Shubham Enterprises Vs. Additional Commissioner of Commercial Tax

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Court : Madhya Pradesh

Decided On : Jul-25-2005

Reported in : (2007)5VST402(MP)

Judge : A.M. Sapre, J.

Appellant : Shubham Enterprises

Respondent : Additional Commissioner of Commercial Tax

Disposition : Petition allowed

Judgement :
ORDER

A.M. Sapre, J.

1. With the consent of parties and on advance copy to the State counsel, petition is heard finally at the motion stage itself.

2. By filing this petition under Article 226/227 of the Constitution of India, the petitioner, a dealer, seeks to challenge an order passed by the Additional Commissioner of Commercial Tax dated October 4, 2004 in revision No. 4/2001/Indore/Prantiya (annexure P 7) communicated to the petitioner by order No. AA/KCG/Revision/2004/339. Facts in brief need to be taken note of infra.

3. Petitioner is a dealer and engaged in the business of sale of tea leaves. On April 24, 1999 the petitioner suffered an assessment order for the period April 1, 1995 to March 31, 1996 (annexure P 1). On the same date, i.e., on April 24, 1999 the petitioner suffered a penalty order passed under Section 69(2) of the Madhya Pradesh Commercial Tax Act, 1994 (annexure P2).

4. The petitioner feeling aggrieved of both the orders, i.e., order passed in assessment proceedings and order of penalty, filed a combined revision before the revisionary authority on February 20, 2001 (annexure P 3). This revision was received in the office of the Additional Commissioner of Commercial Tax on April 10, 2004 as is clear from the endorsement (annexure P3). Perusal of annexure P3 also indicates that the petitioner had questioned the legality and validity of the orders by challenging the same in revision.

5. By order dated January 6, 2003 (annexure P5), the learned Additional Commissioner of Commercial Tax dismissed the revision preferred by the petitioner arising out of an order passed in assessment case. In other words the learned revisionary authority dismissed the revision only in regard to assessment proceedings but did not say or deal with the revision arising out of an order passed in penalty proceedings. It is not in dispute that the petitioner made an attempt to challenge the order passed by the revisionary authority dated January 6, 2003 by filing writ but later withdrew it. This is how the order, in so far as it relates to assessment proceedings, is no longer the subject-matter of judicial debate and has become otherwise final.

6. The petitioner having noticed that revisionary authority did not deal with the issue raised by it against an order passed in penalty proceedings, moved an application requesting the revisionary authority to decide its revision which according to it arose out of the penalty proceedings. By impugned order (annexure P 7) the learned Additional Commissioner of Commercial Tax exercising the revisionary powers dismissed this application saying that it being a belated effort on the part of the petitioner to ask the revisionary authority to pass the order in penalty case, dismissed the application thereby declining to examine the issue relating to penalty proceedings on merits in his revisionary jurisdiction. It is this

order which is sought to be challenged by the petitioner in this petition. As stated supra learned Additional Advocate-General was heard on advance copy of the petition with consent.

7. Having heard learned Counsel for the parties and having perused record of the case, I am inclined to allow the writ and set aside the order dated October 4, 2004 (annexure P 7). As a consequence, the matter has to go back to the revisionary authority for deciding the revision arising out of the penalty proceedings dated April 24, 1999 (annexure P 2) on merits.

8. The reason for remand is that admittedly, the petitioner had filed a revision against an order passed in the penalty proceedings in time. It is also not in dispute that the petitioner had specifically challenged the penalty order in a revisionary proceedings. In this view of the matter it was obligatory upon the authority to have decided the revision one way or the other on merits so far as penalty proceedings were concerned.

9. When there is a challenge to an order either in appeal or revision, the same has got to be decided one way or the other by the appellate/revisionary authority because it is the right of the litigant to approach the higher court for setting aside of the adverse order suffered by them. This exercise was done by the petitioner by challenging both the orders. As a necessary corollary revisionary authority was under a legal obligation to examine the orders by allowing the revision either by upholding or setting aside or remanding or dismissing the revision on merits, as the case may be. What is notable is that revisionary authority did not dismiss the revision by saying that no such combined revision could be filed. On the other hand, it entertained it on merits and actually decided the same in so far as assessment proceedings are concerned.

10. Accordingly and in view of the aforesaid discussion, petition succeeds and is hereby allowed. Order dated October 4, 2004 is hereby set aside. The Additional Commissioner of Commercial Tax is directed to decide the revision on merits only in relation to the order dated April 24, 1999 passed under Section 69(2) of the Act by the assessing officer (annexure P 2) in case No. 4/ 2001/Indore/Prantiya for the period from April 1, 1995 to March 31, 1996 within a period of six months as an

outer-limit. Petitioner to appear before the Additional Commissioner of Commercial Tax on August 22, 2005 and produce the certified copy of this order to enable him to proceed on merits on the revision filed by them on February 20, 2001 (annexure P 3).

Certified copy within three days.