

(1980) 03 MP CK 0004

Madhya Pradesh High Court (Indore Bench)

Case No: M.C.C. No. 459 of 1976

Commissioner of Sales Tax

APPELLANT

Vs

Ramvilas Randiyal

RESPONDENT

Date of Decision: March 18, 1980

Acts Referred:

- Madhya Pradesh General Sales Tax Act, 1958 - Section 13
- Madhya Pradesh General Sales Tax Rules, 1959 - Rule 5

Citation: (1980) 46 STC 490

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

Bench: Division Bench

Advocate: The Government Advocate, for the Appellant; N.K. Jain, for the Respondent

Judgement

G.G. Sohani, J.

By this reference u/s 44 of the M. P. General Sales Tax Act, 1958, hereinafter called the Act, the following question of law has been referred to this Court by the Board of Revenue at the instance of the Commissioner:

Whether, under the facts and circumstances of the case, the Tribunal was correct in holding that under Rule 5 of the Madhya Pradesh General Sales Tax Rules, only the Sales Tax Officer is competent to assess a dealer when licence granted u/s 13 of the Act is cancelled by him for failure to comply with the conditions of the licence ?

2. The material facts giving rise to this reference briefly are as follows: The assessee is a dealer in sweetmeats, namkin and cooked food. He had applied for a licence u/s 13 of the Act and it was granted to him. The licence was, however, cancelled on 24th May, 1969, and thereafter the Assistant Sales Tax Officer proceeded to assess the assessee. Aggrieved by the order of assessment, the assessee preferred an appeal before the Appellate Assistant Commissioner. It was contended on behalf of the assessee that according to the provisions of Rule 5 of the M. P. General Sales Tax Rules, 1959, hereinafter called the Rules, assessment should have been made by the

Sales Tax Officer and not by the Assistant Sales Tax Officer. The contention was not upheld by the Appellate Assistant Commissioner and the appeal was dismissed. Thereupon the assessee preferred a second appeal before the Board of Revenue. The Board held that, in view of the provisions of Rule 5 of the Rules, the Assistant Sales Tax Officer was not competent to assess the assessee. In this view of the matter, the Board allowed the appeal and remanded the case to the Sales Tax Officer for a fresh assessment. Aggrieved by the order of the Board, the department submitted an application before the Board for making a reference, and it is at the instance of the department that this reference has been made.

3. The answer to the question referred to us turns on the provisions of Rule 5 of the Rules, which reads as under :

Where the appropriate Sales Tax Officer has reason to believe that any licensee has committed breach of any one or more of the conditions of the licence or of the provisions of the Act or the Rules made thereunder he may after giving the licensee an opportunity of being heard cancel the licence and assess him to tax in accordance with the provisions of Section 14. A copy of the order cancelling the licence shall be communicated to the licensee.

In view of the aforesaid provisions, the Sales Tax Officer alone would have jurisdiction to assess the assessee. No provision was brought to our notice which conferred on the Assistant Sales Tax Officer powers of the Sales Tax Officer under Rule 5 of the Rules. In our opinion, therefore, the Tribunal was right in holding that under Rule 5 of the Rules, only the Sales Tax Officer was competent to assess a dealer when licence granted u/s 13 of the Act was cancelled by him for failure to comply with the conditions of the licence.

4. Our answer to the question referred to us is, therefore, in the affirmative and against the department. Parties shall bear their own costs of this reference.