
(2003) 11 AHC CK 0185

In the Allahabad High Court

Case No : Sales Tax Revision No's. 1159 and 1160 of 1992

Commissioner, Sales Tax

APPELLANT

Vs

Hari Oil and General Mills

RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 7

Citation : (2005) 139 STC 514

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharatji Agarwal, for the Appellant; B.K. Pandey, for the Respondent

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of the U.P. Sales Tax Act, 1948 (hereinafter referred as "the Act") are directed against the order of Tribunal dated March 31, 1992 relating to the assessment years 1985-86 and 1986-87.

2. Dealer-opposite party was carrying on the business of manufacture and sale of oil and oil cakes and was registered u/s 7 of the Central Sales Tax Act, 1956 (hereinafter referred as "the Act"). The registration certificate u/s 7 of the Act was issued on October 30, 1984 with effect from October 23, 1984 on the application of the dealer moved on October 23, 1984. The dealer being registered dealer under the Central Sales Tax Act was entitled to get form C from its assessing authority for making the purchases from outside the State of U.P. against form C to avail the benefit of concessional rate of tax. Accordingly form C was regularly issued as and when desired by the dealer. It appears that during the assessment proceedings it was found that the dealer had issued form C for the purchases of oil-seeds from outside the State of U.P. and availed the benefit of concessional rate of tax in respect of which it was not registered as per the registration certificate, and accordingly, notice u/s 10-A read with Section 10(b) was issued. Dealer filed the reply to the show cause notice which was not accepted and a sum of Rs. 73,298.60, was levied towards penalty for the assessment year 1985-86 and a sum of Rs. 2,08,064 for the assessment year

1986-87. Dealer filed appeals before the Deputy Commissioner (Appeals). The first appellate authority had allowed the appeal in part for the assessment year 1985-86 and reduced the quantum of penalty to Rs. 1,075 and rejected the appeal for the assessment year 1986-87. Being aggrieved by the order, the applicant filed two appeals before the Tribunal which were allowed and penalty were deleted. Being aggrieved by the order of Tribunal, present two revisions have been filed.

3. I have heard Sri B.K. Pandey, learned Standing Counsel and Sri Bharat Ji Agarwal, learned Senior Advocate appearing on behalf of the respondent.

4. Tribunal held as follows :

"Para 4. From the perusal of record, it reveals that the only question requiring adjudication is whether under the facts and in the circumstances of the case, the penalty proceedings initiated against the assessee u/s 10-A read with Section 10(b) of the Central Sales Tax Act are legally justified or not. We have gone through the relevant provisions of Section 10-A(1) of the Act which envisages that if any person purchasing the goods is found guilty of offence under Clause (b), (c) or (d) of Section 10, the authority granting him a registration certificate under this Act may impose penalty. Before parting with the case, we feel it proper to refer the relevant provisions of Section 10(b) of the Act which runs as under:

"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".

From the perusal of above provisions, it is obvious that it uses the specified words "falsely represents". These words in itself show that mere representation made on bona fide belief does not bring the assessee under the mischief of Section 10(b). In the instant case, the appellant made an application u/s 7(1) and 7(2) of the Act, in form A and word "oil seed" was written in an inappropriate col-umns-16-CHA instead of column-16 Kha and there was cutting over it. However, the appellant was under the belief that he was authorised to make purchases of oil seed against form C because the only raw material for its business was oil seed and nothing else. Besides this, the accounts with regard to the consumption of forms C already issued for purchase of oil seed were produced before the assessing authority for getting further forms issued for the said purpose and those accounts were verified and accepted and orders were made for subsequent issue of form C for the purchase of oil seeds without any objection. In such state of affairs, the appellant was under the honest belief that he was authorised to make the purchase of oil seeds against form C and accordingly he gave form C for the said purpose.

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6. The phrase "falsely represents" in Section 10(b) of the Central Sales Tax Act,

