
(2012) 01 AHC CK 0621

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 662 of 2001

Commissioner, Trade Tax U.P., Lucknow

APPELLANT

Vs

Project Technologist Pvt. Ltd.

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10(b), 10A, 6, 6A

Citation : (2012) 48 VST 406

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Kunwar Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The present revision has been filed against the judgment and order dated March 15, 2001 passed by the Trade Tax Tribunal, Moradabad, whereby the second appeal filed by the opposite-party-dealer was allowed, and the impugned orders passed by the authorities below were set aside and the disputed penalty was knocked off. It appears that during the assessment year 1995-96, the opposite-party assessee purchased from outside the State, cable and light fittings worth Rs. 3,09,681 against form C. Penalty proceedings u/s 10A of the Central Sales Tax Act, 1956, were initiated against the opposite party-dealer on the ground that while issuing form C for purchase of the aforesaid goods, the opposite party-dealer wrongly declared that it was authorized under its certificate of registration under the Central Sales Tax Act, 1956, to purchase the said goods against form C. Show-cause notice in this regard was issued to the opposite party-dealer. However, no reply was submitted by the opposite party-dealer.

2. By the order dated April 24, 1999, the assessing officer imposed penalty u/s 10A of the Central Sales Tax Act, 1956, on the opposite party-dealer in respect of the purchase of the aforesaid goods against form C. It was, inter-alia, noted in the said order that despite repeated opportunities, the opposite party-dealer did

not submit any reply to the show-cause notice. Penalty amounting to Rs. 46,452 was imposed at the rate of 15 per cent of Rs. 3,09,681, i.e., the value of the aforesaid goods imported against form C.

3. The opposite party-dealer filed an appeal being Appeal No. 391 of 2000. The first appellate authority by its judgment and order dated April 29, 2000 partly allowed the said appeal filed by the opposite party-dealer, and reduced the penalty to Rs. 30,968, i.e., 10 per cent of the value of the aforesaid goods imported against form C.

4. The opposite party-dealer thereupon filed a second appeal being Second Appeal No. 352 of 2000.

5. As noted above, by the judgment and order dated March 15, 2001, the said second appeal was allowed and the impugned orders by the authorities below were set aside and the disputed penalty was knocked off.

6. The Department thereafter filed the present revision before this Court.

7. By the order dated March 23, 2007 passed by this Court, revision was admitted. Following questions of law have been framed in the memorandum of revision :

Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified to quash the penalty order passed u/s 10A of the Central Sales Tax Act despite the fact the import of cable and light fittings against C form, for which the assessee was not authorized by the Central registration certificate and the same were not used in works contract by the assessee ?

8. The said question may be re-framed as under :

Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified in quashing the penalty order passed u/s 10A of the Central Sales Tax Act, 1956 ?

9. On September 10, 2009, I heard the learned standing counsel appearing for the applicant and Sri Kunwar Saxena, Learned Counsel for the opposite party-dealer, and reserved the judgment in the revision.

10. Subsequently, on September 17, 2009, an application supported by an affidavit was filed on behalf of the applicant. Along with the affidavit, a document indicating the items in regard to which the dealer had been given registration certificate under the Central Sales Tax Act, 1956 was also annexed.

11. Copy of the said application was served on Sri Kunwar Saxena, Learned Counsel for the opposite party-dealer.

12. By the order dated September 17, 2009, passed in the presence of the learned standing counsel appearing for the applicant and Sri Kunwar Saxena, Learned Counsel appearing for the opposite party-dealer, the said application and

its accompanying affidavit were directed to be placed on record.

13. Let us notice the submissions made by the learned standing counsel appearing for the applicant and Shri Kunwar Saxena, Learned Counsel appearing for the opposite party-dealer.

14. The learned standing counsel has made the following submissions :

(i) Cable and light fittings imported by the opposite party-dealer against form C were not covered in the items, which the opposite party-dealer was entitled to purchase from outside the State against form C. The Tribunal heard in upholding that the said items would be covered under the item "consumers" mentioned in the registration certificate of the opposite party-dealer.

(ii) Before the assessing officer as well as before the first appellate authority, the opposite party-dealer represented that the goods in question were imported for personal use. However before the Tribunal, it was represented by the opposite party-dealer that the goods in question were brought against form C for completing and fulfilling the works contract. In view of the contradictory stand taken by the opposite party-dealer, it was evident that the explanation of the opposite party-dealer was false, and no further guilty intent or mens rea was required to be proved.

15. Reliance has been placed by the learned Standing Counsel on a decision of this Court in Commissioner of Trade Tax v. Rama & Sons General Merchant, Ballia (1999) UPTC 425.

16. In reply, Sri Kunwar Saxena, Learned Counsel appearing for the opposite party-dealer has made the following submissions :

(i) Neither the assessing officer nor the first appellate authority recorded any finding regarding the representation of the opposite party-dealer as being false or regarding the lack of bona fide on the part of the opposite party-dealer or regarding mens rea. The Tribunal considered the material on record and concluded that the import of the goods in question against form C was not under any mala fide intention or having any mens rea, and on the basis of the said conclusion, rightly knocked off the penalty imposed on the opposite party-dealer by the authorities below.

(ii) The Tribunal on a consideration of the material on record including the assessment order for the relevant assessment year held that the goods in question, namely, cables and light fittings had been imported for lighting work for execution of the works contract of pipe fitting and compressor works, and therefore, the representation, if any, by the opposite party-dealer regarding the goods in question having been imported for personal use, lost significant.

(iii) The goods in question were taxed by the Department at the rate of 10 per cent in the relevant assessment order. Thus, it was evident that the goods in question were not imported for any personal use.

(iv) The burden to prove mens rea on the part of the opposite party-dealer was on the Revenue. The Revenue failed to discharge the said burden.

