(1972) 12 MP CK 0003

Madhya Pradesh High Court

Case No: M.C.C. No. 346 of 1971

Jaswantlal Prahlad Bhai and Company, Damoh		APPELLANT
	Vs	
Commissioner of Sales Tax, M.P.		RESPONDENT

Date of Decision: Dec. 8, 1972

Acts Referred:

- Madhya Pradesh General Sales Tax Act, 1958 - Section 44(1)

Citation: (1973) JLJ 344

Hon'ble Judges: P.K. Tare, C.J; Raj Krishna Tankha, J

Bench: Division Bench

Advocate: H.S. Shrivastava, for the Appellant; M.V. Tamasker, Dy. Government Advocate, for the Respondent

Judgement

P.K. Tare, C.J.
This is a reference u/s 44 (1) of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the assessee to answer the following question referred to this Court for its opinion :

Whether, in the facts and circumstances of the case, the levy of extra penalty amounting to Rs. 5,000 in addition to the minimum mandatory penalty of Rs. 71, 376 was justified ?

2. The facts leading to the present reference are as follows. The petitioner firm was assessed to sales tax for the period from 25-10-1965 to 12-10-1966. It had given a declaration in Form XII-A in respect of tendu patta purchased to the extent of Rs. 20,66,830/- . The other purchases by import amounted to Rs. 6,283/- , while goods purchased without declaration amounted to Rs. 1,72,540.52. The Sales Tax authorities found that the petitioner-firm had exported 85% of the produced goods, namely, manufactured bidis, outside the State. The petitioner-firm had been allowed to make purchases at a concessional rate of 1% on the declaration made by it that

the goods would be used inside the State and that they were not meant for export. Under these circumstances the Sales Tax Authorities imposed a penalty as also the proper Sales tax on the petitioner-firm u/s 8 (2) of the Madhya Pradesh General Sales Tax Act, 1958. The penalty imposed by the Sales Tax Officer was Rs. 1,06,961.55, while if was reduced by the Deputy Commissioner of Sales Tax to Rs. 79,379/- . The Board of Revenue, however, reduced the amount of balance of sales tax to Rs. 71,376/- and also imposed a penalty of Rs. 5,000/- . The consideration that persuaded the Board of Revenue to impose this penalty was that, although the Sales Tax Officer and the Deputy Commissioner of Sales Tax had found as a fact that the failure of the petitioner-firm to pay the proper sales tax was bona fide, it had paid an amount of Rs. 12,000/- within time but had paid the balance of Rs. 50,000/- after about a year. Therefore the Government lost interest on that amount which, roughly worked out, would come to Rs. 4,000/- . On that consideration, the Board of Revenue imposed a penalty of Rs. 5,000/- on the petitioner-firm. On these facts, the question posed for an answer by this Court is whether, in the facts and circumstances of the case, the penalty imposed was justified.

3. The Learned Counsel for the petitioner firm invited our attention to the pronouncement of their Lordships of the Supreme. Court in Hindustan Steel Ltd. v. The State of Orissa (1970) 25 STC 211 wherein their Lordships, with reference to the provisions of section 9 (1) of the Orissa Sales Tax Act, 1947, read, with section 25 (1) of the said Act made the following observation. It may be noted that one of the questions referred to the High Court was whether the Tribunal was right in holding that penalties u/s 12 (5) of the Act had been rightly levied and whether, in view of the serious dispute of liability, it cannot be said that there was sufficient cause for not applying for registration. With reference to the phrase used in section 12 (5) of the Orissa Act, their Lordships of the Supreme Court observed :

Under the Act penalty may be imposed for failure to register as a dealer, section 9 (1) read with section 25 (1) (a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so whether penalty should be imposed for failure to perform to statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting

that they erred, no case for imposing penalty was made out.

The provisions of the Orissa Act were more or less similar to the provisions of section 15 (5) of the Madhya Pradesh General Sales Tax Act, 1958. The said sub-section of the Madhya Pradesh Act also imposes a liability on a dealer with respect to penalty for failure to get himself or itself registered without reasonable cause. As the provisions stand regarding penalty for failure to register, penalty can only arise where the failure to register is without reasonable cause. However, if it be for a reasonable cause, then the question of imposing a penalty does not at all arise. It was for that reason that their Lordships of the Supreme Court made the observation that where a reasonable cause was established, there would be no case for imposition of a penalty. However, the case for imposition of a penalty u/s 8(2) of the Madhya Pradesh General Sales Tax Act, 1958, would stand on a slightly different footing than the question of imposition of a penalty either under the provisions of the Orissa Act or u/s 15 (5) of the Madhya Pradesh Act. We may observe that if the question in the present case had been about imposition of penalty u/s 15 (5) of the Madhya Pradesh General Sales Tax Act, 1958, the observations of their Lordships of the Supreme Court in the aforesaid case Would have been applicable in their entirety and in view of the specific finding recorded by the Tribunal, namely, the Board of Revenue, that there were no mala fides on the part of the petitioner-firm, this might have been a case where penalty ought not to have been imposed. But it is to be noted that the present case is not one u/s 15 (5) of the Madhya Pradesh General Sales Tax Act, 1958, but a case u/s 8 (2) of that Act.

