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Dauram Vs. Assistant Commissioner of Sales Tax and anr.

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Court : Madhya Pradesh

Decided On : Mar-18-1958

Reported in : [1958]9STC673(MP)

Judge : Bhutt, J.

Appeal No. : Miscellaneous Petition No. 264 of 1957

Appellant : Dauram

Respondent : Assistant Commissioner of Sales Tax and anr.

Advocate for Def. : S B. Sen, Government Adv.

Advocate for Pet/Ap. : R.K. Pandey, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Bhutt, J.

1. This is a petition under Articles 226 and 227 of the Constitution.

2. The petitioner was registered as a dealer under the C. P. and Berar Sales Tax Act, 1947, hereinafter called the Act. It appears that during the proceedings of assessment of sales tax for the periods (1) 1st June, 1947, to 12th November,

1947, (2) 13th November, 1947, to 31st October, 1948, and (3) 1st November, 1948, to 21st October, 1949, the petitioner prayed by an application, dated 6th August, 1952, that the certificate of his registration as a dealer should be cancelled. No order on that application was then passed, and the assessment was completed.

3. The Sales Tax Officer, Bilaspur, Respondent No. 2, started proceedings against him for assessment of sales tax for the following periods:

(i) 30th October, 1950, to 9th November, 1950.

(ii) 10th November, 1950, to 30th October, 1951.

(iii) 31st October, 1951, to 18th November, 1952.

(iv) 19th October, 1952, to 6th November, 1953.

During the proceedings, the question of assessment and also of the cancellation of the registration certificate were dealt with by a common order whereby the application for cancelling the registration certificate was rejected and the petitioner was assessed to sales tax. The petitioner thereupon filed an appeal before the Assistant Commissioner of Sales Tax, Bilaspur, Respondent No. 1, who served on him a notice to deposit an amount of Rs. 928-15-0 on account of tax before the appeal could be heard. The direction to deposit this amount is questioned in this petition.

4. Section 22 deals with appeals against an original order passed under the Act. The proviso to Sub-section (1) of Section 22 is in these terms:

Provided that no first or second appeal against an order of assessment with or without penalty shall be admitted by the appellate authority unless such appeal is accompanied by a satisfactory proof of the payment of the tax, with penalty, if any, in respect of which the appeal has been preferred.

It is contended that since the proviso is an exception to the absolute right of appeal given to an assessee under Sub-section (1) of Section 22, it must be strictly construed, and accordingly, unless the order under appeal is exclusively an

order of assessment with or without penalty, prior payment of the tax is not compulsory. I am not satisfied with this contention because if an appeal involves a challenge to an order of assessment, with or without penalty, the proviso will come into effect. The question of the cancellation of the registration certificate may be a ground for exemption from assessment. It cannot, therefore, be urged that because this order is also under challenge in appeal, the appeal is not against the assessment of sales tax. In this view, it is not necessary to consider whether or not the petitioner had taken proper steps for getting the registration certificate cancelled.

5. The result is that the petition fails and is dismissed with costs. Hearing fee Rs. 50 which shall be paid out of the security amount. The balance of the security deposit shall be refunded to the petitioner.

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