(v) The opposite party-dealer was authorized to import "consumers" under its registration certificate, i.e., the things used for performance of works contract. For proper execution of the works contract, the goods in question, were required, and such goods were covered in the items "consumers" as mentioned in the registration certificate. The Tribunal was, therefore, right in knocking off the penalty imposed on the opposite party-dealer.

(vi) In any view of the matter, it was evident from the facts and circumstances of the case that the goods in question were imported against form C under the bona fide belief that the same were covered in the registration certificate issued to the opposite party-dealer, and there was no mens rea on the part of the opposite party-dealer in representing that the goods were covered under the registration certificate. In the absence of any mens rea, penalty u/s 10A of the Central Sales Tax Act, 1956 could not be imposed on the opposite party-dealer.

17. Reliance has been placed by Sri Kunwar Saxena on the following decision :

(i) Commissioner of Trade Tax, U.P., Lucknow v. Bisheshwar Nath Mool Chand, Kanpur (2006) 29 NTN 416 (All).

(ii) Indian Farmers Fertilizer Co-operative Limited, Bareilly v. Commissioner of Trade Tax, U.P., Lucknow (2009) 39 NTN 239.

(iii) Commissioner of Trade Tax v. Prem Agriculture Implements (2009) 40 NTN 70.

18. In rejoinder, the learned standing counsel has reiterated his submissions made earlier.

19. I have considered the submissions made by the Learned Counsel for the parties.

20. In order to appreciate the submissions made by the Learned Counsel for the parties, it is necessary to refer to the relevant provisions of the Central Sales Tax Act, 1956 as well as those of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short, "the 1957 Rules").

21. Section 7 of the Central Sales Tax Act, 1956 deals with registration of dealers.

22. Sub-section (1) of section 7 provides that every dealer liable to pay tax under the Central Sales Tax Act, 1956 "shall" make an application for registration under the Central Sales Tax Act, 1956. Sub-section (2) of section 7 provides that any dealer liable to pay tax under the sales tax law of the appropriate State, though not liable to pay tax under the Central Sales Tax Act, 1956, "may" apply for registration under the Central Sales Tax Act, 1956.

23. Such application under sub-section (1) or sub-section (2) of section 7 is to be made in form A prescribed under the 1957 Rules as per rule 3 of the said Rules.

24. Under sub-section (2A) of section 7 of the Central Sales Tax Act, 1956, the authority to whom an application is made under sub-section (1) or sub-section (2) of section 7, may impose as a condition for the issue of certificate of registration a requirement that the dealer shall furnish such security as may be specified.

25. Sub-section (3) of section 7 of the Central Sales Tax Act, 1956 lays down that if the authority to whom an application under sub-section (1) or subsection (2) of section 7 is made is satisfied that the application is in conformity with the provisions of the Central Sales Tax Act, 1956 and the Rules made thereunder and the condition, if any, imposed under subsection (2A) of section 7, has been complied with, he shall register the applicant and grant him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of subsection (1) of section 8 of the said Act.

26. Such certificate of registration is to be issued in form B prescribed under the 1957 Rules as per rule 5 of the said Rules.

27. Section 8 of the Central Sales Tax Act, 1956 deals with the rates of tax on sales in the course of inter-State trade or commerce. Section 8, as it- existed at the relevant time, provides as follows :

8. Rates of tax on sales in the course of inter-State trade or commerce.-(1) Every dealer, who in the course of inter-State trade or commerce,-

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government, goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1),-

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2A) Notwithstanding anything contained in sub-section (1A) of section 6 or sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under

this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil, or as the case may be, shall be calculated at the lower rate.

Explanation.--For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

(3) The goods referred to in clause (b) of sub-section (1)-- (a)...

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner,--

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government:

Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be

specified therein, direct,--

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or subsection (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.

28. Clause (a) of sub-section (1) of section 8 thus provides that in case, a dealer sells to the Government "any goods" in the course of inter-State trade or commerce, then such a dealer shall be liable to pay tax under the Central Sales Tax Act, 1956, which shall be four per cent of his turnover.

29. Clause (b) of sub-section (1) of section 8 lays down that in case, a dealer sells to a registered dealer other than the Government "goods of the description referred to in sub-section (3)" of section 8, then such a dealer shall be liable to pay tax under the Central Sales Tax Act, 1956, which shall be four per cent of his turnover.

30. Sub-section (3) of section 8 gives description of the goods referred to in clause (b) of sub-section (1) of section 8. Accordingly, such goods are the goods specified in the certificate of registration

(1) for resale;

(2) for use in the manufacture or processing of goods for sale;

(3) for use in mining;

(4) for use in the generation or distribution of electricity or any other form of power;

(5) for use in the packing of goods for sale/resale.

31. Sub-section (4) of section 8 of the Central Sales Tax Act, 1956 lays down that for the applicability of sub-section (1) of the said section, it is necessary that the dealer selling the goods should furnish to the prescribed authority in the prescribed manner-

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form

obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government.

32. The declaration contemplated in clause (a) of sub-section (4) of section 8 is to be made in form C prescribed under the 1957 Rules as per sub-rule (1) of rule 12 of the said Rules, while the certificate contemplated in clause (b) of sub-section (4) of section 8 is to be made in form D prescribed under the 1957 Rules as per the said sub-rule (1) of rule 12 of the said Rules.

33. Section 10 of the Central Sales Tax Act, 1956 deals with penalties. Section 10, as it stood at the relevant time, provides as under :

10. Penalties.--If any person,-

(a) furnishes a certificate or declaration under sub-section (2) of section 6 or sub-section (1) of section 6A or sub-section (4) of section 8, which he knows, or has reason to believe, to be false; or

(aa) fails to get himself registered as required by section 7, or fails to comply with an order under sub-section (3A) or with the requirements of sub-section (3C) or sub-section (3E), of that section;

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

(c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer; or

(d) after purchasing any goods for any of the purposes specified in clause (b) or clause (c) or clause (d) of sub-section (3) of section 8 fails, without reasonable excuse, to make use of the goods for any such purpose;

(e) has in his possession any form prescribed for the purpose of sub-section (4) of section 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;

(f) collects any amount by way of tax in contravention of the provisions contained in section 9A;

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.

