

Supreme Court of India

Food Corporation Of India vs Commissioner Of Sales Tax, M.P., ... on 13 January, 1998

Equivalent citations: AIR 1999 SC 545, (1998) 2 SCC 363, 1998 109 STC 131 SC

Bench: S Bharucha, V Khare

ORDER

1. We are concerned in this appeal with the assessment year ended 31-3-1968. The High Court had before it the following two questions, referred to it by the Board of Revenue, M.P.

"1. Whether the power to confirm, reduce, enhance or annul the penalty in appeal as provided under Section 38(5) of the State Act includes the power to impose penalty, where it has not been imposed by the assessing authority?

2. Whether under the facts and circumstances of the case penalty imposed under Section 43(1) read with Section 9(2) of the Central Act was justified?"

2. The appellant's return was delayed by two months and seven days. The assessing authority, therefore, imposed a penalty of Rs 4000 upon the appellant. The appellant preferred an appeal before the Deputy Commissioner of Sales Tax. He maintained the penalty of Rs 4000 imposed as aforesaid. He also came to the conclusion that the total tax that the appellant was liable to pay was Rs 13,44,682 out of which it had deposited Rs 7,71,892 with its return; the sum of Rs 5,68,790 had not been paid. The Deputy Commissioner, therefore, issued to the appellant a notice under Section 43 of the M.P. General Sales Tax Act, 1958. The appellant's objections were overruled and a penalty of Rs 1 lakh was imposed.

3. The appellant moved the Board of Revenue. It relied upon Section 38(5) of the said Act contending that the appellate authority could only enhance a penalty; the assessing authority not having imposed the penalty in regard to the incorrectness of the return, no penalty in that behalf could be imposed by the Deputy Commissioner. The Board rejected its contention and made the above reference to the High Court. The High Court came to the conclusion that Section 38(5) was inapplicable but that the requirements of Section 43 were met. The reference was, therefore, answered in favour of the Revenue.

4. Section 38(5), so far as it is relevant, reads thus:

"38. (5) Subject to such procedure as may be prescribed and after such further inquiry as it may think fit the appellate authority, in disposing of any appeal under Sub-section (1) or (2) may-- (a) confirm, reduce, enhance or annul the assessment or the penalty or both;"

Section 43 reads thus: "43. Power of Commissioner or appellate authority to impose penalty.--If the Commissioner or the appellate authority in the course of any proceeding under this Act, is satisfied that a dealer has deliberately concealed his turnover in respect of any goods or furnished a false return, the Commissioner or the appellate authority, as the case may be, may after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall, in addition to the tax payable

by him, pay by way of penalty a sum not exceeding the amount of the tax which would have been avoided if the return furnished by the dealer had been accepted as correct."

5. It is clear that the power under Section 38(5) is to confirm, reduce, enhance or annul a penalty. It can apply only if a penalty has already been imposed by the assessing authority. Section 43 gives an additional power to the Commissioner or the appellate authority. It is to impose a penalty for the first time in the course of proceedings under the said Act, if satisfied that a dealer has deliberately concealed his turnover or furnished a false return, and he is obliged to give the dealer a reasonable opportunity of being heard before imposing it.

6. It is contended on behalf of the appellant that a penalty imposed under Section 43 must be regarded as a fresh assessment and that, therefore, a penalty under Section 43 can be imposed only within the period prescribed by Section 18(8) of the said Act for the purposes of assessment. We find it difficult to accept the argument, for the power under Section 43 can be invoked only in proceedings in appeal from an assessment order or otherwise in proceedings under the said Act. Necessarily, therefore, the imposition of the penalty is a part of such proceedings and cannot be regarded as a fresh assessment. In these circumstances, the limitations of time prescribed under Section 18(8) for assessments would not apply to the imposition of penalty under Section 43.

7. The appeal is, accordingly, dismissed. No order as to costs.