(2013) 07 MP CK 0411

In the Madhya Pradesh High Court

Case No : W.P. No. 14365 of 2012

Union of India APPELLANT

Vs

State of Madhya Pradesh RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2014) 73 VST 272

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.;Subhash Kakade, J

Bench : Division Bench

Judgement

1. This petition is directed against an order dated June 30, 2012 (annexure P/1) by which an ex parte assessment order was framed against the petitioner under the Madhya Pradesh Vilasita, Manoranjan, Amod Evam Vigyapan Kar Adhiniyam, 2011 and the petitioner has been directed to make payment of tax with penalty of Rs. 7,59,90,000. This order has been assailed by the petitioner on the following grounds:

(1) That notice, annexure R/1, for June 12, 2012 was served on the petitioner on June 8, 2012 while as per rule 31 of the Madhya Pradesh VAT Rules, 2006 it ought to have been served not less than 30 days from the date of hearing.

(2) That, the petitioner is not collecting the advertisements, but, is only providing land on rent for affixing the hoardings and is not liable for assessment under the aforesaid Act, but, the respondent has wrongly assessed the petitioner for the same.

Shri Shrivastava, learned counsel appearing for the petitioner, referred the finding of the authority to the effect that the information was collected by the assessing officer on internet and google search by which it was assessed that the petitioner had collected Rs. 25.33 crores under the various heads by way of advertisements and on the basis of the aforesaid, the tax was assessed while the factual position is that the aforesaid figures may be for the entire State of Madhya Pradesh and not for the Jabalpur, but, this aspect could not be explained to the assessing officer as no notice was served on the petitioner in this regard. It is submitted that the ex parte order may be set aside.

2. It is further submitted by Shri Shrivastava that though an appeal was preferred against the order, annexure P/1, but, it was dismissed because of non-deposit of statutory amount with the appeal. It is submitted that to deposit 25 per cent, of the amount, the petitioner herein was required to obtain sanction form the Board which could not be received resulting in dismissal of the appeal because of non-deposit of the statutory amount. It is submitted that the assessment order itself is without jurisdiction as it was framed within 30 days from the date of service of notice so the ex parte order may be set aside and the matter may be remitted back to the assessing officer for extending an opportunity of hearing to the petitioner and to frame a fresh order in accordance with law.

3. Shri Piyush Dharmadhikari, learned counsel appearing for the State, opposed the aforesaid prayer vehemently. It was submitted that before issuance of notices for June 12, 2012 and June 21, 2012 various notices were issued and those were served on the petitioner, but in spite of that the petitioner had failed to appear before the assessing officer, so the assessing officer had rightly framed the assessment order. It is also submitted that the railway was possessing lot of funds, it ought to have deposited the statutory amount with the appeal, failing which the appellate authority has rightly dismissed the appeal, which order needs not to be interfered with.

4. In reply to it, Shri Shrivastava, learned counsel appearing for the petitioner, submitted that the petitioner was duly represented before the Commercial Tax Officer and counsel Shri Sapan Usrethe was appearing before the assessing officer, but, the file was transferred to the Assistant Commissioner, Commercial Tax, for which, no information was sent to the petitioner and for the first time by notice, annexure R/1 for June 12, 2012 and thereafter for June 21, 2012, the informations were sent. Though the informations were received in the office of general manager, but, because of internal transmission it could be received by the Chief Commercial Officer on June 18, 2012, so no arrangement could be made for appearance before respondent No. 3 in this regard. It is submitted that an opportunity of hearing be allowed to the petitioner in this regard.

5. In this case it is not in dispute that the notice, annexure R/1, for June 12, 2012 was served on the petitioner on June 8, 2012. From the perusal of annexure R/1, we find that notice dated June 12, 2012 was issued by the respondent on June 7, 2012 fixing the date of hearing as June 12, 2012. This notice was served on the petitioner on June 8, 2012. Thereafter another notice was issued for June 21, 2012 on June 12, 2012 and this notice was also served upon the petitioner on June 19, 2012 meaning thereby that both the notices were served upon the petitioner before the date fixed in the notice for hearing.