34. Section 10 thus provides for punishment of simple imprisonment which may extend to six months, or with fine, or with both, in case a person commits any of the defaults mentioned in various clauses of the said section.

35. Clause (b) of section 10 deals with a case where a 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.

36. Section 10A of the Central Sales Tax Act, 1956 deals with imposition of penalty in lieu of prosecution. Section 10A, as it stood at the relevant time, lays down as follows :

10A. Imposition of penalty in lieu of prosecution.--(1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under sub-section (2) of section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section :

Provided that no prosecution for an offence u/s 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of section 9,-

(a) in the case of an offence falling under clause (b) or clause (d) of section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods;

(b) in the case of an offence falling under clause (c) of section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed.

37. Sub-section (1) of section 10A thus provides that if any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under sub-section (2) of section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section.

38. Proviso to sub-section (1) of section 10A provides that no prosecution for an offence u/s 10 shall be instituted in respect of the same facts on which a penalty has been imposed u/s 10A.

39. In the present case, as noted above, penalty was imposed by the assessing

officer on the opposite party-dealer on the ground that the goods in question imported by the opposite party-dealer against form C were not covered under the registration certificate issued to the opposite party-dealer. The penalty was upheld by the first appellate authority though the quantum of penalty was reduced. The penalty was evidently imposed on the opposite party-dealer u/s 10A read with clause (b) of section 10 of the Central Sales Tax Act, 1956.

40. The Tribunal knocked off the said penalty imposed on the opposite party-dealer.

41. From a perusal of clause (b) of section 10 of the Central Sales Tax Act, 1956, it is evident that for the applicability of the said clause, following conditions should be fulfilled :

(i) The person is a registered dealer.

(ii) The said person falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration.

42. The words "" falsely represents"" appearing in clause (b) of section 10 are significant. The said words are in active voice and lay emphasis on the action of the person concerned, i.e., the registered dealer. The said words imply that the act of making representation has been done by the said person, (i.e., the registered dealer) consciously and deliberately, and the same has been done knowingly, i.e., with the knowledge that the representation is untrue. In other words, there are two requirements--first, the person concerned, (i.e., the registered dealer) makes representation which is not true, and second, while making the representation, the said person knows that the representation is not true, and still, he consciously and deliberately makes such representation. Thus, mere making of untrue representation by the person concerned, (i.e., the registered dealer) is not sufficient. Such untrue representation must be accompanied by wrongful intention or guilty mind or mens rea in the sense of the word "falsely" on the part of the said person, (i.e., the registered dealer) in performing the said Act.

43. Therefore, a registered dealer can be held liable under clause (b) of section 10 when it is established that there was mens rea in the sense of the word "falsely", on the part of the dealer in representing that the goods purchased by him were covered by his certificate of registration. It is only when mens rea in the sense of the word "falsely", on the part of the dealer is established that penalty u/s 10A read with clause (b) of section 10 of the Central Sales Tax Act, 1956 may be imposed on the dealer.

44. There is another aspect which further supports the above conclusion. Section 10 provides for criminal liability and contemplates punishment of imprisonment or fine or both in the event of any of the defaults mentioned in various clauses of section 10 of the Central Sales Tax Act, 1956 including clause (b) or clause (c) or clause (d). As criminal liability is contemplated u/s 10, mens rea will be required

to be established for punishing a person for default under any of the clauses mentioned in section 10 including clause (b) or clause (c) or clause (d). Penalty imposed u/s 10A of the Central Sales Tax Act, 1956, in respect of defaults contemplated under clause (b) or clause (c) or clause (d) of section 10 of the said Act is in lieu of prosecution u/s 10 of the said Act. Evidently therefore, the ingredients required to be established under clause (b) or clause (c) or clause (d) of section 10 of the said Act for prosecution and imposition of punishment u/s 10, will have to be established for imposition of penalty u/s 10A for defaults under the said clauses of section 10. As mens rea is necessary to be established for prosecution and imposition of punishment u/s 10 of the Central Sales Tax Act, 1956, the same will have to be established for imposition of penalty u/s 10A also.

45. Let us consider certain judicial decisions including those cited by the Learned Counsel for the parries.

46. In *State of Rajasthan Vs. Jaipur Udyog Ltd.*, , their Lordships of the Supreme Court held that a dealer can be said to be guilty of an offence under clause (b) of section 10 of the Central Sales Tax Act if he falsely represents, when purchasing the goods in question that those goods are covered by the certificate of registration. Unless it is shown that he has made such a false representation, section 10A of the said Act is not attracted.

47. In *Commissioner of Sales Tax v. Rama and Sons, General Merchant, Ballia* (1999) UPTC 425, S.T.R. No. 129 of 1994 in respect of the dealers Rama & Sons, Ballia, and S.T.R. Nos. 130 and 131 of 1994 (*Commissioner of Sales Tax v. Maha dev Bholaram, Ballia* (1999) UPTC 425) in respect of the dealer Maha dev Bholaram, Ballia, were decided by this Court.

48. In S.T.R. No. 129 of 1994, the dealer was a general merchant and was registered under the Central Sales Tax Act, 1956, which authorized it to purchase biscuits from outside the State. During the assessment year 1983-84, the dealer purchased from outside the State, toffees for Rs. 1,33,554 and flash brush for Rs. 2,316 and issued a declaration in form C, to the selling dealer thereby paying Central sales tax at a lower rate. Penalty proceedings were initiated against the dealer on the ground that the declaration made in form C was false because the registration certificate did not authorize the dealer to purchase the aforesaid items.