1956 indicates that mens rea is an essential ingredient for the offences contemplated u/s 10(b) of the Act. In the present case, the doctrine of mens rea is permanently absent and from the record on file, it does not stand established that form C were issued under the false representation. The department should be diligent enough to use the genuineness and legality of issuance of forms, but in the present case, the department itself has been negligent to issue form C without any objection for purchase of oil seeds, which resulted into the bona fide belief of the appellant that he was authorised to purchase oil seeds against form C. The case of the appellant was that he genuinely believed that oil seeds was also covered by its registration because form C were being regularly issued by the department for the said purpose without any objection. Under these circumstances, the appellant in the present case does not appear to act in deliberate deviation or disregard of the provisions of the Act. When there is no deliberate violation of the provisions of law, the penalty imposed against the assessee is liable to be quashed. For this view, we stand fortified with the case law referred to by the learned counsel in the case of *Sri Lakshmi Machine Works v. State of Madras* [1973] 32 STC 407 (MP) and *State of Rajasthan Vs. Jaipur Udyog Ltd.*, . It would not be out of place to mention here that the requisite forms can only be issued by the assessing authority when he is satisfied that the demand was genuine and legal. Since the forms C were being issued regularly for the purchase of oil seeds without any objection for the last five years and the accounts rendered in that behalf have always been verified and accepted by the assessing authority, hence, the appellant cannot be held that he made the false representation to make the unauthorised purchase of oil seeds against form C and guilty of offence contemplated u/s 10(b) of the Act. In these circumstances, the penalty proceedings initiated against the assessee on the grounds narrated above, cannot be sustained in the eye of law. No plausible material could be adduced on behalf of the Revenue to rebut these findings, hence, the impugned order is found to have suffered from legal defect and is, thus, liable to be set aside."

5. Learned Standing Counsel contended that admittedly, the applicant had not applied for registration for oil seed. He submitted that in column 16-Kha which was for the goods required to be used in the manufacturing or production to be mentioned, only "machinery plant with spare parts and electrical goods required for operation of Machinery for oil mill or generator" were mentioned. In column 16 (Ang) goods used for packing of goods to be mentioned only iron and plastic containers, polly bag, gunny bag, sell for plastic strap are mentioned within bracket and outside the bracket oil seed was mentioned but it was cut. He submitted that on the basis of application stated above registration certification was issued on October 30, 1984 in which in the column goods required to be used in manufacture or production only "Machinery plant with spare parts, electric goods required for operation of machinery, generators" and in the column of goods required for the use for packing only "iron and plastic and containers, polly bag, gunny bag, etc." are mentioned and in the column of goods

manufactured "edible oil" is mentioned. It is submitted that apart from the aforesaid item, no other items are mentioned in the certificate. Oil seed is not mentioned in the registration certificate. He submitted that neither, the applicant had applied for registration for oil seed in its application nor the registration was granted for "oil seed" in the registration certificate. He submitted that the registration certificate was duly served on the dealer to which no objection was raised. On the part of the applicant, i.e., no application was moved that oil seed was left to be written in the registration certificate. He submitted that though the dealer was aware that he was not registered for oil seed still used form C in making the purchase of oil seed which amount to false representation on the part of the dealer. He further submitted that since dealer was registered therefore, entitled to get form C and accordingly, the assessing authority had issued the form C on its application. He submitted that though there is nothing to show that before issue of form C earlier details about its use were looked into but even if it is presumed that it was seen still for the laches on the part of the assessing authority, dealer could not get right to issue form C while making the purchases of oil seed when dealer was aware that firm was not registered for oil seed. He submitted that the Tribunal has illegally cancelled the penalty.

6. He submitted that for the levy of penalty u/s 10(b) of the Act the only ingredient required to be considered is that while making the purchases whether dealer had made false representation that it was registered in respect of the goods and mens rea is not a necessary ingredient. In support of its contention he relied upon the judgment of this Court in case of Commissioner of Sales Tax v. Rama and Sons reported in 1999 UPTC 425.

7. Sri Bharatji Agarwal, learned counsel for the opposite party, contended that the dealer was only carrying on the business of manufacture of oil and oil seed was only raw material and therefore, there was no reason for not getting the registration for oil seed under the Central Sales Tax Act. He submitted that in the application though in the wrong column but oil seed was mentioned and it is not known that who had cut the word oil seed. He submitted that without going into controversy as to who had cut the word oil seed as mentioned in the application but the facts remain the oil seed was mentioned in the application and on account of which the dealer led to believe that it was registered for oil seed. He further submitted that for many years in spite of the details being furnished for use of form C, showing the purchase of oil seed against form C still the assessing authority had regularly issued form C and had not raised any objection in this regard and therefore, the action on the part of the assessing authority led the applicant to believe that it was registered for oil seed and hence while making the purchases of oil seed issued form C. The sum and substance of the argument of learned counsel for the applicant is that there was no false representation on the part of the applicant while making the purchases of oil seed and the applicant had acted bonafidely. He submitted that the Tribunal has examined all the aspect of the matter and has recorded categorical findings of fact that the dealer was under the bona fide believe and had not acted in deliberately defiance of the Act

