

(1993) 10 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2553 of 1983

Ujjawal Feeds

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 09-10-1993

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 2, 43(1)

Citation : (1994) 39 MPLJ 762 : (1994) MPLJ 762 : (1994) 95 STC 447

Hon'ble Judges : R.C. Lahoti, J;M.V. Tamaskar, J

Bench : Division Bench

Advocate : B.L. Neema, for the Appellant; A.S. Jha, for the Respondent

Judgement

M.V. Tamaskar, J.

The petitioner is engaged in the business of manufacture of poultry feeds. By this petition, he challenges the order passed by the respondents 1 and 2 under the M.P. General Sales Tax Act, 1958, in assessment and revision respectively for the period April 1, 1981 to March 31, 1982. The premises of the petitioner were raided by the Sales Tax Flying Squad and certain accounts were seized which were not reflected in the regular books of account. For the period April 1, 1981 to March 31, 1982, the petitioner had submitted returns of his gross and taxable turnover containing the gross turnover of Rs. 24,49,006. From the said turnover, deduction was claimed in respect of tax-paid goods u/s 2(r)(ii) at Rs. 19,94,357 and the taxable turnover was shown at Rs. 4,54,650. This deduction claimed was in respect of raw material which was said to be tax-paid, purchased by him for manufacture of the feeds and sold them in the market.

The taxing authorities, taking into consideration the suppression, determined the gross turnover at Rs. 26,40,000 and taxable turnover at Rs. 10,44,800 and the claim for deduction was also reduced by 5 lacs from Rs. 19,94,357 to Rs. 15,95,000 on the ground that certain discrepancies of sales were noted in the account books of the assessee. A penalty of Rs. 10,000 was also imposed u/s

43(1) of the Act for furnishing incorrect return;

On revision, the enhancement and deductions made were upheld. Against the said order of assessment in revision, this petition is filed.

The primary ground which was raised by learned counsel for the petitioner was that there is no specific finding in the order regarding any concealment or furnishing of inaccurate particulars in the return.

Statements of persons recorded during the investigation by the Flying Squad were read over before this Court.

On going through the order of assessment as well as the revision which form the enhancement, deduction and imposition of penalty, it was found that the loose papers had connections with the business of the petitioner.

The question for consideration in this petition is whether the Revenue was justified in enhancing the gross turnover by about Rs. 26,40,000 and reducing the deductions claimed.

The law on the subject is laid down by the Supreme Court in [1973] 32 STC 77 (Commissioner of Sales Tax v. H.M. Esufali H.M. Abdulali). It has been held thus :

"In estimating any escaped turnover, it is inevitable that there is some guesswork. The assessing authority while making the best judgment assessment, no doubt, should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his "best judgment" and not of anyone else."

We may also refer to the judgment reported in [1993] 89 STC 186 (Ker) (Siva Traders v. State of Kerala). It has been stated that it was open to the fact-finding authority to infer that the assessee had large scale dealings outside the accounts for the whole year, though it is not possible to find out precisely the turnover suppressed which could make an estimate of the suppressed turnover on the basis of the material available before him, including the materials unearthed at the time of inspection, but it should have a reasonable nexus with the facts discovered. It is necessary that the best judgment assessment made should not be arbitrary, though the assessing authority is the sole judge of the situation.

In [1993] 90 STC 513 (Mad.) (P.M. Sundaram & Company v. State of Tamil Nadu), again relying on the same judgment reported in The Commissioner of Sales Tax, Madhya Pradesh Vs. H.M. Esufali, H.M. Abdulali, Siyaganj, Main Road, Indore, it has been held that the authority should find out whether there is a continuous pattern of suppression as disclosed from the manner and method of maintaining the account books. It is also stated to sustain an addition on the basis of slips, there should be a clear nexus with the suppression found. I am

afraid, in the instant case, the assessing authorities have not made any effort to establish the connection and the extent of suppression.

In the instant case, the assessing authority has made a guess in respect of purchases made of raw material without determining the extent of suppression. It has been stated by the assessing authority that since the assessee has not maintained the record of manufacture, the gross turnover was enhanced, nor has it been shown that any purchases were made from any registered dealer. Though it is a fact that during the investigation it was found that the assessee had made purchases of raw material, yet it was not reflected in the regular course of account. The assessing authorities failed to arrive at the extent of sales on the basis of loose papers found. It was necessary for them to arrive at the extent of concealment and then enhance the gross turnover for purposes of determining the taxable turnover. That being so, even though there is suppression, the determination of the turnover does not appear to be based on material and is on the higher side and guess-work cannot be said to be reasonable or bona fide.

While making a deduction in respect of the tax-paid goods, the deductions were arbitrarily reduced. At the same time, it cannot be disputed that the assessee had not filed a correct return and as such, imposition of penalty u/s 43 of the M.P. General Sales Tax Act was proper, but taking into consideration the increase made by 10 per cent for the assessment year 1980-81 cannot be said to be arbitrary, but enhancement for the assessment year 1981-82 is set aside, being on higher side.

Accordingly, the matter is remanded back to the assessing authority for determining the concealment and passing of fresh order of assessment.