49. The assessing officer imposed penalty of Rs. 20,380. On appeal, the first appellate authority set aside the penalty. The Tribunal affirmed the order of the first appellate authority.

50. Thereupon, the Department filed revision, namely, the aforesaid S.T.R. No. 129 of 1994 before this Court.

51. In S.T.R. Nos. 130 and 131 of 1994, the dealer held a registration certificate under the Central Sales Tax Act, 1956, under which it could purchase kirana, agarbatti, medicines, camphor and sindoor, etc., from outside the State. During

the two years in question, it purchased chewing gum from outside the State for Rs. 4,84,857 and Rs. 1,79,851 in the two years respectively. The dealer issued form C to the purchasing dealer, and thereby paid Central sales tax at a lower rate. The penalty proceedings u/s 10A of the Central Sales Tax Act, 1956 were initiated against the dealer on the ground that the declaration made by the dealer in form C was false because the registration certificate did not permit the dealer to purchase chewing gum from outside the State.

52. The assessing officer imposed penalty of Rs. 72,728 and Rs. 26,977 for the two years respectively.

53. On appeal, the first appellate authority set aside the penalties levied by the assessing officer. The Tribunal concurred with the view of the first appellate authority.

54. Thereupon, the Department filed revisions, namely, the aforesaid S.T.R. Nos. 130 and 131 of 1994.

55. this Court allowed the aforesaid revisions, and remanded the matter to the Tribunal. this Court laid down as under (paragraph Nos. 8, 9, 10, 11 and 12 of the said UPTC) :

8. The principle of mens rea comes from English Criminal Law from times when the law was not codified. It was said that *actus non facit reum nisi mens sit rea* (the intent and act must both concur to constitute the crime). But this principle has lost much of its significance owing to greater precision of modern statutes. The nature of intent or the ingredients of offences are now clearly stated in the statutes and nothing further is required to establish an offence than what the statute specified. We have words like "voluntarily", "intentionally", "negligently", "knowingly", "fraudulently", "dishonestly", "rashly", "omits", "without lawful authority", etc., used in various sections of the Indian Penal Code defining various offences. Proof of the state of mind or of the conduct of the person as indicated by the aforesaid word establishes the offence and no further guilty intent or mens rea need be proved. In fact there are many acts which are offences and do not require proof of any mens rea or guilty intention, for example possession of illicit fire arm.

9. The case in hand is in respect of a tax statute and the penalty provided is for a false statement. In *Integrated Enterprises Vs. State of Kerala*, the honourable Kerala High Court held that the mens rea is not a factor in the levy of penalty u/s 10(b) read with section 10A of the Central Sales Tax Act. In that case the assessee held a certificate of registration for Coca Cola, Fanta orange and Fanta soda. The dealer, however, purchased bottle coolers by using form C. It was held that the representation made in C form that the dealer was entitled to purchase bottle coolers was not a bona fide statement and was, therefore, a false one. It was held that the plea was too far-fetched, unreasonable and baseless to justify inference of bona fides in the petitioner's favour and the only possible inference in the circumstances was that the petitioner acted mala fide in making what was

clearly a false representation. In *Gujarat Travancore Agency, Cochin Vs. Commissioner of Income Tax, Kerala, Ernakulam*, the question was about the levy of penalty on dealer in filing of return of the income under the income tax Act. The honourable Supreme Court held that the concept of mens rea was not applicable. The honourable Supreme Court has observed as under :

Unless there is something in the language of the statute indicating the need to establish the element of mens rea. it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in section 271(1) (a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in *Corpus Juris Secundum*, Volume 85, page 580, paragraph 1023;

A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws.

10. In my view therefore apart from the falsehood of the representation it is not necessary to establish mens rea as an independent factor. Normally in view of the aforesaid judgments of this Court I should have referred the matter to a Larger Bench but in my view this is not necessary because from the facts that were established on record even mens reas was established.

11. In S.T.R. No. 129 of 1994, the assessee held a registration certificate only for biscuits while it purchased toffees and issued form C. Admittedly, the representation in form C was made in order to gain a financial advantage by paying tax at a lower rate and thereby depriving the State of a portion of the tax leviable on the sale of toffees. The provisions of the Central Sales Tax Act lay obligation on a dealer to act carefully while issuing form C and conduct of the assessee shows that he was at least grossly negligent if not deliberately false. The dealer's conduct cannot be termed as bona fide as it was patently done without due care and caution. The mere fact that the same company, i.e., Parle Products sold biscuits as well as toffees to the dealer and invoice for the two was the same did not absolve the dealer from the wrong obligation that lay on him to act with due care and caution in using a statutory document like form C. There is nothing in the orders of the authorities below that could make representation of the respondent true or even bona fide. Therefore, the respondent's conduct in making a wrong statement to gain a tax advantage and doing so with negligence makes representation false within the meaning of section 10A read with section 10(b) which as stated above deals with a civil liability and not a criminal offence. The word "falsely" might have slightly different interpretation if the criminal prosecution was launched but here is a case of penalty which is levied to compensate the revenue and coerce the delinquent in complying with the law. Therefore, in my view the default contemplated with section 10A read with section 10(b) was clearly made out.

12. Similarly in the case of other assessee M/s. Mahadeo Bholaram the dealer

was registered for goods like kirana, medicines, etc. Chewing gum does not fall in any of these categories. The attempt on the part of the dealer to justify his conduct by saying that he thought it to be a medicine reflects on its part the lack of bona fides. Therefore, no person could honestly on reasonable grounds say that chewing gum is a medicine or an item included in kirana goods. It is an item of confectionery and was, thus, outside the scope of the goods mentioned in the registration certificate. In this case too therefore the statement was false and mens rea stood established because it was intended to make a wrongful gain to the assessee and wrongful loss to the Revenue by paying tax at a lower rate. Therefore, in this case too the default punishable u/s 10A read with section 10(b) of the Central Sales Tax Act was established against the dealer-respondent.