and the findings of the Tribunal are finding of fact and should not be interfered. He further submitted that when in the course of assessment proceedings it was found that the applicant had wrongly issued form C for making the purchase of oil seed and notice u/s 10-A was issued, applicant moved the application for inclusion of oil seed and it was included in the registration certificate with effect from May 22, 1990. In support of contention that on the facts and circumstances penalty is not leviable he relied on the decision of the honourable Supreme Court reported in State of Rajasthan Vs. Jaipur Udyog Ltd., and Commissioner of Sales Tax Vs. Kashi Prasad Ram Chandra Lal, In the case of Sanjiv Fabrics Vs. Commissioner of Sales Tax,

I have perused the order of Tribunal and authorities below.

8. Section 10(b) read as follows :

"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."

9. It is true that false representation means "something done knowingly having knowledge". If anything is done bona fide then such act cannot be said to be a false representation. Therefore, the question for consideration is whether on the existing fact, stated above, the dealer-opposite party while making the purchases of oil seed made the false representation that it was registered for oil seed, in other words, whether while making the purchases dealer knowingly represented that it was registered for oil seed and issued form C.

10. No doubt dealer was engaged in the manufacturing of edible oil only, and oil seed was the only raw material and the dealer could avail the benefit of concessional rate of tax under the Central Sales Tax Act after having the registration in respect thereof. When the dealer had moved the application in form A u/s 7 of the Central Sales Tax Act, 1956 stating therein certain items required for use in the manufacturing with the view to avail the benefit of concessional rate of tax. It is clear that the dealer was aware that to avail the benefit of concessional rate of tax, the registration under the Central Sales Tax Act was necessary and when the various other items were mentioned in the registration application nothing prevented the dealer to mention the oil seed in the column of goods required for the manufacturing. Further in the application in the wrong column oil seed was mentioned and subsequently cut and thereafter under the bracket certain other items were mentioned, namely, iron and plastic containers, etc. If the intent was to get the registration for oil seed there was no reason to cut it. Further on the basis of the application, the registration certificate was issued which was served on the dealer and in the registration certificate oil seed was not mentioned. If the intent of the dealer was to obtain registration for oil seed dealer would have objected immediately which was not done, therefore, it lead to the inference, that dealer never desired to had a registration under the Central Sales Tax Act for oil seed, for the reason best

known to it. When neither in the registration application registration for oil seed was claimed nor in the registration certificate oil seed was mentioned, it is not understandable as to what led the dealer to believe that it was registered for oil seed in as much as registration was granted on October 30, 1984 with effect from October 23, 1984 and the form C was issued in respect of the purchases made in the year 1985-86 for which there was no reason at all. Applicant had issued form C in respect of oil seed at its own risk. Mere fact that form C was issued by the sales tax authority for many years would not give the right to the dealer to act in defiance to the law and act in the manner for which it was not entitled. In the present case, there is remotely no reason which led to the dealer to believe that it was registered for oil seed under the Central Sales Tax Act and was entitled to issue form C. There may be cases where the dealer is registered for some item and the belief may be that the item for which form C was issued was covered under such item and in that situation one can understand about bona fide belief case. Where the dealer admittedly has neither applied for registration for oil seed nor registration was issued for oil seed, it is difficult to accept a plea of bona fide.

11. Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 contemplates form C to avail the benefit of concessional rate of tax as required u/s 8 of the Central Sales Tax Act, 1956. It is relevant to refer the language of form C:

ORIGINAL

The Central Sales Tax (Registration and Turnover) Rules, 1957

Form C

Form of declaration

See Rule 12(1)

Name of issuing State :

Office of issue :

Date of issue :

Name of the purchasing dealer to whom issued along with his registration certificate No. : Date from which registration is valid :

Serial No.

Seal of the issuing authority

To,

.....(Seller)

.....

() certified that the goods

** ordered for in our purchase order

No.....dated.....and

supplied as per bill/cash memo/challan No.....dated.....as stated below
*purchased from you as per bill/cash memo/challan No..... dated.....as
stated below*}

Supplied under your challan No.....datedare for **resale Use in
manufacture/processing of goods for sale.....

Use in mining.....

Use in generation/distribution of power

Packing of goods for sale/resale and are covered by my/our registration
certificate No.....dated.....issued under the Central Sales Tax Act, 1956 ()

It is further certified that I/We am/are not registered u/s 7 of the said Act in the
State of.....in which the goods covered by this form are/will be delivered.

