

MADHYA PRADESH HIGH COURT

Commissioner of Sales Tax

Vs.

Kantilal Mohanlal

Misc. Civil Case No. 299 of 1966, Decided on 6.2.1967. Reference made by Board of Revenue, Madhya Pradesh, Gwalior
(P.V. Dixit, C.J. and R.J. Bhave, J.)

10.11.1966. 06.02.1967

JUDGMENT

Bhave, J.

1. The Sales Tax Tribunal (Board of Revenue, Madhya Pradesh) has made this reference under section 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the Commissioner of Sales Tax, Madhya Pradesh. The question referred for our decision is :

"Can the penalty for late submission of returns in Form V appended to the Madhya Pradesh Sales Tax (Central) Rules, 1957, be imposed under section 17(3) of the Madhya Pradesh General Sales Tax Act, 1958?"

2. For the period, 15th December 1960 to 7th November 1961 the non-applicant assessee was assessed to Central Sales Tax by the Sales Tax Officer, Gwalior, Circle No. 2. In the said assessment, the Sales Tax Officer imposed a penalty of Rs. 1000 on the assessee under section 17(3) of the Madhya Pradesh General Sales Tax Act, 1958, on the ground that the assessee failed to file the returns within the period prescribed by Rule 15 of the Madhya Pradesh General Sales Tax Rules, 1959. In appeal, the Board of Revenue set aside the order taking the view that the penalty under section 17(3) of the Madhya Pradesh General Sales Tax Act, 1958, could be imposed only if there were no rules framed by the State Government under section 13(3) of the Central Sales Tax Act, 1956, but that as the State Government had framed rules under the Central Act, styled as "The Madhya Pradesh Sales Tax (Central) Rules, 1957" (hereinafter referred to as the Central Rules), and as Rule 7-A of the Rules contained a

provision for imposition of penalty for a breach of the Central Rules, therefore no penalty under section 17(3) of the Madhya Pradesh General Sales Tax Act, 1958, could be imposed.

3. The relevant provisions to consider are :

I. Central Sales Tax Act, 1956.

"Section 9(3) : The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf, make necessary provision for all or any of the matters specified in this sub-section and such rules may provide that a breach of any rule shall be punishable with fine which may extend to five hundred rupees; and where the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues."

II. M.P. General Sales Tax Act, 1958.

"Section 17(3) : 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."

III. M.P. Sales Tax (Central) Rules, 1957.

"Rule 7-A : Submission of returns. (1) Every registered dealer liable to pay tax

under the Act shall furnish a return in Form V in respect of each period, for which his turnover is required to be determined under Rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957, to the assessing authority in the manner and by the date prescribed in respect of returns under the general sales tax law in force in the State of Madhya Pradesh and the rules framed there under and to each such return he shall attach one copy of the receipted challan in Form X in respect of the tax due according to the return.

(2) Every registered dealer, referred to in sub-rule (1), shall along with the return in Form V, furnish a list showing the total sales made to each registered dealer of different States separately during the period covered by the return which shall be duly signed and verified by him. The list shall be in Form VI serial wise as far as possible.

Rule 10-B : Application of the M.P. General Sales Tax Act, 1958, and the rules made there under : Subject to the provisions of the Act, these rules and the Central Sales Tax (Registration and Turnover) Rules, 1957, the provisions of the M.P. General Sales Tax Act, 1958 (2 of 1959) and the rules made there under shall apply mutatis mutandis to all proceedings or other matters, incidental to the carrying out of the purposes of the Act.

Rule 12 : Penalty; Any person committing a breach of any of the provisions of these rules shall be punishable with fine which may extend to five hundred rupees and when the offence is continuing one, with a fine which may extend to fifty rupees for every day during which the offence continues."