(Emphasis supplied)

56. this Court has thus laid down that the words like "voluntarily", "intentionally", "negligently", "knowingly", "fraudulently", "dishonestly", "rashly", etc., used in various sections of the Indian Penal Code defining various offences, indicate the nature of intent required for such offences. Proof of the state of mind or of the conduct of the person as indicated by the aforesaid words establishes the offences, and no further guilty intent or mens rea need be proved. Under clause (b) of section 10 of the Central Sales Tax Act, 1956, once the falsehood of the representation made by the dealer has been established, it is not necessary to establish mens rea as an independent factor. Proof of the state of mind or of the conduct of the person as indicated by the word "falsely" establishes the offences, and no further guilty mind or mens rea need be proved. In case, there is lack of bona fide on the part of the dealer in making the representation, the requirement of clause (b) of section 10 of the Central Sales Tax Act, 1956 stands established. It was further held that on the facts of the cases considered in the judgment, mens rea was established.

57. From the above decision, it follows that in case, the dealer has made representation bona fide, i.e., honestly and on reasonable grounds, and such representation is found to be incorrect, then he cannot be held liable under clause (b) of section 10 of the Central Sales Tax Act, 1956. Question as to whether the representation was made bona fide, i.e., honestly and on reasonable grounds, would depend on the facts and circumstances of each case, including the nature of the items included in the certificate of registration, the nature of item (s) imported by giving declaration in form C, etc.

58. In Commissioner of Sales Tax Vs. Kashi Prasad Ram Chandra Lal, , the assessee was a registered dealer under the provisions of the Central Sales Tax Act, 1956, and was engaged in the business of kirana, etc. It was specifically registered under the Central Sales Tax Act, 1956 as a dealer for kirana, colour food drugs, dry fruits, seeds, kattha, supari, camphor and chemicals. The assessee had been importing gari gola against form C treating the same as an item of kirana. Penalty proceedings were initiated against the assessee u/s 10A of the Central Sales Tax Act, 1956. The Tribunal held that there was no intention

on the part of the assessee to give any false declaration form C while importing gari gola. The assessee had been importing gari gola under the bona fide belief that it was an item of kirana even though it was liable to tax as oil-seed being declared goods. The Tribunal accordingly concluded that penalty u/s 10A of the Central Sales Tax Act, 1956 was not exigible in the facts and circumstances of the case.

59. this Court upheld the order of the Tribunal and held as under (paragraph No. 4 of the said UPTC) (page 568 in 122 STC) :

It may be mentioned here that the word Keran 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 penalty provision u/s 10(b) of the Act was not at all attracted. The revisions lack merits and are dismissed.

(Emphasis supplied)

60. This decision thus lays down that for levying penalty under clause (b) of section 10 of the Central Sales Tax Act, 1956, the requirement is that 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, as per the findings of fact recorded by the Tribunal, the assessee had not deliberately given any false representation while purchasing goods. Therefore, the penalty provision u/s 10(b) of the Central Sales Tax Act, 1956, was not attracted.

61. In Sanjiv Fabrics Vs. Commissioner of Sales Tax, , the dealer was granted registration u/s 7(2) of the Central Sales Tax Act, 1956, and was carrying on business of manufacture and sale of handloom cloths: The dealer was granted registration u/s 7(2) of the said Act to import raw material, i.e., "cotton" and "cotton yarn".

62. During the assessment years in question, the dealer made purchases of "cotton waste" and issued form C for such purchases.

63. Penalty was imposed u/s 10A read with section 10(b) of the Central Sales Tax Act, 1956 on the dealer in respect of the assessment years in question on the ground that the dealer made false representation in form C that "cotton waste"

was covered under the certificate of registration granted to the dealer.

64. this Court allowed the revisions filed by the dealer, and set aside the penalty orders as regards "cotton waste". this Court took note of the facts that the dealer was registered dealer since the assessment year 1977-78 and had been making purchases of "cotton waste" and issuing form C in respect of such purchases since then. The Department did not raise any objection from the assessment year 1977-78 up to October 15, 1985 when a show-cause notice for imposition of penalty u/s 10(b) of the Central Sales Tax Act, 1956 read with section 10A of the said Act in respect of various assessment years. In view of these facts, this Court held that it could not be said that false representation had been made by the dealer.

65. It was laid down as under (paras 11 and 12 of the said UPTC) (page 568 in 137 STC) :

11. this Court in the case of Commissioner of Sales Tax Vs. Kashi Prasad Ram Chandra Lal, , had occasion to interpret the words "falsely represents" as occurred in section 10(b) and it has been held that section 10(b) of the Central Sales Tax Act, 1956 provides for 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. The false representation and wrong representation both stand on different footing. In the present case there is no finding by the Tribunal that there was any deliberate representation by the dealer. A line of distinction has to be drawn in between "false representation" and "wrong representation". "Wrong representation" may be on account of some inadvertence or some omission. "False representation" takes place when a person knowingly makes representation for certain things when he knew that he is not entitled to make the said representation. This section 10(b) has to be read with section 10A of the Act. Section 10A provides imposition of penalty in lieu of prosecution. Section 10 provides penalties and also simple imprisonment, which may extend to six months or with a fine or with both.

