

(2006) 12 AHC CK 0158
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Tiger Steels Tubes Pvt. Ltd.

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 22 VST 224

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U. P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") is directed against the order of Tribunal dated August 3, 1999 relating to the assessment year, 1989-90 under the Central Sales Tax Act, 1956 (hereinafter referred to as, "the Central Act").

2. By the impugned order, the Tribunal has deleted the penalty u/s 10A of the Central Act, which was levied by the assessing authority for the violation of Section 10(b) of the Central Act. The assessing authority levied the penalty u/s 10A of the Central Act on the ground that the dealer/opposite party (hereinafter referred to as "the dealer") had imported electrical goods, machinery, socket and PP rings from outside the State of U. P. for Rs. 8,36,626 and issued form C in respect thereof, while the dealer was not registered under the Central Act for the aforesaid items. The assessing authority levied the penalty to the extent of Rs. 1,26,364. First appeal filed by the dealer was dismissed. Dealer filed second appeal before the Tribunal, which has been allowed. The Tribunal held that the dealer has furnished the detail of four form C before the assessing authority and no objection has been raised by the assessing authority and there was no false representation on behalf of the dealer.

3. Heard learned Counsel for the parties.

4. Learned Standing Counsel submitted that the order of the Tribunal is patently erroneous. He submitted that admittedly the dealer was not registered for the

impugned items, which were imported from outside the State of U. P. and in respect of which form C were issued. He further submitted that merely because the details of the form C were furnished informing the import of the alleged goods, it cannot be said that there was bona fide on the part of the dealer.

5. I have perused the order of the Tribunal and the authorities below.

6. On the facts and circumstances of the case, the order of the Tribunal cannot be sustained. Admittedly, the dealer has issued form C for electrical goods, machinery, socket, PP rings, etc., for which it was not registered. No reason has been given why the form C was issued when it was not registered under the Central Act. Merely because after issuance of form C, dealer has furnished detail of the purchases it does not lead to the conclusion, there was bona fide. Bona fide has to be considered at the time of the purchases and issue of form C and not by the subsequent act of the dealer. No explanation has been furnished that why the form C was issued when the dealer was not registered for the aforesaid items under the Central Act. In this view of the matter, it is a case where while issuing form C, dealer had falsely represented that it was registered and issued form C. Dealer is, accordingly, liable for penalty u/s 10A of the Central Act. Since the Tribunal has not considered about the quantum of penalty, the matter is remanded back to the Tribunal to adjudicate the quantum of penalty.

7. In the result, revision is allowed.

8. The order of the Tribunal is set aside and the matter is remanded back to The Tribunal to adjudicate the issue relating to the penalty afresh.