

(1993) 11 MAD CK 0075

In the Madras High Court

Case No : Tax Case No. 686 of 1993 (Revision No. 460)

Kumudham Printers (P) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 10(b), 38

Citation : (1993) 11 MAD CK 0075

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : A.S. Raman, for the Appellant;

Judgement

K.A. Swami, C.J.—This revision is preferred u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, against the order dated April 12, 1993, passed by the Sales Tax Appellate Tribunal, Madras Bench, in T.A. No. 888 of 1992. The assessing authority, the Appellate Assistant Commissioner and the Appellate Tribunal have held that air-conditioner was not in any way connected with the printing press and it was not included in the registration certificate granted to the dealer therefore the dealer wrongly included in the "C" form the air-conditioner and got the benefit of concessional rate of sales tax. It has been held by the Appellate Tribunal in paragraphs 3 to 5 of the order as follows :

"3. The appellant contends that there is no false representation on the part of the appellant and the registration certificate covers the purchase of air-conditioners also and it was issued for the purchase of these articles and so the levy of penalty is not proper. The counsel for the appellant argued that air-conditioners are electrical machinery given in the certificate and even though air-conditioners are not specifically mentioned in the certificate it is only electrical machinery, electrical appliances include air-conditioners also and so the air-conditioners are covered by registration certificate of the appellant and there is no false representation and levy of penalty is not warranted.

4. The learned State Representative pointed out that air-conditioners are distinct commodities and the machineries do not include air-conditioners and so the levy of penalty u/s 10A is proper.

5. The appellant is doing printing work. The appellant was issued the registration certificate for the purchase of machinery, electrical machinery and appliances, spare parts and components, paper and boards of all kinds, rubber rollers, stitching wire, adhesives and chemicals, non-ferrous metals and other raw materials and packing materials required for printing press. This certificate shows that the appellants are eligible to buy the machinery - electrical machinery and the above mentioned articles required for printing press. So only the materials required for the printing press can be purchased by the appellants under the above certificate. On perusal of the certificate, we see that the appellants are eligible to buy only the above machinery and the materials required for printing press. Air-conditioners are not the machineries required for printing press. Air-conditioner is a distinct commodity and it is not a requisite for the printing machinery. The counsel for the appellant pointed out that the appellant is having sophisticated printing machineries and the air-conditioner is a must for running the printing machinery. The air-conditioner is not connected with printing machinery for printing and it is not a required material for printing press. The machineries and the articles mentioned in the certificate required for the printing press alone are eligible for purchase by the appellants. Air-conditioner does not come under the machineries required for the printing press mentioned in the certificate. Hence we find that the appellant has violated the provisions of the Central Sales Tax Act and hence levy of penalty u/s 10A is warranted. The Appellate Assistant Commissioner (CT), Kancheepuram, has correctly confirmed the levy of penalty with regard to air-conditioner and the Appellate Assistant Commissioner has reduced it to 50 per cent of the tax by taking a lenient view. We see no reason to interfere. The order of the Appellate Assistant Commissioner (CT), Kancheepuram, is confirmed."

2. In addition to this, it may also be noted that the Commercial Tax Officer recorded a finding that the dealer had falsely represented when they issued the "C" form for the purchase of film, that it was covered by the certificate of registration. The appellate authority also confirmed the said finding of the Commercial Tax Officer. The Tribunal, as already pointed out, has also confirmed the said finding. Therefore, it is clear that there is a categorical finding of fact recorded by the authorities below that the dealer falsely represented when purchasing the class of goods in question that such goods were covered by the certificate of registration.

3. However, learned counsel appearing for the petitioner has placed reliance on a decision of this Court in *State of Tamil Nadu v. Gemini Studios* [1975] 36 STC 357 and also a Division Bench decision of the High Court of Madhya Pradesh in *Commissioner of Sales Tax v. Bombay Garage* [1984] 57 STC 67. In both the decisions, the penalty levied under the provisions of section 10A read with

section 10(b) of the Central Sales Tax Act is considered. It has been held in the aforesaid decisions that the assessee, in the facts and circumstances obtaining in each case, cannot be held to have made a false representation to his knowledge.