6. Rule 31 of the Madhya Pradesh VAT Rules provides thus:

"31. Manner of assessment, reassessment and imposition of penalty.--(1) The notice required to be issued under sub-section (4) of section 18, sub-sections (5) and (6) of section 20, sub-section (1) of section 21, sub-section (2) of section 52 shall be in form 20 and the date fixed for compliance therewith shall not ordinarily be less than 30 days from the date of service thereof.

(2) On the date fixed in the notice issued under sub-rule (1), the assessing authority shall, after considering the objections raised by the dealer and examining such evidence as may be produced by him and after taking such other evidence as may be available, assess or reassess, the dealer to tax and/or impose penalty or pass any other suitable order.

(3) In making an assessment to the best of his judgment under sub-section (5) or sub-section (6) of section 20, the assessing authority shall, as far as practicable, have due regard to the extent of the business carried on by the dealer, the surrounding circumstances and all other matters which may be of assistance in arriving at a fair and proper estimate of the taxable turnover of the dealer."

7. Aforesaid rule specifically provides that the notice in form 20 shall be served not ordinarily less than 30 days from the date of service thereof. In this case though the earlier notices were issued and served upon the petitioner, but, the case which was dealt with by the Commercial Tax Officer was transmitted to the Assistant Commissioner, Commercial Tax, for which the aforesaid notices were issued to the office of the petitioner. Though it was expected from the petitioner to make arrangement for appearance before the authority, but, it appears that because of internal transmission of the notice, the notice could not reach to the Commercial Manager of the petitioner and it reached to him after the date of hearing fixed in the notice. However, ordinarily notices could have been sent before 30 days of the date of hearing fixed in the notice, but, in the present case, notices were issued for five days and thereafter for nine days as is reflecting in annexure R/1. As per rule 31, it was the requirement to issue notice ordinarily before 30 days from the date of hearing. But, it appears that the aforesaid compliance was not made by the authority. Apart from this, the basis for assessment was some information collected by the Commercial Tax Commissioner on the basis of internet and google search and if any such information were collected by the officer then a specific notice ought to have been issued in this regard to the petitioner to explain the factual position, but, from the perusal of the notice, annexure R/1, it is apparent that such information were not sent to the petitioner in this regard. The respondents ought to have noticed the petitioner that some information were collected from internet, the petitioner was going to be assessed on the basis of such information. In view of the aforesaid, we find that an opportunity of hearing deserves to be allowed to the petitioner in this regard so that the petitioner may place its case properly before the authority because the stand of the petitioner is that it is not collecting the advertisements amount and only is collecting the rent for the land on which

the hoardings are affixed. However, all these aspects will be considered by the assessing officer after extending an opportunity of hearing to the petitioner in this regard.

8. In view of the aforesaid, without making any comments on the merits of the case, we remit the case to the Assistant Commissioner, Commercial Tax, Jabalpur Division No. 1, Jabalpur, for extending an opportunity of hearing to the petitioner and to frame a fresh assessment order. Accordingly, this petition is finally disposed of with the following directions:

(1) That, the petitioner shall appear before the assessing officer namely; Assistant Commissioner, Commercial Tax, Jabalpur Division No. 1, Jabalpur on July 22, 2013 on which date, the petitioner herein shall submit all its contentions to the authority.

(2) That, the authority on the aforesaid date shall receive the aforesaid objections, restore the file and proceed with the matter in accordance with law and after hearing the petitioner shall frame a fresh assessment order in accordance with law.

(3) That, it is made clear that this court has not expressed any opinion on the merits of the case. Respondent No. 3 to whom the file is assigned for framing assessment order shall be free to decide the matter in accordance with law.

No order as to costs.

