



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI**

**ON THE 8th OF AUGUST, 2025
VALUE ADDED TAX APPEAL No. 2 of 2022
M/S AVS SALES CORPORATIONS**

Versus
COMMERCIAL TAXES DEPARTMENT

Appearance:

Shri P.M.Choudhary – Learned senior counsel alongwith Shri Anand Prabhawalkar – Learned counsel for the appellant.

Shri Anand Soni – Learned Additional Advocate General for the respondent / State.

ORDER

Per: Justice Vivek Rusia

Appellant has filed this appeal under Section 53(2)(b) of the M.P. Value Added Tax Act, 2002, against the order dated 24.09.2021, whereby the M.P. Commercial Tax Appellate Board has dismissed the Appeal No.A/232/CTAB/IND/17 (Entry Tax) for the period 01.04.2012 to 31.03.2013.

02. Appellant is an HUF and is engaged in trading of spare parts, nuts, bolts and bearing of two wheeler vehicles. Till 31.03.2012 the rate of Entry Tax on the parts of two wheeler vehicles was 1% and w.e.f. 01.04.2012, the same has been enhanced to 2%. The appellant was required to submit the return for the period 01.04.2012 to 31.03.2013 and pay the tax @ 2%. According to the appellant, there was a confusion in respect of rate of tax, therefore, on 22.01.2013 an application under Section 70 of the M.P. VAT Act, 2002 was filed before the



Commissioner, Commercial Tax for determination of rate of tax on two wheeler vehicle parts even prior to the end of relevant financial period. The learned Commissioner passed an order on 09.12.2013 clarifying the rate of tax to be 2%. According to the appellant, as per the provision of Section 70 of M.P. VAT Act, 2002, the order passed by the Commissioner has a prospective application; therefore, the appellant is liable to pay tax on the goods in question @ 2% from financial year 2013-14.

03. For the financial year 2012-13, the Assistant Commissioner of Commercial Tax vide order dated 16.12.2014 levied the tax @ 1% on the parts of two wheelers. Later on, the assessment was reopened by Assistant Commissioner of Commercial Tax, Division-3 and levied the tax at the enhanced rate of 2% in place of 1% vide reassessment order dated 30.12.2015 and calculated the difference of demand of Rs.39,28,642/- alongwith penalty of Rs.1,17,85,926/- under Section 21(2) of the M.P. VAT Act, 2002 equal to 3 times of the tax so levied. Being aggrieved by the aforesaid order, the appellant preferred an appeal before the Deputy Commissioner of Commercial Tax, Khandwa Division, Camp Indore which came to be dismissed vide order dated 23.02.2017. Thereafter, the appellant approached the Appellate Board by way of second appeal which has also been dismissed vide order dated 08.08.2017. Hence, there is a concurrent finding recorded by the Assessing Officer, First Appellate Authority and Appellate Board.

04. Shri P.M. Choudhary, learned senior counsel appearing for the appellant submits that the appellant is not disputing to pay the tax @ 2% even for the financial year 2012-13, but the appellant is not liable to be subjected to the penalty at the rate of 3 times because the mistake in payment of tax @ 1% was not attributable to the dealer. There was some confusion about the applicability of the enhanced rate, the appellant



approached to the Commissioner of Commercial Tax under Section 70 of M.P. VAT Act, 2002. The Commissioner examined the applicability of the notification and decided that for the financial year 2012-13 also, the interest rate would be 2%. The appellant has paid the enhanced tax, but penalty is on a higher side for the mistake which the appellant did not commit deliberately.

05. In support of his contention, Shri Choudhary, learned senior counsel has placed reliance on a judgment passed by the Division Bench of this Court in case of *Vikash Rexine House V/s State of Madhya Pradesh and another, [2014] 72 VST 420 (MP)*, in which the Division Bench has held that the penalty could be imposed when 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. Learned senior counsel has also placed reliance on a judgment passed by the Division Bench of this Court in the case of *Ind Exports Limited V/s Assistant Commissioner of Commercial Tax & others, (2011) 18 STJ 289 (MP)*, in which the Division Bench has held that there is no allegation or findings that the petitioner has concealed his turnover or has furnished false particulars of sale or purchases in the return. The mistake about the rate of tax was a *bona fide* mistake on its part and it had occurred due to lack of knowledge to the petitioner about the increase in the rate of tax from 2% to 4% w.e.f. 01.05.1999. The petitioner is only aggrieved by the imposition of penalty 3 times of the tax assessed or reassessed under Section 20(2) of the M.P. VAT Act, 2002.

Heard.

06. It is correct that before imposing the penalty between 3.5 to 3 times of the tax assessed, the Commissioner shall examine whether the omission leading to assessment or reassessment is attributable to the



dealer. The appellant was subjected to assessment for the financial year 2012-13 by the Assistant Commissioner, Commercial Tax, Division -3, Indore and order dated 16.12.2014 was passed for payment of tax @ 1%. Before such order, the appellant had already moved before the Commissioner by way of application under Section 70 of M.P. VAT Act, 2002 on 22.01.2013 i.e. prior to 31.03.2013. The Commissioner decided the application vide order dated 09.12.2013 i.e. one year before 16.12.2014 when the Assistant Commissioner passed a first assessment order, therefore, it was the duty of the appellant to inform the Assistant Commissioner about the order dated 09.12.2013 by which the rate of tax @ 2% had been clarified, had the appellant been disclosed, the Assistant Commissioner would have levied the tax @ 2% without imposing any penalty. The appellant concealed the order dated 09.12.2013. When it came to the knowledge of the department, the assessment of 09.12.2013 was reopened under Section 13 of Entry Tax r/w Section 21(1) of M.P. VAT Act, 2002 on 07.09.2015.

07. Shri Choudhary, learned senior counsel for the appellant submits that once the order has been passed by the Commissioner and the same was reported in *Reliable Dairy Products & Biotech Pvt. Ltd. V/s Commissioner of Commercial Tax, M.P., (2014) 24 STJ 70 (CCT, MP)*. The Assistant Commissioner must have a knowledge about the said order and ought to have passed an assessment order for payment of tax @ 2%.

08. The appellant is a person in whose case the order under Section 70 of M.P. VAT Act, 2002 was passed on 09.12.2013 in *(2014) 24 STJ 70 (CCT, MP) (supra)*. Under Section 21(1) of M.P. VAT Act, 2002 the omission on the part of assessee is liable to be examined not the omission on the part of the department. Therefore, it was the duty of appellant to inform the Assistant Commissioner in the original



assessment proceedings.

09. In view of the above, we do not find any question of law involved in this appeal. Accordingly, this Value Added Tax Appeal is hereby **dismissed**.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

Divyansh