IV. The M.P. General Sales Tax Rules, 1959.

"Rule 15 : Returns, (1) Every registered dealer other than registered dealer having more than one place of business shall furnish to the appropriate Sales Tax Officer for each quarter of a year a return in Form VIII within 30 days from the expiry of the quarter to which the return relates. A registered dealer, having more than one place of business in the State, shall submit a consolidated return in Form VIII for all places of business in the State, including his principal place of business, and also a return in the same form separately for each of his place of business in the State in the same manner within 60 days from the expiry of the quarter to which the return relates. Each of such return submitted shall be accompanied by a treasury receipted challan in Form VI in respect of the tax due according to the return."

A perusal of Rule 12 of the Central Rules indicates that under that rule a penalty can

be imposed for a breach of any of the Central Rules. Now, it will be seen that Rule 7-A of the Central Rules does nothing more than provide for the form in which a return has to be submitted. According to that rule, a return is to be submitted in the prescribed form in the manner and by the date prescribed in respect of the returns under the general sales tax law in force in the State of Madhya Pradesh and the Rules made there under. Thus, the manner and the date within which a return is to be filed is prescribed not by Rule 7-A but by the relevant provisions of the M.P. General Sales Tax Act, 1958, and the Rules made there under. If, therefore, there is any non-compliance with regard to the manner and the period of limitation in the filing of a return, then the breach is not of Rule 7-A but is of Rule 15 of the M.P. General Sales Tax Rules, 1959, which prescribes the manner in which and the date by which a return should be filed. A breach of Rule 15 of the State Rules is punishable under section 17(3) of the State Act.

4. It may be noted that even if Rule 7-A of the Central Rules had not provided that the returns are to be submitted to the assessing authority in the manner and by the date prescribed in respect of the return under the general law in force in the State and the Rules framed there under, still the provisions of the State Act and the Rules there under with regard to the manner and the period of limitation for filing returns would have applied by virtue of Section 9(3) of the Central Sales Tax Act. That provision distinctly lays down that assessment, collection and enforcement of payment of any tax under the Central Act shall be by the authorities for the time being empowered to assess, collect and enforce payment of any tax under the State Sales Tax law and the Rules made there under, and has to be in the same manner as the tax on the sale or purchase of goods under the State Act is assessed, collected or paid and that the provisions of the State law including provisions relating to returns, penalties and offences shall apply. In the face of the statutory provision contained in section 9 of the Central Act, it cannot be contended with any degree of force that Rule 7-A of the Central Rules itself fixes the manner in which and the date within which returns are to be submitted. The Board of Revenue was, therefore, in error in holding that the question of penalty in the present case was governed by Rule 12 of the Central Rules and not by Section 17(3) of the State Act.

5. The applicability of the provisions of the M.P. General Sales Tax Act, 1958, and the Rules made there under in regard to the imposition of penalty for not filing a return within the prescribed time also flows from Rule 10-B. It is easy to see that if Rule 12

of the Central Rules were taken as authorizing the imposition of a penalty for not filing a return in time, it would be inconsistent with Section 9(3) of the Central Act which expressly makes the provisions of the State Act and the Rules made there under applicable in the matter of assessment and collection of tax. Those provisions cover matters relating to returns, imposition of penalties etc. Section 9(3) no doubt uses the expression "subject to any rules made under this Act". But the rules made under the Central Act can only be consistent with the provisions of that Act. They cannot override any statutory provision of the Central Act. That apart, even if it be held that the matter of imposition of penalty for failing to file a return in time has been dealt with by Rule 12 of the Central Rules as well as by Section 17(3) of the State Act by virtue of Section 9(3) of the Central Act, then the provisions of section 17(3) of the State Act being special provisions relating to imposition of penalty for failing to file returns within time must prevail over the Rule 12 of the Central Rules on the principle of '*generalia specialibus non derogant*'.

6. For these reasons, our answer to the question placed before us is that the penalty for late submission of returns in Form V appended to the Madhya Pradesh Sales Tax (Central) Rules, 1957, can be imposed under section 17(3) of the M.P. General Sales Tax Act, 1958. The Commissioner of Sales Tax, M.P., shall have costs of this reference. Counsel's fee is fixed at Rs. 150.

Reference answered.