12. There is another notable feature in the present case. As soon as penalty notice dated October 15, 1985 was issued to the dealer it applied for amendment of certificate of registration for inclusion of "cotton waste" in the certificate. The Department granted the said amendment on October 15, 1985 and the dealer-applicant became entitled to purchase "cotton waste" against form C. The case of the dealer in reply to the show-cause notice was that it bona fide believed that "cotton waste" is also covered in "cotton". As soon as the mistake was realized necessary application for amendment was filed. This action of the dealer itself shows its bona fide. The representation in order to attract section 10B should be false representation to the knowledge of the assessee. If the assessee bona fide believes that the goods are covered by certificate of registration, but

it ultimately turned out to be incorrect, it will not attract the provisions of section 10B of the Act. The use of word "falsely" implies that the persons making representation knew that certificate of registration does not cover the item, but knowingly fully well that it does not, represents that issuing form C covers it.

(Emphasis supplied)

66. This decision thus lays down that in order to attract section 10(b), mere "wrong representation" is not sufficient. What is necessary is that the representation is "false representation". "Wrong representation" may be on account of some inadvertence or some omission. "False representation" takes place when the dealer knowingly makes representation that the goods in question are covered under his certificate of registration even though he knows that the certificate of registration does not cover such goods. If the dealer bona fide believes that the goods in question are covered by certificate of registration, but it ultimately turns out to be incorrect, it will not attract the provisions of section 10(b).

67. In Commissioner of Trade Tax v. Bisheshwar Nath Mool Chand, Kanpur (2006) 29 NTN 416, the dealer was authorized under the registration certificate to purchase "plywood", "laminated decorative sheets" and "glue" under the registration certificate. The dealer purchased particles-board, hard-board, nova pan and hardner. Penalty proceedings u/s 10A of the Central Sales Tax Act, 1956 were initiated against the dealer on the ground that various items purchased by the dealer were not covered under the registration certificate. The dealer claimed that hard-board and particles-board were kind of plywood and had issued form C under the bona fide belief that these were covered under the items "plywood and laminated decorative sheet". It was also claimed that the hardner was adhesive, which was used to paste the joints of the wooden material and was covered under "glue".

68. Rejecting the claim of the assessee, the assessing authority imposed penalty on the dealer u/s 10A of the Central Sales Tax Act, 1956. The first appellate authority partly allowed the appeal accepting the claim of the dealer as regards hard-board, but rejecting the claim of the dealer as regards particles-board, nova pan (treated to be particles-board) and hardner. The Tribunal allowed the appeal of the dealer, and held that form C were issued under the bona fide belief that the items were covered under the items mentioned in the registration certificate, and there was no misrepresentation.

69. this Court dismissed the revision filed by the Department and held as under (paragraph No. 3 of the said NTN) :

I do not find any error in the order of Tribunal. Learned standing counsel is not able to assail the finding recorded by the Tribunal and is not able to produce any material to controvert the findings. The finding of the Tribunal that form C were issued under the bona fide belief that the alleged items purchased from outside the State of U.P., and in respect of which form C were issued were covered under

the registration certificate, is finding of fact Assessing authority had also not made out any case that form C were issued knowingly that the goods were not covered and made false representation. For the levy of penalty u/s 10A of the Act for the alleged default of section 10(b) of the Act no case of false representation is made out.

In the result, revision fails and is accordingly, dismissed.

(Emphasis supplied)

70. This decision thus lays down that for the levy of penalty u/s 10A of the Central Sales Tax Act, 1956 for the alleged default of section 10(b) of the said Act, case of false representation should be made out by the assessing authority. The assessing authority should make out a case that form C were issued knowingly that the goods were not covered under the registration certificate and thus there was false representation by the assessee. As the Tribunal recorded the finding of fact that form C were issued under the bona fide belief that the alleged items purchased from outside the State of U.P., and in respect of which form C were issued, were covered under the registration certificate, and therefore, the Tribunal did not commit any error in deleting the penalty levied u/s 10A of the Central Sales Tax Act, 1956.

71. In *The Commissioner, Sales Tax Vs. S/S Bhawani Paper Mills Ltd.*, , the items included in the registration certificate of the dealer were as under (page 326 in 147 STC) :

All kinds of machines required for manufacturing and production of papers, pulping instrument, iron and steel, chemicals and pulp irons formers, generators and all others electrical goods and equipment. Builder pipe fitting and others fitting. Fans exhaust air condition motors hassan cotton and waste paper jute rages asbestos sheet angle seed.

72. The items which were purchased by the assessee utilizing form C included dyes, starch, colour, soap stone, lubricants, caustic dye, caustic soda, cotton linter and some other items. Rejecting the reply submitted by the dealer that the said items were included in "chemicals" mentioned in the registration certificate, the Sales Tax Officer imposed penalty on the dealer. The first appellate authority allowed the appeal filed by the dealer. It was held by the first appellate authority that there was no mala fide on the part of the dealer in importing the said goods and form C was issued under bona fide belief that the said articles were covered under the item "chemicals" mentioned in the registration certificate, hence there did not appear to be any violation of section 10(b) of the Central Sales Tax Act, 1956.

73. The second appeal filed by the Department was dismissed by the Tribunal. The Tribunal held that the dealer was not mala fide in importing the aforesaid goods, and at best it could be said that there was a technical default on the part of the dealer in importing the aforesaid goods against form C and for attracting

the provisions of section 10A of the Central Sales Tax Act, 1956 mere technical breach was not enough.

74. Thereupon, the Department filed revision before this Court. this Court dismissed the revision, and upheld the orders of the first appellate authority and the Tribunal.