Name and address of the purchasing dealer in full..... The above statements
are true to the best of my knowledge and belief.

Date.....

(Signature).....

(Name of the person signing the declaration)

(Status of the person signing the declaration in relation to the dealer)

*Particulars of Bill/Cash Memo/Challan Date....No.. Amount...

*Name and address of the seller with name of the State.

**Strikeout whichever is not applicable.

(Note :--To be furnished to the prescribed authority in accordance with the Rules
framed u/s 13(4)(e) by the appropriate State Government dealer).

12. The above language of form C shows that a declaration is required to be
made that the goods are covered by registration certificate. Therefore, while
issuing form C in respect of goods, it is incumbent upon the dealer who issues
certificate to be clear that the goods in respect of which form C is being issued is
covered under the registration certificate. Thus, form C should be issued only
when dealer is sure that the goods for which, he is issuing form C is covered
under the registration certificate. As stated above, since the dealer has neither
applied for registration certificate for oil-seed nor in the registration certificate oil-
seed was mentioned, there was absolute no reason for dealer to issue form C for
oil seed after making false declaration. The issuance of form C for oil seed was

patently amounts to false declaration.

13. Let us now examine the cases relied upon by the learned counsel for the applicant.

14. In the case of State of Rajasthan Vs. Jaipur Udyog Ltd., honourable Supreme Court had an occasion to consider Section 10(b) read with Section 10-A of the Central Sales Tax Act, 1956. In that case dealer was registered for machinery and has issued form C for purchase of earth moving machinery comprising bulldozers, dumpers and tipping wagons, paying the preferential rate of tax. Assessing authority levied penalty on the ground that in respect of the aforesaid goods, dealer was not entitled for the benefit of preferential rate. The levy of penalty was confirmed up to the stage of Board of Revenue. In reference, the division Bench of Rajasthan High Court held that in respect of the above goods, dealer was entitled to preferential rate. Matter went to honourable Supreme Court. Honourable Supreme Court held as follows :

"Now, the only question is whether the respondent was guilty of falsely representing, when purchasing the goods referred to earlier, that those goods were covered by the certificate of registration. Unless it is shown that he had made such a false representation, Section 10-A is not attracted. Two Judges of the High Court and one Member of the Board of Revenue have come to the conclusion that the respondent was entitled to the preferential rate which he claimed. That is the view of the law taken by them. Assuming, without deciding, that the view taken by them is incorrect, even then it is impossible to say under the circumstances of the case that the respondents was guilty of making any false representation. The view of the law, which he is contending for is supported by the view taken by two Judges of the High Court and one Member of the Board of Revenue. Hence, we fail to see how such a view of the law can be taken as false representation."

15. In the case of Sanjiv Fabrics Vs. Commissioner of Sales Tax, , the dealer was registered for cotton but has issued form C for cotton waste which was held not covered under the registration certificate. The plea of the dealer was that form C was issued under bona fide belief that the cotton waste was covered under the cotton. It was further contended that when the authorities had objected about the wrong issuance of form C, applicant immediately applied for registration certificate which was granted from later date. Further Sales Tax Officer has not raised any objection for issue of form C for cotton waste for many years. On these facts, this Court held that the dealer was under the bona fide belief and had not made any false representation.

In the case of Commissioner of Sales Tax Vs. Kashi Prasad Ram Chandra Lal, the dealer was registered under the Central Sales Tax Act for Kerana, food products, dry fruits, supari and chemicals. Dealer purchased Gari ka Gola against form C. The claim of dealer was that Gari ka Gola is generally treated as an item of Kerana and is being sold by Kerana dealers, issued form C for Gari ka Gola being

registered for kerana under the bona fide belief. Tribunal on the facts and circumstance deleted the penalty. This Court held as follows :

"It may be mentioned here that the word Kerana is a wide word and includes several items. Normally Gari Gola sold by the assessee has not been treated as oil seed by the consumer but as an item of Kerana. The findings which have been recorded by the Tribunal on the basis of appraisal of evidence and material on record are pure findings of fact; Section 10(b) of the Central Sales Tax Act, 1956 provides of levy of penalty if any person being registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by a certificate of registration : thus for levying penalty u/s 10(b) of the Act, the dealer should falsely represent that the goods are covered by the certificate of registration. The word falsely implies deliberate act which has been done knowingly. In the present case the findings recorded by the Tribunal are that the assessee-opposite party had not deliberately given any false representation while purchasing goods. Thus, the penal provision u/s 10(b) of the Act was not at all attracted. The revisions lack merit and are dismissed."