4. Section 10(b) of the Central Sales Tax Act provides :

"If any person -

(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;"

Therefore, what is necessary to be found is whether there is a false representation made by the dealer to the effect that a particular class of goods is included in or covered by the certificate of registration held by him. As already pointed out, all the authorities have found that there is a false representation made by the dealer when purchasing the goods in question that the same are covered by the certificate of registration held by it. In the instant case, the registration certificate issued to the assessee related to the machineries concerning the printing press and as such, it was eligible to buy the machineries concerning the printing press and electrical machinery and appliances, spare parts and components, paper and boards of all kinds, rubber rollers, stitching wire, adhesives and chemicals, non-ferrous metals and other raw materials and packing materials required for printing press at the concessional rate of tax against "C" forms. But, the assessee included the air-conditioner and film, totalling Rs. 1,07,616.13, though these goods were not included in the certificate of registration under the Sales Tax Act. As such, it was not eligible to buy the goods under the concessional rate against "C" form and the dealer had purchased air-conditioner and film by falsely stating that they were covered by certificate of registration. When the air-conditioner was not specifically included in the registration certificate, it cannot be held that it was inextricably connected with the process of printing. The only inference that is possible in the facts and circumstances of the case is that in order to avail the concessional rate of tax, the assessee knowing full well that air-conditioner was not included, had falsely made a representation that air-conditioner was included and got the concessional rate of tax against "C" form. Therefore, we are of the view that the finding recorded by the authorities below squarely brings the case u/s 10(b) read with section 10A of the Act. In the light of the finding recorded that the assessee falsely represented that the air-conditioner was included in the certificate of registration, this decision of the Tribunal cannot also be held to be contrary to the provisions contained in section 10A read with section 10(b) of the Central Sales Tax Act. Not only the aforesaid decision in *Gemini Studios*" case [1975] 36 STC 357 but also the decision of a Division Bench in another case, *Sri Lakshmi Machine Works v. State of Madras* [1973] 32 STC 407 and also that of the Kerala High Court in *Varghese and Sons v. Sales Tax Officer* [1965] 16 STC 323 have been considered by a Division Bench of this Court in *Vijaya Electricals v. State of Tamil Nadu* [1991] 82 STC 268. In *Vijaya Electricals* case [1991] 82 STC 268 it

has been specifically held that there is nothing in section 10A which requires that mens rea must be proved before penalty can be levied under that provision if on facts it is found that the assessee has made a false representation. It has also been further held thus :

"..... It is the making of a "false representation" which is, indeed the sine qua non for invoking the provisions of section 10(b) of the Act. Once a finding is recorded by the competent authority that the assessee has made a false representation, that would clearly attract the provisions of section 10(b) of the Act and, in our opinion, no further finding is required that the assessee had also the mens rea. The statute does not contemplate that. Even otherwise, mens rea is a state of mind. Under the criminal law, mens rea is considered as the "guilty intention", but when it is relatable to tax delinquency, which is a civil obligation, it implies a "blameworthy conduct". Therefore, unlike in criminal cases, where it is essential for the prosecution to establish that the accused had a guilty intention or, in other words, the requisite mens rea before recording conviction, the obligation on the part of the Revenue, in cases of tax delinquency, would be discharged where it can be shown that the "blameworthy conduct" of the assessee was established, like by recording a finding that the assessee had made a "false representation" and the like. The recording of such a finding by itself shows the establishment of the blameworthy conduct, which would be the establishment of mens rea to the limited extent applicable to civil obligations. Mens rea can be established either by direct evidence or by drawing inferences from the established facts and circumstances of a given case. To the extent that mens rea is the blameworthy conduct, it goes without saying that the making of a "false representation", which has been made an offence u/s 10(b) of the Act, would bring the case of the defaulting party within the ambit of that section. The application of the doctrine of mens rea in cases of tax delinquency has been nicely summed up in "Carpus Juris Secundum", Volume 85, at page 580 in paragraph 1023, where it is stated thus :

"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."

We are in agreement with the above statement. Therefore, we hold, to the limited extent that mens rea has application in tax default cases, it would stand established, if the conduct of the assessee is found to be blameworthy, within the meaning of the particular provision of the given tax statute. Where a finding is recorded on facts about the existence of the blameworthy conduct, which the Legislature has treated as an offence or a default on the part of the assessee, like the making of a "false representation", it would attract the provisions of section 10(b) of the Act and no further finding would be required to be recorded about the existence of mens rea on the part of the assessee, as it would be inherently included in the earlier finding. We, therefore, cannot accept the proposition that even if a finding has been recorded on facts by the competent

authorities that an assessee has made a "false representation", as contemplated by section 10(b) of the Act, in the absence of an additional finding that the assessee also had the requisite mens rea, he cannot be penalised u/s 10(b) of the Act. The argument has no basis and is absolutely far-fetched."

Therefore, it is not possible to agree with the decision of the Madhya Pradesh High Court in Commissioner of Sales Tax v. Bombay Garage [1984] 57 STC 67, as it is not necessary that in a case of tax delinquency mens rea must be established. The obligation on the part of the Revenue in a case of tax delinquency is discharged when the blameworthy conduct of the assessee is proved. Such blameworthy conduct can be held to have been proved if it is found that the assessee had made a false representation and the like.

5. For the reasons stated above, there is no ground to admit the tax case. It is accordingly rejected.

6. Petition dismissed.