
(1992) 09 MAD CK 0068

In the Madras High Court

Case No : Tax Case No. 1482 of 1984 (Revision No. 375 of 1984)

Koodal Industries Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 7, 8(1), 8(4)
Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1992) 09 MAD CK 0068

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

Abdul Hadi, J.—The only question to be decided in this tax revision case u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, filed by the assessee, a manufacturer of wheat products, is whether the Sales Tax Appellate Tribunal below is justified in confirming the penalty of Rs. 22,125, imposed on the assessee for the assessment year 1979-80 u/s 10A of the Central Sales Tax Act (hereinafter referred to as "the Act") read with section 10(b) of the Act. The said penalty was levied on the ground that the assessee-petitioner misused the C forms, prescribed pursuant to section 8(4) of the Act, and purchased generators for Rs. 2,21,156 in the course of inter-State trade or commerce at the concessional rate of tax on the said inter-State sale u/s 8(1) of the Act. While "generators" were not included in his registration certificate in form B issued u/s 7 of the Act, the goods mentioned in the said certificate for availing the said concessional rate are only "machineries, accessories, mill stores and all other materials connected with flour milling". (No doubt, the penalty originally imposed by the assessing officer was Rs. 39,826. But the Appellate Assistant Commissioner reduced it to Rs. 22,125, which was subsequently confirmed by the said Tribunal).

2. According to section 10(b) of the Act, if a registered dealer "falsely represents" when purchasing any class of goods that goods of such class are covered by his certificate of registration, he shall be punished under that section. According to section 10A, penalty could be imposed in lieu of prosecution of the offence u/s 10(b).

3. Now, the Tribunal has confirmed the abovesaid penalty on the ground that the abovesaid generators could not be regarded as one of the abovesaid goods mentioned in the registration certificate of the petitioner and that there was also no scope for the petitioner to entertain any bona fide doubt that the said generators would fall under any one of those goods.

4. The learned counsel for the petitioner submits that "generators" would come under the term "machineries" mentioned in the abovesaid registration certificate of the dealer and the hence no penalty could be levied on the petitioner. He also submits that till September 13, 1977 when item 81 of First Schedule to the Tamil Nadu General Sales Tax Act was amended and when entry 41(d) of the said Schedule was introduced, "generators" were treated only as "machineries" even by the Sales Tax Department. Entry 81, as it stood originally, read as follows :

"All machinery worked by (i) electricity, (ii) diesel, (iii) petrol, (iv) furnace oil, (v) kerosene, (vi) coal including charcoal and (vii) any other fuel or power, and parts and accessories of such machinery other than those specifically mentioned in this Schedule."

But, on and from September 13, 1977, the said entry was amended to read as follows :

"All machinery (other than those specifically mentioned in this Schedule) worked by (i) electricity, (ii) diesel or petrol, (iii) furnace oil, (iv) kerosene, (v) coal including charcoal or (vi) any other form of fuel or power, and parts and accessories of such machinery and tools used with such machinery."

On the same date entry 41-D was introduced, which read as follows :

"Generators, generating sets, and transformers and parts and accessories of all such goods."

Only in view of the expression "other than those specifically mentioned in this Schedule" used in entry 81 on and from September 13, 1977, and in view of the inclusion of "generators" in entry 41-D from the said date, "generators" came to be excluded from entry 81 on and from September 13, 1977. Otherwise, prior to the said date, "generators" were coming only under entry 81 within the terms "machinery" used therein, according to the learned counsel. Therefore, he contends that when the department itself was treating "generators" as one of the "machineries" earlier, the assessee could not be charged with penalty u/s 10(b) of the Act, when he bona fide thought that the generators also would come under the term "generators" (machineries ?) and purchased generators, using C forms and consequently availing concessional rate of tax as stated above.

5. On the other hand, the learned counsel for the Revenue argues that what is mentioned in the certificate of registration of the petitioner is machineries, etc., "connected with flour milling" and that the generators could not be treated as machineries "connected with flour milling". According to her, if at least the certificate of registration mentioned only "machineries" generally, and not added the rider "connected with flour milling", there may be some scope for the argument advanced by the learned Counsel for the petitioner. But, in view of the fact that the certificate of registration also contains the abovesaid rider "connected with flour milling", according to the learned counsel for the Revenue, there cannot be any scope for the argument advanced by the learned counsel for the petitioners, since generator cannot be termed as machinery particularly connected with flour milling, though it may be generally connected with any industry.

6. We see force in the submission made by the learned counsel for the Revenue in view of the abovesaid rider added in the certificate of registration to the expression "machineries", viz., "connected with flour milling". A generator cannot be said to be a machinery, particularly connected with flour milling, though generally a generator may be used in any industry for generation of electricity for running the machineries in the factory. Therefore, it cannot be said that the petitioner was under the bona fide impression that the generators also would come under the term "machineries connected with flour milling". In *Vijaya Electricals Vs. State of Tamil Nadu*, whose ratio was also followed in the judgment dated August 5, 1992 in *J. C. Ramamoorthy v. State of Tamil Nadu T.C. (A) 1145 of 1984*, the facts were that the assessee therein was granted certificate of registration under the Act and was authorised to purchase "machinery and electrical goods" only and that the assessee therein purchased "ball-bearings on the basis of C forms. On the ground that ball-bearings were not covered by the appellant's certificate of registration, penalty was levied on the appellant u/s 10-A of the Act. In that case, the Division Bench has held as follows :

"..... The dealer, who was been dealing with these commodities for a long time must be presumed to know the difference between the machinery and ball-bearings. If, knowing as to what was contained in the certificate of registration, and there is nothing on record to show that the assessee had no such knowledge, the assessee used the C form declarations to purchase ball-bearings, undoubtedly, the representation made by the assessee was "false". When a representation is made intentionally or knowingly that it is not true, that representation would, unmistakably, be a "false representation"."

7. In the above referred to latter decision dated August 5, 1992 also, when as per the registration certificate, the assessee therein was permitted to purchase automobile spare parts under inter-State sales at the concessional rate of tax, the assessee purchased tractor parts, using the C forms and availing concessional rate. In the context, this Court held that penalty could be levied u/s

10-A of the Act on the assessee. In that context, it was observed that -

"..... the appellant being a dealer in automobile parts, ought to have known the difference between the automobile parts and tractor parts, and therefore, it cannot be contended for a moment that mens rea must be specifically proved and such a contention has been repelled by the Division Bench of this Court as cited supra."

8. In *State of Tamil Nadu v. Gemini Studios* [1975] 36 STC 357, another Division Bench of this Court has observed as follows :

"If a belief is entertained by the assessee bona fide that the goods are covered by the certificate of registration, but it ultimately turned out to be not a proper understanding of the certificate of registration or correct understanding of the same, it will not attract the provisions of section 10(b). The use of the word "falsely" itself implies that the person making the representation knew that the certificate of registration does not cover that item, but knowing fully well that it does not, states that it is covered. What is required plainly u/s 10(b) is knowledge that the item is not covered by the certificate and the representation that it is covered by the certificate. Of course the representation is implied in the issue of C forms to the out-of-State seller."

It can be safely inferred in the present case that the petitioner did have the knowledge that the "generators" are not covered by its certificate of registration since the certificate only uses the expression "machineries connected with flour milling" and not simply machinery. If at least the abovesaid rider "connected with flour milling" is not there, it can be said that the assessee bona fide thought that generators would come under the term "machineries".

9. Therefore, we do not see any merit in this tax revision case and hence it is dismissed. However, in the circumstances of the case, there will be no order as to costs.

10. Petition dismissed.