(2003) 01 MP CK 0108

In the Madhya Pradesh High Court

Case No : Writ Petition No. 63 of 2003

Vysya Bank Limited — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 14-01-2003

Acts Referred:
Constitution of India, 1950 — Article 226
Madhya Pradesh Commercial Tax Rules, 1995 — Rule 79

Citation : (2004) 138 STC 386

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : M.M. Asudani, for the Appellant; S.S. Kemkar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—With the consent of parties, petition is heard finally at the motion stage itself.

2. The only grievance of the writ petitioner appears to be in the writ is that an ex parte order, passed on November 12, 2002 (annexure P 11) by Additional Commissioner, Commercial Tax, dismissing the revision petition filed by the petitioner in default and not restoring the same by again passing an adverse order against the petitioner, dated January 1, 2003 (annexure P 13) deserves to be quashed.

3. It appears that consequent upon the remand made by this Court by order dated October 21, 2002, passed in W.P, No. 2398 of 2001, the revision petition preferred by the petitioner ought to have been heard on merits keeping in view the directions given by this court in the aforementioned writ. It appears that on the date fixed by the learned Additional Commissioner, Commercial Tax, the petitioner and or his consultant could not appear as according to petitioner his consultant fell sick. On this ground the revision petition came to be dismissed in default thereby not giving any verdict on the merits of the controversy.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/vysya-bank-limited-appellant-hash-...

4. In my opinion, the petitioner is entitled to be heard on merits. When they moved an application for setting aside of an ex parte order, dated November 12, 2002 liberal view ought to have been taken by granting opportunity to the petitioner to appear in the revision petition for its hearing on merits. The Rules framed under the Act also empowers the revisionary authority to impose a cost as precondition of setting aside an ex parte order in revision. The same could have been resorted to for setting aside of an order.

5. Accordingly and in view of the aforesaid limited discussion the order dated November 12, 2002 (annexure p 11) and the order dated January 1, 2003 (annexure p 13), passed by the Additional Commissioner, Commercial tax, are hereby set aside by issuance of writ of certiorari. It is, however, directed that petitioner shall deposit a sum of Rs. 10,000 (rupees ten thousand only) towards cost as a precondition to set aside of the impugned orders. This amount should be deposited within a week from today. The petitioner will appear before the Additional Commissioner, Commercial Tax, Indore, on February 3, 2003 and will produce certified copy of this order. The learned Additional Commissioner, will then hear the revision on merits keeping in view the directives given by this Court on October 21, 2002 (W.P. No. 2398 of 2001) and will pass reasoned order on merits. Petitioner shall be at liberty to file documents, if necessary, in support of their contention and will not seek adjournment on any ground whatsoever. The learned Additional Commissioner, Commercial tax, Indore, shall make endeavor to decide the revision on merits within a period of three months.

6. With these directions, petition succeeds and is allowed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/vysya-bank-limited-appellant-hash-...