learned single Judge as also that of the Deputy Commissioner, Commercial Tax, dated April 10, 2003 and March 20, 2002 and restore appellant''s revision to file to be heard and disposed of on merits at an early date. Appellant agree that it shall appear before said revisional authority on February 10, 2004 for further participation. Appeal, therefore, stands allowed to the extent indicated hereinabove, but with no order as to costs.