NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 4313 of 1995

- M/s Chandra Medical And General Stores, Lailunga, District Raigarh (C.G.)

---- Petitioner

Versus

1. Additional Commissioner of Sales Tax (Now Additional Commissioner of Commercial Tax), Motimahal, Gwalior (M.P.)
2. Divisional Dy. Commissioner of Sales Tax (Now Divisional Dy. Commissioner of Commercial Tax), Bilaspur (M.P.)
3. Sales Tax Officers (Now Commercial Tax Officer) Raigarh (M.P.)

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate
For Respondent/State	:	Shri Rahul Jha, GA

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12/07/2019

1. Heard.

2. The present petition is to quash the order dated 20.06.1995 (Annexure P-5) passed by the Additional Commissioner of Commercial Tax, Motimahal, Gwalior under Section 39 (1-A) of the M.P. General Sales Tax Act, 1958 and against the order dated 19.09.1988 (Annexure P-3) passed by the Divisional Deputy Commissioner of Sales Tax in a revision and the initial assessment order dated 28.09.1984 (Annexure P-2) passed by the Sales Tax Officer, Raigarh.

3. The initial order which is relevant for the case was passed on 28.09.1984

(Annexure P-2) under Section 19 (1) of the M.P. General Sales Tax Act, 1958 (hereinafter referred to as the Act, 1958), which was subject of revision before the Divisional Deputy Commissioner of Sales Tax. The revision was rejected vide order dated 19.09.1988 (Annexure P-3) and at last in a subsequent suo moto revision invoked on an application by petitioner, the Additional Commissioner of Commercial Tax, Gwalior passed an order on 20.06.1995 (Annexure P-5) whereby the revision was dismissed.

4. Learned counsel for the petitioner would submit that the petitioner was carrying the business of dealing in minor forest produce and was registered under the the then Act of 1958. He would further submit that they followed Dewali year for the purposes of their accounts. A raid was conducted by the Sales Tax Officers, Flying Squad at the place of petitioners on 20th of August, 1978, thereafter, a report was submitted and initially it was stated that for Mahua, a forest produce, a sale of Rs.38000/- was not shown in account. Subsequently, it was stated that Rs.2,78,480/- sales were not accounted for and a demand of Rs.38,014/- was made. The said assessment order was subject of challenge before the Divisional Deputy Commissioner of Sales Tax, Bilaspur, which was dismissed vide order dated 27.02.1982 and the levy was eventually challenged in a writ petition before the M.P. High Court in a miscellaneous petition bearing M.P. No.329/1982, wherein it was held that the petitioner had purchased the forest produce from the department and therefore it was a tax paid item as such no tax could be levied. With respect to Mahua and Amchur, the High Court by its order did not go into the issue and kept that open. Under these circumstances, the reassessment in respect of the Mahua product was again in question. The Sales Tax Officer thereafter initiated reassessment proceedings under Section 19 (1) of the Act, 1958 and at the first instance the sales to the extent of

Rs.70,360/- was found that it escaped the assessment, whereas subsequently that was enhanced to Rs.5,64,890/-. The petitioner contended that the sale of Mahua was not made by him and he was only a commission agent and was supplying the Mahua product to C.G. distilleries and the sales were made by other registered dealers, therefore, the escape of assessment for tax do not come for consideration. The Sales Tax Officer after perusal of the record came to a conclusion that the petitioner himself has made the sale of Mahua which had escaped the assessment and levy of Rs.61489.10 was levied including of charges, interest, penalty etc. The said order was subject of revision under Section 39 of the Act, 1958 before the Divisional Deputy Commissioner, Bilaspur. The Divisional Deputy Commissioner, Bilapsur too agreed with the order of the assessment dated 28.09.1984(Annexure P-2) and eventually dismissed the revision vide order dated 19.09.1988 (Annexure P-3). Thereafter, another revision was preferred under Section 39 (2) of the Act, 1958 wherein the Additional Commissioner of Commercial Tax, Motimahal, Gwalior vide order dated 20.06.1995 (Annexure P-5) dismissed such revision. Hence this petition.

5. Learned counsel for the petitioner would submit that the entire inception of alleged reassessment was on the basis of the order dated 31.03.1981 and 27.02.1982 and while the exercise was being carried out, the Sales Tax Officer diverted themselves with the change of opinion whereas the order dated 31.03.1981 and 27.02.1982 was set aside by the High Court by its order dated 26th of March, 1985. He would further submit that the earlier order of the High Court which set aside the assessment order in respect of Chironji, which is a forest product, will also be applicable in the case of Mahua too as both were forest products and like that of Chironji, which was held to be tax paid in the hand of the petitioner, the Mahua was also a tax paid which the petitioner

transacted from the registered dealer, who had purchased the same from the forest department. He would further submit that under these circumstances, double taxation cannot be invoked. He would further submit that initial assessment order dated 28.09.1984 (Annexure P-2) would show that the reassessment was opened on the basis of the order dated 31.03.1981 and 27.02.1982 and the said order was dated 18.10.1982 which opened the way for reassessment. It is strenuously argued that once the original genesis of the order dated 31.03.1981 and 27.02.1982 were set aside, no proceedings can be drawn or inference further can be carried out on the basis of the order dated 18.10.1982, which was based on initial order of 31.03.1981. He would, therefore, submit that it is a clear case where only with the change of opinion the assessment has been invoked under Section 19 (1) of the Act, 1958. He has placed the reliance in the case of ***Binani Industries Limited, Kerala Versus Assistant Commissioner of Commercial Taxes, VI Circle, Banglore and Others {(2007) 15 SCC 435}*** and submits that when the question of reopening of assessment comes mere change of opinion of the officers reassessment cannot be invoked. He also relied on the decision of the Division Bench of this Court rendered in the case of **State of Chhattisgarh & ors. Vs. Ultra Tech Cement Ltd. {W.A. No.697 of 2018}** & other connected matters decided on 26.11.2018.

