

(1991) 02 MAD CK 0054

In the Madras High Court

Case No : S.L.P. (Civil) No"s. 5081 to 5083 of 1991, T.C. No"s. 133 to 135 of 1991

India Pistons Repco Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-02-1991

Acts Referred:

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

Citation : (1991) 02 MAD CK 0054

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant;

Judgement

Dr. A. S. Anand, C.J.—These tax revision cases have been filed by the assessee relating to the assessment years 1982-83, 1983-84 and

1984-85. Since the point involved is common, the tax cases are being dealt with by this common judgment.

2. The assessee is a dealer who was found to have purchases steel flats from other States by issue of declarations in form C. The steel flats were

required for use in the manufacture of diesel engine parts. Verification of the certificate or registration in form B issued to the assessee under the

Central Sales Tax Act, 1956 (hereinafter referred to as "the Act") revealed that they are not permitted to use the C forms for purchase of this

particular commodity, i.e., steel flats. There was an inspection by the Enforcement Wing Officers on February 17, 1989, and it was then

discovered that the assessee had purchased steel flats by issue of declaration in from C. The assessing authority, after hearing the parties, recorded

a finding to fact to the effect that the assessee-dealers were fully aware of the

fact that they were not entitled to use the C form for purchase of steel flats, and in spite of this knowledge, they had used the declaration form for the purchase of steel flats. He noticed among other things that the assessee himself applied for inclusion of this item in the certificate of registration only on July 16, 1985. On the basis of this finding that the assessee had with full knowledge, that they were not entitled to use the C form for purchase of steel flats used the same, the assessing authority found that the provisions of section 10(b) of the Act, which provides that if any person, being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration he is punishable, were attracted and therefore penalty u/s 10A of the Act was called for, and it was accordingly levied.

3. On appeal, the Appellate Assistant Commissioner considered the plea raised on behalf of the assessee as well as the judgments cited in support of the case that the assessee had made no false representation. After consideration of the materials on record, the Appellate Assistant Commissioner found that the plea that the assessee was under a bona fide impression could not be sustained in view of their own conduct. It was found that the assessee had wilfully made a false representation with regard to the purchase of steel flats by issue of declaration in form C and the assessing authority had, therefore, rightly held that there had been a false representation attracting the provisions of section 10(b) of the central Sales Tax Act and the penalty u/s 10A of the Act. However, leniency was shown by the Appellate Assistant Commissioner, and the levy of penalty at the rate of 150 per cent of the tax due was reduced to 100 per cent of the tax due. The assessee went up in further appeal to the Tribunal. The concurrent finding of fact to the effect that the assessee had made a false representation inasmuch as being fully aware of the fact that the assessee was not entitled to use the C form for the purchase of steel flats, had used the same for the purchase of the steel flats during the years in question, was upheld. Thus, the ultimate fact-finding statutory authority, the Tribunal, found on facts that it was a case of false representation on the part of the assessee. After arriving at this finding, the Tribunal held that the provisions of section 10(b) of the Act were attracted. The Tribunal showed further leniency so far as the assessee-dealer is concerned and reduced

the penalty from 100 per cent of the tax due as imposed by the

Appellate Assistant Commissioner to an amount equal to 50 per cent of the tax due for all the years.

4. The learned counsel for the assessee-revision petitioner once again submitted that the assessee was not guilty of making any false representation

and that the mere fact that the assessee had asked for inclusion of the item in the certificate of registration in 1985 would not lead to any inference

that the assessee had made false representation. All the statutory authorities including the Tribunal, as we have already noticed, have concurrently

found as a fact that the assessee was fully aware of the fact that he was not entitled to use the C form for the purchase of steel flats and had despite

that knowledge knowingly used the C form for the purchase of the steel flats. Even the certificate of registration in form B did not permit the

assessee to use the C forms for purchase of steel flats. This fact sufficiently justified the recording to the finding that there had been false

representation on the part of the assessee. In this connection, it is relevant to point out that the assessee had not requested the assessing authority

to include steel flats in the certificate of registration in form B and what they had sought to be included was only machinery and tools and this has

been specifically noticed by the first appellate authority. In the facts and circumstances of the case, we have not been persuaded to interfere, in

exercise of the revisional jurisdiction, with the findings of fact recorded by the authorities below, which finding, in our opinion, is based both on

materials on record and on proper appreciation of the facts and circumstances of the case. The tax revision cases fail and they are dismissed.

5. Petitions dismissed.