75. this Court referred to the decision of the Supreme Court in K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, , and laid down as under (para 10 of the said UFTC; page 328 in 147 STC) :

10. In the above case, the apex court while considering the word "concealment" held that word "concealment" inherently carried with it the element of mens rea. The words "false representation" used in section 10(b) is more strong word which require an overt act with an element of mens rea. There being finding of both the authorities that action of purchase of the aforesaid goods was bona fide act of assessee under bona fide belief that said goods are covered by registration certificate, the provisions of penalty u/s 10(b) of the Act are not attracted. No case has been made out for imposing penalty on the assessee. The first appellate authority has considered the entire materials on record and has come to the conclusion which are fully supported from materials on record. The findings recorded by both the appellate authorities that the purchase by the assessee was under bona fide belief the present was not a case for imposition of any penalty. No infirmity could be pointed out in the orders passed by both the appellate authorities which may warrant interference by this Court in its revisional jurisdiction.

(Emphasis supplied)

76. This decision thus lays down that the words "false representation" used in section 10(b) of the Central Sales Tax Act, 1956 require an overt act with an element of mens rea. Both the appellate authorities below having recorded findings on a consideration of the material on record, that action of purchase of the aforesaid goods was bona fide act of the dealer under bona fide belief that the said goods were covered by the registration certification, the provisions of penalty u/s 10(b) of the said Act were not attracted, and no case was made out for imposing penalty on the dealer.

77. In Indian Farmers Fertilizer Co-operative Limited, Bareilly v. Commissioner of Trade Tax, U.P., Lucknow (2009) 39 NTN 239, penalty u/s 10A of the Central Sales Tax Act, 1956 was imposed on the registered dealer/applicant by the assessing authority in respect of various items on the ground that the registered dealer/applicant was not entitled to purchase the same against form C. Against the said penalty order, the registered dealer/applicant filed an appeal, which was dismissed and the order of penalty was confirmed. The registered dealer/applicant filed second appeal before the Trade Tax Tribunal, which was partly allowed and the order of penalty was modified. The Tribunal on various items accepted the contention of the registered dealer/applicant, and set aside the

order of penalty on some of the items. The registered dealer/applicant, being aggrieved by that part of the order of the Tribunal, whereby penalty on some of the items was imposed, filed revision before this Court. Two such items were effluent treatment plant and stitching thread.

78. this Court partly allowed the revision filed by the registered dealer/ applicant, and quashed the penalty imposed in respect of the aforesaid items, namely, stitching thread and effluent treatment plant.

79. It was held as under (paragraph Nos. 12, 13, 14, 18 and 19 of the said NTN) :

12. There is another aspect of the matter. Section 10 provides imposition of penalty. Section 10(b) is the relevant provision for the purpose of this case, which is quoted hereunder...

13. Section 10(b) provides imposition of penalty in lieu of prosecution, which reads as under...

14. The aforesaid provisions indicate that if a person being a registered dealer falsely represents while purchasing any goods to the effect that such goods are covered by the certificate of registration, in that event, penalty can be imposed in lieu of prosecution of a sum not exceeding one-and-a-half times the tax, which could have been levied under sub-section (2) of section 8.

18. In view of the aforesaid decisions, it is clear that a dealer must make a false representation, only then penalty could be imposed. There has to be an element of mens rea. In the present case, there is no finding about the existence of mens rea. On the other hand, there is ample evidence of the bona fide act of the assessee, being under a bona fide belief, that such goods were covered by the registration certificate.

19. In my view, the provision of imposition of penalty was not attracted and the penalty imposed u/s 10(b) of the Act was patently erroneous. The Additional Chief Standing Counsel invited the attention of the court to the judgment of this Court in Commissioner of Trade Tax, U.P., Lucknow v. Chhabra International (2005) 28 NTN 56. In my opinion, this case has no relevance to the facts and circumstances of the present case. The said judgment was concerned with the amendment made in the registration certificate with retrospective effect.

(Emphasis supplied)

80. This decision thus lays down that in view of the provisions of section 10(b) and section 10A of the Central Sales Tax Act, 1956, a dealer must make a false representation, only then penalty can be imposed under the said provisions. If there is bona fide act of the dealer, being under a bona fide belief, that the goods in question are covered by the registration certificate, then the provisions for imposition of penalty u/s 10(b) read with section 10A are not attracted, and no penalty can be imposed under the said provisions.

81. In Commissioner of Trade Tax v. Prem Agriculture Implements (2009) 40 NTN 70, the dealer carried on the business of agricultural implements and was authorized by virtue of his registration to purchase agricultural implements. The assessee issued form C for the purchase of diesel engine and spare parts.

82. The assessing authority passed an order imposing penalty u/s 10A of the Central Sales Tax Act, 1956 for an amount of Rs. 28,300. The first appeal filed by the dealer was dismissed.

83. The dealer preferred a second appeal before the Trade Tax Tribunal. The Tribunal allowed the second appeal and set aside the orders passed by the authorities below.

84. The Department filed revision before this Court. this Court dismissed the revision and upheld the order of the Tribunal. this Court laid down as under (paragraphs 9, 10, 11 and 12 of the said NTN) :

9. The Trade Tax Tribunal has recorded that in the previous year, the diesel engines were included in agricultural implements and therefore the assessee issued form C to purchase the diesel engines under bona fide belief that this item was also included under its registration.

10. The Tribunal has taken a view that there was no mala fide intention on the part of the assessee nor was there any false representation, while issuing form C to purchase the diesel engine.

11. Mens rea is one of the main grounds under which the penalty could be imposed u/s 10A of the Central Sales Tax Act.

12. The Tribunal has therefore rightly taken the view that it could not be said that there was any false or wrongful intention to make any false representation on the part of the assessee while issuing form C to purchase diesel engines. Therefore I see no reason to interfere in the order of the Tribunal. As such no question of law arises.

The revision is, accordingly, dismissed.

85. This decision thus lays down that mens rea is one of the main grounds for imposition of penalty u/s 10A of the Central Sales Tax Act, 1956. In case, there is no false or wrongful or mala fide intention to make any false representation, penalty cannot be imposed.