6. Per contra, learned State counsel opposes the submission and went through the order of the assessment and submits that the assessment order has been passed for the escaped sale which came to the knowledge of the Sale Tax Officers and the person on whose behalf the petitioner was said to have passed the goods have not supported the fact that they have supplied it to the petitioner. Consequently, the only inference can be drawn that the sale was

made directly through the petitioner and assessment as a result was correctly shown.

7. I have heard learned counsel for the parties and perused the record and orders of the respective courts, which are on record.

8. The order of the High Court passed in Misc. Petition No.329/1982 on 26.03.1985, the reading of it would show that exception was carved out in respect of Mahua and Amchur and it was confined to the sale assessment in respect of Chironji only. The High Court of M.P. held that as regards Mahua and Amchur transactions, it was open to the authorities to accept the explanation or not to accept it. The instant petition which is in respect of the Mahua, no finality was given to the assessment and the explanation which was given by the petitioner was still subject of scrutiny by the department, whether to accept it or not.

9. The original order dated 28.09.1984 (Annexure P-2) would show that Section 19 (1) of the Act, 1958 was invoked. Section 19 (1) of the Act, for the sake of brevity is reproduced hereunder:-

> **"19. Assessment of turnover escaping assessment. -** (1) Where an assessment has been made under this Act or any Act repealed by section 52 and if for any reason any sale or purchase of goods chargeable to tax under this Act or any Act repealed by Section 52 during any period has been under assessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made therefrom, the Commissioner may, at any time within five calender years from the date of order of assessment, after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he considers necessary, proceed in such manner as may be prescribed to reassess within a period of two calender years from the commencement of such proceedings, the tax payable by such dealer and the Commissioner may, where the omission leading to such reassessment is attributable to the dealer, direct that the dealer shall pay, by way of penalty in

> addition to the amount of tax so assessed, a sum not exceeding that amount:
>
> Provided that in the case of an assessment made under any Act repealed by section 52, the period for reassessment on the ground of under-assessment, escapement or wrong deduction shall be as provided in such Act notwithstanding the repeal thereof:
>
> Provided further that any reassessment proceedings pending on the date of commencement of the Madhya Pradesh General Sales Tax (Amendment) Act, 1978, be completed in accordance with the provisions in force before the date of such commencement and within a period of two calender years from the date of such commencement."

10. The order would show that the notices having been issued pursuant to the Section 19 (1) of the Act, 1958, the petitioner appeared before the assessment authority and placed the documents. According to the order, it shows that as per the flying squad inspection dated 20.01.1979, the sale of Mahua was to the extent of Rs.56489/-, the statement of the petitioner was also recorded, wherein he stated that the said account which was seized shows that it was supplied to the C.G. Distilleries, Bhilai, he was to receive a commission of 1.50 paisa per quintal in respect of the products of Mahua from registered dealer. The statement was made that the said Mahua was routed through from the different registered dealer of Raigarh. However, as against such statement, no documentary evidence were produced about the commission so as to fortify the fact that the commission was paid. In absence of any document, the assessment authority came to a finding that in order to avoid the payment of tax, the petitioner projected himself to be the commission agent and accordingly the levy was imposed.

11. The said order was subject of revision under Section 39 of the Act, 1958, wherein the Divisional Deputy Commissioner vide order dated 19.09.1988 (Annexure P-3) held that as per the books of accounts seized, which contains

sale of Mahua, no document was produced and the finding of the assessment authority was found to be correct. Further order speaks that on enquiry it revealed that Mahua were not sold on commission, no document was produced, neither the document was produced, nor the commission so received was shown in the account book. It further records that the person whose produce i.e. the Mahua on whose behalf the products were said to have sold, they did not support the version of the petitioner that it was sold on their behalf by the petitioner and had completely denied the same. Subsequently, it was held that the sale of Mahua to the extent of Rs.564891/- was sold by the petitioner to C.G. Distillery and was not transacted as a commission agent. The order further speaks that since the facts were concealed as such the levied sale tax on the sold products escaped earlier.

12. The rejection order of first revision was subject of suo moto revision under Section 39 (2) of the Act, 1958, the same was eventually dismissed on 20.06.1995 by holding that the petitioner has claimed that the Mahua was sold to C.G. distillery on behalf of the different registered dealer who have been named in such order, the said statement has not been proved instead the enquiry revealed the entire money of sale was made good by the petitioner to the C.G. distillery as against sale consideration and no document was on record to show that the petitioner had transacted as an commission agent on behalf of the registered dealer.

13. All the orders and the facts when are examined, it shows that because of the facts were not disclosed, the reassessment was carried out as the earlier sale escaped the assessment. There is nothing on record to accept that the petitioner was working as a commission agent on behalf of the other registered

dealers for the forest produce. To hold such finding of fact is perverse, nothing is on record to hold to come to such finding. The reading of the order would show that the petitioner was given all ample opportunity and the rules of natural justice were followed and before the order of escaped assessment was passed, the enquiry was conducted and the statements of witness were also recorded. The submission made by learned counsel for the petitioner that with the change of opinion, reassessment cannot be ordered in the facts of this case will not apply for the reason that the orders reflect that on enquiry on whose behalf the petitioner was said to have in hold & supplied goods as a commission agent, they have not supported the cause of the petitioner. Therefore, if at the time of assessment certain facts were not before the assessment authority, which came to their knowledge subsequently, it can definitely be gone into by invoking Section 19 (1) of the Act, 1958 for escaped assessment.

14. In a result, I am not inclined to interfere with findings. Accordingly, the petition is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu