(2006) 11 KL CK 0034

In the High Court Of Kerala

Case No : O.P. No. 20037 of 2002 (I)

Asianet Satellite Communications (P) Ltd. APPELLANT

Vs

Additional Sales Tax Officer-I and Another RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 3
Central Sales Tax Act, 1956 — Section 10, 10A, 8(3)

Citation : (2007) 10 VST 615

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging revisional order issued by the Commissioner of Commercial Taxes confirming penalty levied u/s 10A of the Central Sales Tax Act, 1956 (hereinafter called "the Act") for the offence committed by the petitioner u/s 10(d) of the Act for the assessment years 1993-94 to 1996-97. The facts leading to the case are as follows. The petitioner which is a reputed company engaged in telecast of TV programmes and cable networking issued C forms for the above four years and availed concessional rate of sales tax on inter-State purchase of dish antenna, battery, digitiser, etc., which are used in their cable TV network for transmitting TV signals to customers. The assessing officer found that the items purchased were neither used for manufacture of any goods nor for generation of power or for resale and therefore there was misuse of C form leading to loss of revenue. Since the action of the petitioner amounts to violation of Section 10(d) of the Act, he proposed to impose a penalty u/s 10A in lieu of prosecution. The petitioner filed objections stating that the items purchased are used for transmitting TV signals which amounts to distribution of power and so much so, there is no violation of Section 8(3)(b) of the Act to attract penalty. Alternately, it was contended that no penalty could be levied because C forms were not issued deliberately to evade payment of tax. The assessing officer overruled the objections holding that the petitioner declared in the application for registration that the items purchased were for "resale" and by using the items by the petitioner for their own networking, they have violated Section 10(d) of the Act that attracts prosecution in lieu of which penalty is leviable u/s 10A of the Act. Accordingly, he levied penalty at one-and-a-half times the differential tax. Since the supplier has charged tax at four per cent against C forms issued by the petitioner, penalty levied was one-and-a-half times of 6 per cent, i.e., 9 per cent of the value of goods. Since the revision petitions filed before the first revisional authority were unsuccessful, second revisions were filed which were dismissed by common order of the Commissioner produced as exhibit P7.

2. I heard Senior counsel Dr. Muhamed Kutty, appearing for the petitioner and Government Pleader for the respondents. The counsel for the petitioner pointed out the amendment to Section 8(3)(b) introduced by Act 20 of 2002 whereunder telecommunication network is included as an item eligible for issue of C form. However, since amendment is made only in 2002, it does not apply for the assessment years 1993-94 to 1996-97 for which penalty is levied. Moreover, it is a matter to be seen whether the equipment purchased by the petitioner answers the description of telecommunications network. In any case since amendment does not apply to the relevant years, I do not go into the question whether the petitioner is entitled to issue C form for the purchase of some equipment after the above amendment has come into force.

3. The next contention raised is that the equipment used for sending television signals through cables is in the form of distribution of "another form of power". The electronic TV signals cannot be equated to a form of power and therefore, I am unable to accept petitioner''s contention that the use of C form is for an eligible purpose. Besides, the assessing officer has pointed out that the petitioner had declared in the application for registration that the items for which C forms claimed were for "resale" which admittedly the petitioner has not made. Therefore, the petitioner''s claim that the petitioner is entitled to issue C form is unacceptable and violation is rightly found against the petitioner.

4. The counsel contended that the authorities below went wrong in levying maximum penalty of one-and-a-half times of the tax involved. According to counsel, the petitioner''s operations were made known to the assessing officer and while issuing C forms he was well aware of the fact that the petitioner is not engaged in trading of the commodities for which C forms were claimed. He pointed out that in the monthly return filed also the petitioner has not declared any turnover on sale of these equipment. Therefore, the fact that the items purchased were not for resale was clear on records and the assessing officer was well aware of use of C forms by the petitioner for the purchase of equipment. Moreover, the grievance of the petitioner is that the officer did not issue any notice intimating the violation or proposed penalty until notice was issued in the year 2000. The contention therefore is that the C forms were not deliberately

