(1978) 08 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 17 of 1973

Bhim Sain Sudarshan Kumar APPELLANT

Vs

The State RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8
Punjab General Sales Tax Act, 1948 — Section 22

Citation : (1979) 43 STC 58

Hon'ble Judges : Rajendra Nath Mittal, J;D.B. Lal, J

Bench : Division Bench

Advocate : N.L. Dhingra, for the Appellant; D.N. Rampal, for the Advocate-General, for the Respondent

Judgement

R.N. Mittal, J.—This order will dispose of G. S. T. References Nos. 17 to 22 of 1973 as the facts of all the cases and the points involved in them are the same.

2. The facts of the cases are that the firm M/s. Bhim Sain Sudarshan Kumar, the petitioner, is functioning as commission agents at Patti. It is registered under the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956. Under the Central Sales Tax Act, 1956, the registration certificate was issued on the basis of an application dated 6th July, 1961. The petitioner was entitled to purchase paddy, kapas, gur and oilseeds for resale, according to the registration certificate issued under the Central Sales Tax Act, 1956. The Assessing Authority while inspecting the accounts of M/s. Nihal Chand & Sons, Patti, found that the petitioner had effected purchase of timber from time to time during the years 1961-62 to 1966-67 and effected sales thereof in favour of M/s. Nihal Chand & Sons, Patti. The Assessing Authority considering that the petitioner was not entitled to purchase timber on the strength of the registration certificate issued 6 notices u/s 10(b) of the Central Sales Tax Act for the years 1961-62 to 1966-67. The Assessing Authority after hearing the petitioner imposed penalties on it in all the six cases, vide order dated 16th December, 1966. The appeals against the

order of the Assessing Authority to the Deputy Excise and Taxation Commissioner were rejected by him, vide order dated 28th March, 1968. The petitioners went up in second appeals before the Sales Tax Tribunal who rejected the same, vide order dated 5th June, 1970. On application u/s 22(1) of the Punjab General Sales Tax Act, 1948, the Sales Tax Tribunal has referred the following question for decision by this Court :

That under the circumstances according to the facts found out by the Assessing Authority and the material on record along with the explanation of the petitioner-firm, has the petitioner made any false representation with any guilty intention which is an essential requisite of Section 10(b) of the Central Sales Tax Act, 1956, and is the petitioner-firm liable for penalty u/s 10A of the said Act ?

3. In order to determine the question a few more facts may be stated. In the application dated 6th July, 1961, it was stated that the petitioner was carrying on business in "all foodgrains, rice, kapas, chillies, toria, oil-seeds, cotton-seeds, etc." The registration certificate was issued on 26th July, 1961, with regard to purchase for resale of the following commodities : "Paddy, kapas, gur, oil-seeds".

4. From the perusal of the two entries, it is evident that in the registration certificate the commodities, all foodgrains, cotton, chillies and the word "etc." did not figure. The Assessing Authority, the Deputy Excise and Taxation Commissioner and the Tribunal came to the conclusion that the dealer had made an untrue statement while purchasing timber on the concessional rate of tax against C forms issued by him. Consequently, they imposed penalty u/s 10A of the Central Sales Tax Act.

5. Section 10 relates to penalties and Section 10A to imposition of penalty in lieu of prosecution. Section 10(b) provides that if any person, being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration, he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both, and when the offence is a continuing offence with a daily fine which may extend to fifty rupees for every day during which the offence continues. Section 10A, inter alia, says that if any person purchasing goods is guilty of an offence u/s 10(b), the Assessing Authority may impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied u/s 8(2) in respect of the sale to him of the goods. It further says that if penalty has been imposed under this section no prosecution u/s 10 would be instituted.

6. The main question to be determined is whether the petitioner was guilty of false representation while purchasing timber that it was included in the certificate of registration. Before dealing with the factual side, it will be proper to see in the first instance as to what the phrase "falsely represents" means. This phrase has not been defined in the Act but has been interpreted judicially by various High Courts. In P. K. Varghese and Sons v. Sales Tax Officer, Special Circle, Ernakulam [1965] 16 S.T.C. 323, a learned single Judge of the Kerala High Court, while

interpreting the phrase, observed that the use of the words "falsely represents" in Clause (b) of Section 10, is significant. It must be proved that the dealer made the representation that the goods purchased were covered by the registration certificate with the knowledge that they were not so covered. In Ben Gorm Nilgiri Plantations Company, Coonoor v. Government of Madras [1968] 21 S.T.C. 480, a similar matter came up before a Division Bench of the Madras High Court. Veeraswami, L, speaking for the Bench, observed as follows :

The phrase ''falsely represents'' in Section 10(b) of the Central Sales Tax Act, 1956, clearly indicates that the falsity of the representation should be with the knowledge of the representator. If he is under an honest belief that what he represents is true, he cannot be said to make a false representation. The gravamen of the offence is the representation of something as true which, in fact and to the knowledge of the representor, is false.