4. It may be relevant to note the wording of section 8 (2) of the Madhya Pradesh General Sales Tax Act, 1958, which is as follows :

(2) Where any raw material purchased by a registered dealer under sub-section (1) is utilised by him for any purpose other than a purpose specified in the said sub-section, such dealer shall be liable to pay as penalty an amount not less than the difference between the amount of tax on the sale of such raw material at the full rate mentioned in column (3) of Schedule II and the amount of tax payable under sub-section (1), and not exceeding one and one-quarter times the amount of tax at such full rate as the Commissioner may determine having regard to the circumstances in which such use was made :

Provided that no such penalty shall be imposed on a registered dealer where any raw material purchased by him under sub-section (1), is sold by him, subject to such restrictions and conditions as may be prescribed, to another registered dealer for the purpose specified in that sub-section :

Provided further that where such registered dealer subsequently purchasing the raw material as aforesaid, utilises it for any purpose other than the purpose specified in sub-section (1), he shall be liable to pay the penalty specified under sub-section (2).

The relevant thing to note is that this section provides for imposition of the proper sales tax which might not have been paid on account of certain circumstances. A dealer may obtain purchase of goods on concessional terms probably on the impression that he may not be required to export the goods or that he may be required to utilise them for manufacture in the State. However, as the business stands, those expectations of a dealer may not materialise and he may be required to export the goods for which he may be required to pay the full sales tax at the rate of 6% instead of the concessional rate of 1%. Section 8 (2) of the Act makes a provision for meeting such situation. Firstly, it provides for imposition of the proper sales tax as may be warranted according to the facts and circumstances of a case. Secondly, it also provides for imposition of a penalty which may be from nil to 1½ times the proper sales tax. Thus it is not possible for us to accept the suggestion of the learned Government Advocate that the imposition of a penalty u/s 8 (2) of the Act is mandatory. We would, on the other hand, hold, that the imposition of penalty is absolutely discretionary which has to be done on some judicial principles. On the other hand, we would also reject the contention of Learned Counsel for the petitioner-firm that no penalty, whatsoever; can be imposed where the action of the petitioner-firm is found bona fide. We are clearly of the opinion that even in bona fide cases a dealer can be penalised by imposing a penalty, though however nominal it may be, looking to the facts and circumstances of a particular case. In the present case, it was distinctly found by the Board of Revenue that an amount of Rs. 12.000 out of the amount of proper sales tax had been paid within time while the balance of Rs. 50,000 was paid after about a year. Thus, according to the Board of Revenue, a loss of interest was caused to the Government inasmuch as there was late payment of the proper sales tax. In that; view, the Board of Revenue thought it necessary to compensate the Government by awarding some penalty which might roughly be near about the loss of the actual interest, that the Government could have earned if proper sales tax had been paid in due time. From this point of view, it cannot be urged on behalf of the petitioner-firm that the discretion had been exercised not on any of the judicial principles, nor can the discretion be said to be arbitrary or high-handed. In our opinion, that would be a perfectly relevant consideration for imposing a penalty, however nominal it might be. We can also envisage a case where the Sales Tax Authority may not think it proper to impose any penalty, whatsoever. Suppose if the Sales Tax authority had decided not to impose any penalty, then it would not be possible for this Court exercising either its prerogative power or its power of reference to impose any penalty. After all, if this Court finds that the discretion has been exercised by the Sales Tax Authority on some judicial principle which would be valid in law, there can be no interference with that judicial discretion. We find that the discretion exercised by the Sales Tax authorities has been exercised on judicial principles on valid consideration and, therefore, we are not in a position to say that the imposition of the penalty made by the Sales Tax authorities or the final Tribunal, namely, the Board of Revenue, was in any way unjustified.

5. In the statement of the case, the Board of Revenue has tried to introduce a new fact, namely, that the petitioner firm acted in the manner inspite of the previous opportunities given to it. We may observe that there can be no improvement of a case in the statement of facts submitted to this Court. That fact was not found by the Tribunal in its final order Therefore, we ignore it altogether ; but, in our opinion, the imposition of the penalty was perfectly justified on the consideration mentioned above in the previous paragraph.

6. In the ultimate view we take, we answer the question by stating that, in the facts and circumstances of the case the levy of penalty amounting to to Rs. 5,000/- in addition to the balance of proper Sales Tax of Rs. 71,376/- was justified. We may at this stage clarify the position. What was imposed by way of penalty was the balance of proper sales tax. In this view of the matter, the amount of Rs. 71,376/- , although called a penalty, was only the balance of the proper sales tax payable by the petitioner-firm. In that view of the matter, penalty of Rs. 5,000/- , although categorised as extra penalty, was just ordinary penalty imposable u/s 8 (2) of the Madhya Pradesh General Sales Tax Act, 1958. Accordingly, the case shall be sent back to the Tribunal. However, we direct that there shall be no order as to the costs of the present reference.