

Supreme Court of India

Malwa Vanaspati & Chemical Co. vs Commissioner Of Income Tax on 1 October, 1996

Equivalent citations: 1997 225 ITR 383 SC, (1997) 10 SCC 659, 1997 105 STC 188 SC

Bench: S Bharucha, S Majmudar

ORDER

1. These appeals relate to the assessment years 1971-72, 1972-73 and 1973-74. In its income-tax returns for these assessment years the assessee claimed as deduction of expenditure for the purpose of business under Section 37(1) of the Income-tax Act, 1961, amounts that it had paid to the Madhya Pradesh sales tax authorities under the provisions of sections 8(2) and 17(3) of the Madhya Pradesh General Sales Tax Act, 1958. The matter was carried by the assessee up to the Income-tax Appellate Tribunal, which held that it was entitled to the deduction. Arising from out of the order of the Tribunal, the following question was referred to the High Court of Madhya Pradesh under the provisions of Section 256 of the Income-tax Act (see page 222 of 135 ITR) :

Whether, on the facts and in the circumstances of the case, the penalty levied under sections 8(2) and 17(3) of the Madhya Pradesh General Sales Tax Act paid by the assessee is allowable expenditure in the computation of total income ?

2. Section 17(3) of the State statute reads as follows :

If a dealer fails without sufficient cause to comply with the requirements of a notice issued under Sub-section (1) or a registered dealer fails without sufficient cause to furnish under the said sub-section his return for any period, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one-fourth of the amount of the tax which may be assessed on him under Section 18 or where no tax is payable a sum not exceeding one hundred rupees.

3. The amount that the assessee is required to pay thereunder is by reason of the fact that he has, without sufficient cause, failed to comply with the requirements of a notice or to furnish a return. Then, after giving the assessee a reasonable opportunity of being heard, the Commissioner may direct him to pay a sum that does not exceed 1/4th of the tax that is assessed or, if no tax is found payable, a sum not exceeding rupees one hundred. It is for the Commissioner to determine whether the assessee has so failed without sufficient cause and he must do after giving the assessee an opportunity of being heard. He is empowered to direct the assessee to pay and the upper limit of such payment is prescribed. Where no tax is found to be payable he can direct the assessee to pay a sum not exceeding Rs. 100. The use of the word penalty in the provision is neither here nor there. Read as a whole, there can be no doubt that the provision is intended to have penal consequences upon an assessee who fails to comply with the provisions of the statute without sufficient cause. There is no element of compensation involved and, therefore, the High Court was right in the view that it took, namely, that the assessee was not entitled to a deduction under Section 37(1) of the Income-tax Act in respect of the amounts that it had been required to pay under the provisions of Section 17(3).

4. Section 8, so far as it is relevant, reads thus :

Rate of tax for raw material. - (1) Notwithstanding anything contained in Section 6 or Section 7 but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material other than tendu leaves for the manufacture of other goods for sale in the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India, shall be two per cent. of the sale or purchase price of such raw material :

Provided...

(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

5. Here, the assessee, should he have used the raw material for a purpose other than that specified in Sub-section (1), must pay an amount to be determined as stated in Sub-section (2). That amount cannot be less than the difference between the amount of tax on the sale of such raw material at the full rate and the amount at the lesser rate by reason of Sub-section (1). That amount also cannot be more than one and one-quarter times the amount of the tax at the full rate. Whether it should be the aforesaid minimum amount or the aforesaid maximum amount or something in between is for the Commissioner to determine, having regard to the circumstances in which such use was made. Clearly, Sub-section (2) comprises both the elements of compensation and penalty, compensation in so far as payment of tax at the full rate is obligatory, and something more, up to 25 per cent, thereof, is payable should the Commissioner so deem fit, having regard to the circumstances in which the use of the raw material was made : to that extent the amount would partake of the character of a penalty.

6. Now, it does not appear from the record that there had at any stage been a bifurcation, if at all a bifurcation was required, of the amounts paid under the provisions of Section 8(2) between the elements of compensation and penalty as aforesaid. This shall now have to be done and the assessee shall be entitled to the deduction under Section 37(1) only in so far as the payments under Section 8(2) partake of the element of compensation.

7. The question referred to the High Court must be answered thus : The amounts payable under the provisions of Section 17(3) of the Madhya Pradesh General Sales Tax Act are not allowable expenditure in the computation of total income. The amounts payable under the provisions of Section 8(2) thereof are allowable expenditure in the computation of total income only in so far as

they are compensatory in character.

8. The appeals are allowed to the extent aforesaid. 8. No order as to costs.