issued to avoid or evade payment of sales tax, but the petitioner issued it on the bona fide impression that they were entitled to concessional rate of tax u/s 8(3)(b) of the Act. Relying on the decision of the Supreme Court in Hindustan Steel Ltd. v. State of Orissa [1970] 25 STC 211 kercounsel submitted that levy of maximum penalty is not warranted as the violation is only technical. Another decision cited by counsel for the petitioner is that of this Court in Palghat Dist. Co-operative Rubber Marketing Society Ltd. v. Assistant Commissioner (Assmt.) II, Sales Tax Office, Special Circle, Palghat [1994] 93 STC 485 ker : [1994] KLJ 58 (TC) whereunder this Court held that mens rea is required for imposing penalty u/s 10A of the Act. The Government Pleader on the other hand contended that even if mens rea is required, the same is satisfied because the petitioner by declaring that the items purchased are for resale, did not in fact sell the goods but used the items as capital equipment for their business in TV network. The findings of the officer are also to the effect that the petitioner had declared the items in the certificate of registration applied for by them as "for resale". The counsel for the petitioner submitted that the nature of business was declared in the certificate of registration as distribution and therefore, the contents of the application should be read as a whole and so much so, there is no misrepresentation in the application in his contention. The application for registration, namely, form A prescribed under Rule 3 of the Central Sales Tax (Registration and Turnover) Rules specifically requires dealer to mention the various purpose for which goods are purchased which includes all the eligible activities for which C forms are to be issued as contemplated u/s 8(3)(b) of the Act, namely, for resale, for manufacture and processing of goods for sale, for use in mining, in the generation and distribution of electricity or any other form of power, etc. When the petitioner makes a declaration in the application for registration that items are for resale, the same is incorporated in the certificate of registration. If the petitioner wants to change the purpose of the goods, it was the duty of the petitioner to get the certificate of registration amended which was not done in this case. Therefore, I am of the view that there is violation of Section 10(d) of the Act inasmuch as the petitioner has not used the items purchased for the declared purpose, i.e., for resale. Therefore, penalty u/s 10A is leviable for the violation u/s 10(d) of the Act. The levy of penalty by the officer, which is confirmed by the Commissioner, is therefore upheld in principle.

5. The next question raised is whether the penalty levied at nine per cent of the purchase value is justified. The petitioner admittedly purchased the articles by paying tax at four per cent against issue of C forms. Therefore, the loss of revenue is six per cent of the purchase value. The maximum penalty is one-and-a-half times of the tax sought to be evaded by misuse of C form which is nine per cent. Even though counsel contended that the appropriate State which lost the revenue is the State of Punjab wherefrom goods were purchased and therefore, penalty cannot be levied in the State of Kerala, I do not think such a contention is tenable because Section 10A authorises levy of penalty by the authority who issued certificate of registration to the dealer under the Act.

Moreover, Central sales tax and penalty are collected on behalf of the Central Government and it is immaterial as to which State collects the same. In the circumstances, the argument that the assessing officer who issued certificate of registration to the petitioner cannot levy penalty u/s 10A is repelled. However, I am of the view that if the assessing officer had perused the returns, it would have been known to him that the petitioner was not acting as a trader in the goods purchased by it. Moreover, in the application for certificate of registration the petitioner''s business activity declared is telecasting and networking and not the role of a trader. Moreover, even the declaration of the article as for resale also may not be a deliberate action because the application form contains only two purposes, i.e., one for manufacture and processing and the other for resale. In any case when C forms were issued by the assessing officer to the petitioner, he should have ensured that there is no misuse of the same as the petitioner''s business prima facie does not make them eligible for getting C forms. Moreover, the officer has not for years verified the use of C form or monthly returns filed by the petitioner which led to initiation of penalty for 1993-94 to 1996-97 only in the year 2000. Therefore, I feel these mitigating factors do not justify levy of maximum penalty which is levied in this case. Even though counsel for the petitioner contended that mens rea is a necessary ingredient for the levy of penalty, I am unable to accept this contention because the purpose of penalty u/s 10A in lieu of prosecution is mainly to compensate the State for the loss suffered on account of misuse of C form. It is to be noted that but for the misuse of C form, the petitioner would have had to pay tax at 10 per cent as against 4 per cent paid by the petitioner. In fact, there is no way for the authorities in the State wherefrom the petitioner purchased the goods to find out violations or misuse of forms and declarations and that is why authority to levy penalty is granted to the assessing authority who issued certificate of registration to the petitioner. In the circumstances and in view of the mitigating factors stated above, I modify the penalty orders for 1993-94 to 1996-97 confirmed by exhibit P7 by reducing the penalty to differential tax, i.e., at two-third of the actual penalty levied and cancel one-third of the penalty levied and sustained for all the four years.

6. The original petition is disposed of as above.

7. Order on C.M.P. No. 34387 of 2002 in O.P. No. 20037 of 2002(1) is dismissed.