7. A Division Bench of the Madhya Pradesh High Court in Commissioner of Sales Tax, Madhya Pradesh, Indore v. Bombay General Stores, Shahdol [1969] 23 S.T.C. 449 came to the conclusion that in the absence of mens rea, a dealer cannot be penalised for contravention of Section 10(b) of the Central Sales Tax Act, 1956. The above view was followed later by another Division Bench of the same High Court in Pannalal Umesh Kumar of Ghoghar, Rewa v. Commissioner of Sales Tax, Madhya Pradesh [1971] 27 S.T.C. 199 . The Madras High Court again in Sri Lakshmi Machine Works v. State of Madras'' [1973] 32 S.T.C. 407 reiterated :

Section 10(b) of the Central Sales Tax Act, 1956, specifically uses the words ''falsely represents'' which shows that mere representation based on a bona fide belief will not bring an assessee within the mischief of that provision. The representation should be false to the knowledge of the assessee. Merely because the belief entertained by the assessee turned out to be not proper or correct does not mean that the issue of C form certificate was on the basis of a false representation. The phrase ''falsely represents'' in Section 10(b) indicates that mens rea is an important ingredient for the offence contemplated therein. The question whether there is mens rea or not is one of fact to be decided on the facts of each case.

8. From the abovesaid authorities, it is evident that in order to punish an assessee u/s 10(b), it should be proved that he had the knowledge that his representation was untrue. Thus mens rea is an essential ingredient of the offence and an assessee in its absence cannot be penalised for contravention of the section. In case the assessee has a bona fide belief that the goods are covered by the certificate of registration he may not be liable to punishment. The question whether an assessee had a bona fide belief or represented falsely is one of fact and has to be decided taking into consideration the facts of each case.

9. Keeping the aforesaid ingredients in view, it is now to be seen whether in these cases the assessee was liable to be penalised u/s 10A? The learned counsel

for the petitioner has vehemently argued that after specifying the goods, the word "etc." had been mentioned by it in the application for registration, but this word had been dropped from the certificate of registration. He further urges that the word "timber" got incorporated in 1953 in the certificate of registration issued under the Punjab General Sales Tax Act. According to him, the sale of timber was mentioned in the account books of the firm which came to the notice of the Assessing Authority and he had been making assessments accordingly in the years 1961-62 to 1966-67. The counsel argues that the firm had been submitting the counterfoils of C forms to the Assessing Authority and getting new forms issued from him. In the circumstances, the counsel submits, the petitioner was under bona fide belief that it was entitled to purchase timber in the course of inter-State trade.

10. We have given a thoughtful consideration to the argument, but regret our inability to accept it. It is not disputed that the partners of the firm are all educated persons. After the certificate was issued to the firm, it cannot be assumed that its partners did not know that timber was not mentioned in it. In the certificate of registration under the Central Sales Tax Act, the goods mentioned are paddy, kapas, gur, oil-seeds. In the application dated 6th July, 1961, which the petitioner made for giving a registration certificate, the goods mentioned were foodgrains, toria, rice, kapas, chillies, oil-seeds, cotton-seeds, etc. Even in that application, the word "timber" was not mentioned. The dropping of various items and the word "etc." from the certificate further shows that the department had allowed the petitioner to purchase goods for resale mentioned therein. The other circumstances mentioned by the learned counsel, namely, that the word "timber" appears in the certificate of registration issued under the Punjab General Sales Tax Act, or that purchase and sale of timber are entered in the account books, or that the firm had been taking C forms from the Assessing Authority or that the Assessing Authority had been assessing the petitioner for a long time considering timber to have been purchased in the course of inter-State trade, cannot be said to be grounds for holding that the petitioner bona fide believed that it was entitled to purchase timber during the course of inter-State trade". It cannot take benefit of the mistake of the Assessing Authority. The main thing to be seen is whether the item is mentioned in the certificate or not or whether the items mentioned in it were such that the petitioner could claim bona fide mistake.

11. There is yet another circumstance which conclusively shows that the petitioner made false representations to the sales tax authorities. It is that while purchasing the goods, in the course of inter-State trade, a registered dealer has to give form C to the dealer from whom these are purchased. The form consists of various columns and includes a certificate to the effect that the goods are covered by the registration certificate. It is to be signed by the purchaser. The petitioner, it is not disputed, issued the certificate while purchasing timber wherein it was said that this item was covered by the registration certificate issued to it under the Central Sales Tax Act. It was not expected of the petitioner

to issue such certificate without ascertaining as to whether timber was included in the registration certificate. This further affirms that the petitioner made a false representation. In view of the above reasons, it cannot be held that the petitioner bona, fide believed that the- goods were covered by the registration certificate. In this regard, reference may be made to M. Pais & Sons v. State of Mysore [1966] 17 S.T.C. 161. In that case, the petitioner obtained the registration certificate under the Central Sales Tax Act, 1956, for inter-State purchases of tin provisions, patent goods, medicine, tobacco, medicated wines, denatured spirits, cigars and cigarettes. The petitioner used C form for purchasing in the course of inter-State trade goods not covered by his certificate of registration, viz., petromaxes, tapes, toilets, battery cells, glassware, essences, etc. The officer held that the petitioner had committed an offence u/s 10(b) and therefore imposed on him a penalty u/s 10A. The Sales Tax Appellate Tribunal came to the conclusion that the representations made by the petitioner in C forms were false. A reference was made to a Division Bench of the High Court of Mysore under the Central Sales Tax Act. K. S. Hegde, J., as he then was, observed that the petitioner had made false representation to his sellers deliberately and therefore the levy of penalty was proper.

12. After taking into consideration all the aforesaid circumstances, we are of the opinion that the petitioner made false representation and is liable for penalty u/s 10A of the Act. '' The question referred to is, therefore, decided against the assessee and in favour of the revenue. No order as to costs.

D.B. Lal, J.

13. I agree.