86. From the above decisions, it follows that for levying penalty on a registered dealer u/s 10A of the Central Sales Tax Act, 1956 for default under clause (b) of section 10 of the said Act, it is necessary for the Department establish that the registered dealer has purchased any class of goods by issuing form C and has represented that the goods of such class are covered by his certificate of registration, and such representation has been made by the registered dealer falsely, i.e., consciously and deliberately, and knowing that such representation is not correct and the goods of such class are not covered by his certificate of

registration.

87. In other words, there is wrongful intention or mala fide intention or guilty mind or mens rea in the sense of the word "falsely" on the part of the registered dealer in making the representation.

88. Therefore, if the representation has been made by the registered dealer under bona fide belief that the goods in question are covered by his certificate of registration then penalty under clause (b) of section 10 read with section 10A of the Central Sales Tax Act, 1956 cannot be imposed on such a dealer. Belief of the registered dealer would be bona fide if the same has been formed by him bona fide, i.e., honestly and on reasonable grounds. However, if there is lack of bona fide on the part of the registered dealer in making the representation then penalty may be imposed on such a dealer.

89. Question as to whether the representation has been made by the registered dealer bona fide, i.e., honestly and on reasonable grounds, would depend on the facts and circumstances of each case, including the nature of the items included in the certificate of registration, the nature of item(s) imported by giving declaration in form C, etc.

90. The above decisions also show that the questions regarding guilty mind or mala fide intention or wrongful intention or bona fide belief or lack of bona fide, are questions of fact, and the findings recorded on such questions are findings of fact.

91. Let us now consider the present case. As noted earlier, the goods imported by the opposite party-dealer against form C were cables and light fittings. Even though the contention of the opposite party-dealer before the authorities below was that the said goods were imported for personal use, the opposite party-dealer changed its stand before the Tribunal, and contended that the goods in question were imported by the opposite party-dealer against form C to complete and fulfill the works contract under bona fide belief that the said goods were covered under the registration certificate, and there was no mens rea on the part of the opposite party-dealer.

92. The Tribunal accepted the contention of the opposite party-dealer and held as under:

"Looking into the contentions of both the parties, the facts on record and the orders passed by both the authorities below, I am of this view that aforesaid appeal deserves to be allowed because cables and light fittings comes under consumers (consumable items) and the assessee is authorized under his Central registration certificate for consumers to be used in welding machine and grinding machines. Though the consumers materials disclose in the registration certificate did not specifically include cables and light fittings but looking into the fact that words, etc., have been used by the assessee in consumers materials and consumers have been used by the assessee in consumers materials and

consumers have been authorized by the Department to be imported against form C in the registration certificate of the assessee, I am of this view that the assessee did not import cables and light fittings under any mala fide intention or having any mens rea. In this regard perusal of the assessment order for the relevant year discloses the fact that the assessee executed works contract of pipe fittings and compressor for Gas Authority of India Ltd., Babrala, in which it is alleged that cables and light fittings have been imported for lighting work in execution of works contract. Though alleged cable and light fittings have been taxed at 10 per cent by the Department in the relevant assessment order but this fact may not be sufficient to presume that the assessee was not entitled to issue form C against cable and light fittings which is consumable in light work for executing the works contract in pipe fitting and compressor works. Cable and, light fitting material may not be said of such material which is not used in the welding machines, grinding machines and the lighting works at the time of execution of works contract of pipe fitting and compressor works executed by the assessee for Gas Authority of India Ltd., Babrala. Hence, I find no substance in the contention raised on behalf of Revenue that the assessee was not entitled to import aforesaid items against form C. Therefore, I find it expedient that aforesaid appeal be allowed and the penalty imposed against the assessee be set aside.

93. From a perusal of the above-quoted paragraph, it is evident that the Tribunal on a consideration of the record including the assessment order for the relevant year accepted the version that the opposite party-dealer executed works contract of pipe-fittings and compressor for Gas Authority of India Limited, Babrala, and the goods in questions had been imported for lighting work in execution of works contract.

94. Though under the registration certificate the opposite party-dealer was authorized to import "consumers", and "cables and light fittings" were not specifically mentioned in the registration certificate, still the use of the word "consumers" in the registration certificate showed that the opposite party-dealer did not import "cables and light fittings" under any mala fide intention or having any mens rea.

95. Though the Tribunal in the above-quoted paragraph made certain observations suggesting that a treated "cables and light fittings" as covered under the items mentioned in the registration certificate, but such observations when read in the light of the entire order show that the Tribunal was of the view that the word "consumers" as used in the registration certificate could be given interpretation as including "cables and light fittings" meant for light work in execution of works contract, and therefore, the belief of the opposite party-dealer that the "cables and light fittings" imported by the opposite party-dealer were covered under its registration certificate, was bona fide belief.

96. The Tribunal has thus recorded finding of fact on a consideration of the material on record that there was no mala fide or mens rea on the part of the

opposite party-dealer in making the representation that the goods in question were covered under its registration certificate. In other words, the opposite party-dealer made the representation under bona fide belief that the goods in question were covered under its registration certificate.

97. In arriving at the said finding, the Tribunal has, inter alia, considered the nature of the items included in the registration certificate and the nature of items imported by giving declaration in form C.

98. No illegality or perversity has been shown in the said finding recorded by the Tribunal.

99. In view of the said finding of fact, the Tribunal rightly set aside the penalty imposed u/s 10A read with clause (b) of section 10 of the Central Sales Tax Act, 1956 on the opposite party-dealer by the authorities below.

100. The question as reframed in the earlier part of the judgment is, therefore, answered as under :

On the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified in quashing the penalty order passed u/s 10A of the Central Sales Tax Act, 1956.

101. In view of the above, the present revision filed by the Department lacks merits, and the same is liable to be dismissed.

102. The revision is accordingly dismissed. However on the facts and in the circumstances of the case, there will be no order as to costs.