16. It is stated that the aforesaid cases relied upon by the learned counsel for the applicant are not applicable to the facts of the present case and are distinguishable. In all the above cases, dealer was registered for such goods which were for some reasons related to the goods imported and for which form C was issued. In the case of State of Rajasthan Vs. Jaipur Udyog Ltd., dealer was registered for machinery and form C was issued for earth moving machine comprising bulldozers, dumpers and tipping wagons. In the case of Sanjiv Fabrics Vs. Commissioner of Sales Tax, the dealer was registered for cotton and form C was issued for cotton waste and in the case of Commissioner of Sales Tax Vs. Kashi Prasad Ram Chandra Lal, the dealer was registered for kerana and form C was issued for Gary ka Gola which are commonly treated as kerana goods. In the present case, admittedly, dealer was not registered for oil-seed or any other item which was closed to oil-seed on the basis of which, a bona fide belief could be formed.

17. In the case of Commissioner of Sales Tax v. Rama and Sons reported in 1999 UPTC 425 the dealer was registered for biscuits under the Central Sales Tax Act and had issued form C for purchase of toffee and flash brush. The assessing authority levied the penalty u/s 10(b) on the ground that the dealer was not registered for toffee and flash brush. Penalty was deleted by the Tribunal. While deleting penalty, Tribunal has observed that toffee and biscuits were purchased through common invoice, and both item were taxable at the same rate and dealer had been submitting requisite details in Sales Tax Office from time to time and therefore, there was no mens rea or evil intention on the part of dealer. This Court has set aside the order of Tribunal and upheld the penalty u/s 10(b) read with Section 10-A.

18. In the case of Vijaya Electricals v. State of Tamil Nadu reported in [1991] 82 STC 268 (MP), form C was issued for ballbearing while the dealer was registered

for machinery and electrical goods. A penalty u/s 10-A read with Section 10(b) of the Act was levied and was confirmed by the division Bench of the Madras High Court on the ground that false representation was made by the dealer.

19. In the case of Integrated Enterprises Vs. State of Kerala, dealer was registered for Coca Cola, Fanta orange and Fanta soda while the form C was issued for purchase of bottle coolers. A penalty was levied u/s 10-A read with Section 10(b) of the Central Sales Tax Act, 1956 which was upheld by the division Bench of the Kerala High Court on the ground that the dealer was not registered for bottle coolers and made a false representation while issuing form C.

20. In the case of Commissioner of Sales Tax v. Misra Modern Rice Mills, Gorakhpur reported in 2003 NTN 713, the dealer was not registered for machinery but has issued form C for purchase of machinery. Penalty u/s 10-A read with Section 10(b) was levied on the ground that dealer was not registered for machinery. Tribunal has deleted penalty on the ground that at the time of taking registration in statement on oath it was stated that it requires form C and 31 for machinery. This Court held that such statement made at the time of taking registration, did not amount to bona fide belief. It has been held that the dealer had neither applied for registration for machinery nor in the registration certificate, machine was mentioned and therefore, it could not be said that the dealer was not aware that it was not registered for machine while making purchase of machine and thus order of the Tribunal deleting the penalty u/s 10-A read with Section 10(b) was set aside.

21. For the reason stated above, I am of the view that the order of the Tribunal deleting the penalty is erroneous and liable to be set aside.

22. However, on the facts and circumstances of the case, since sales tax authority had regularly issued form C in spite of details being furnished penalty to the extent of benefit availed should be levied. On the oil-seed, without form C tax was 8 per cent and against form C it was 4 per cent. Therefore, on account of issuance of form C benefit of 4 per cent tax was availed. Therefore, penalty to the extent of 4 per cent should be levied.

In the assessment year 1985-86, dealer had issued form C for purchase of oil-seed on the amount of Rs. 6,81,863.53 and for the assessment year 1986-87 on the amount of Rs. 16,73,866.89. On the aforesaid amount, penalty at 4 per cent comes to Rs. 27,275 for the assessment year 1985-86 and Rs. 66,955 for the assessment year 1986-87.

23. In the result, revision is allowed in part. Order of Tribunal is set aside and the penalty for the assessment years 1985-86 and 1986-87 are levied to the extent of Rs. 27,275 and Rs. 66,955 respectively.