(1986) 02 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Petition No. 2 of 1984

Poppy Corporation	APPELLANT
Vs	
Deputy Commissioner of Sales Tax, Ujjain Division and Another	RESPONDENT

Date of Decision: Feb. 6, 1986

Acts Referred:

- Central Sales Tax Act, 1956 - Section 8
- Constitution of India, 1950 - Article 226, 227

Citation: (1987) 65 STC 360

Hon'ble Judges: K.K. Verma, J; G.G.Sohani, J

Bench: Division Bench

Advocate: B.L. Pavecha, for the Appellant; S.R. Joshi, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.K. Varma, J.
This is a petition under Article 226/227 of the Constitution of India filed by the petitioner-assessee which is a registered partnership firm. The petitioner-firm is a dealer of poppy husk and poppy seeds duly registered under the provisions of the Central Sales Tax Act, 1956. For the period Diwali, ? 1978, to Diwali, 1979, i.e., 1st November, 1978, to 20th October, 1979, the petitioner-firm was assessed to pay Central sales tax Rs. 18,266.45 in respect of the assessment order dated 30th September, 1982, passed by respondent No. 2 (annexure B). The petitioner filed a revision before respondent No. 1 u/s 39 of the Madhya Pradesh General Sales Tax Act, 1958. The petitioner in the said revision placed reliance upon a notification dated 19th October, 1982 (annexure D), issued by the State Government generally exempting poppy husk from the payment of

sales tax for the period from 11th June, 1979, to 8th February, 1982 and contended that this exemption would be attracted for the purpose of Central sales tax also. Respondent No. 1 by order dated 17th February, 1983 (annexure E), allowed the revision and remanded the case to respondent No. 2 for making a fresh assessment after excluding the sale of poppy husk made by the petitioner-firm during the relevant period. Respondent No. 1 in his order referred to two notifications (annexures R-I and R-II) which are issued u/s 12 of the Madhya Pradesh General Sales Tax Act on 13th November, 1981 and 19th October, 1982, respectively. The notification (annexure R-I) wholly exempted from payment of sales tax on poppy husk for the period from 1st April, 1969, to 10th June, 1979. The subsequent notification (annexure R-II) which is the same as annexure D to the petition wholly exempted poppy husk from payment of sales tax for the period from 11th June, 1979, to 8th February, 1982, subject to certain restrictions and conditions, viz., when sales are made by a registered dealer and when it is proved to the satisfaction of the assessing authority at the time of assessment of such sales that no tax was collected by the dealer from the purchasers on sales of these goods to them with reference to the period notified as aforesaid. Respondent No. 1 found that exemption of sales tax had been granted by the assessing authority, respondent No. 2, under notification, annexure R-I, on sales of poppy husk for the period upto 10th June, 1979 and directed the assessing authority in view of the subsequent notification, annexure R-II, to grant exemption of sales tax on sales of poppy husk for the entire period of assessment, i.e., up to 20th October, 1979.

2. Pursuant to the remand by respondent No. 1, respondent No. 2 passed a fresh assessment order on 24th June, 1983 (annexure F), exempting the sale of poppy husk during the relevant year and imposed Central sales tax to the extent of Rs. 1,282.18 on sales of other goods.

3. Thereafter, respondent No. 1, on 14th November, 1983, without giving any notice or opportunity of hearing to the petitioner-firm passed the impugned rectification order (annexure G) in the purported exercise of his powers u/s 46(1) of the Madhya Pradesh General Sales Tax Act, 1968. By this order respondent No. 1 rectified the earlier order passed by him on 17th February, 1983 (annexure E) and directed that the revision filed by the petitioner shall stand dismissed holding that the exemption in respect of the sale of poppy husk claimed by the petitioner-firm for the period from 11th June, 1979, onwards as mentioned in notification annexure R-II was not available to it.

4. The learned counsel for the petitioner submitted that the order of rectification (annexure G) was liable to be quashed for more than one reason. He submitted that neither any notice was given to the dealer by respondent No. 1 of his intention to rectify the order nor any opportunity of hearing to be given to him before passing the impugned order (annexure G) which is, therefore, without jurisdiction and that in view of a notification dated 13th May, 1986 (annexure H) which has been issued in exercise of powers u/s 8(5)(a) of the Central Sales Tax Act, 1956, during the pendency of the petition the sale of poppy husk for the period from 11th June, 1979, to 8th February, 1982, has

been wholly exempted from tax without any condition and as such no rectification would be called for.

5.The aforesaid contention of the learned counsel is sufficient to allow this petition. Section 45(1) of the Madhya Pradesh General Sales Tax Act confers power on the Commissioner to pass an order rectifying any mistake apparent from the record on his own motion at any time within nine months from the date of any order passed by him or on an application made by the dealer within six months from the date of receipt of such application. But the second proviso to this section prohibits making of any such rectification if it has the effect of enhancing the tax or reducing the amount of refund unless the Commissioner has given notice in writing to the dealer of his intention so to do and has allowed the dealer a reasonable opportunity of being heard. In the instant case it is an admitted position that no notice in writing was given to the petitioner-dealer before passing the order (annexure G) seeking to rectify the order (annexure E). The requirement of notice to the dealer in writing being a condition precedent for exercise of power of rectification by respondent No. 1 and that mandatoryrequirement having not been complied with in the instant case, the order of respondent No. 1 is without jurisdiction and deserves to be quashed.

6. In view of the discussion aforesaid, this petition is allowed with costs. The order of rectification dated 14th November, 1983, passed by respondent No. 1 (annexure G) is hereby quashed. Counsel''s fee Rs. 150 if certified. The outstanding amount of security deposit, if any, shall be refunded to the petitioner.