(1965) 09 KAR CK 0013

In the Karnataka High Court

Case No : S.T.R.P. No''s. 15, 16 and 17 of 1965

M. Pais and Sons and Another — APPELLANT

Vs

The State of Mysore — RESPONDENT

Date of Decision : 17-09-1965

Acts Referred:
Mysore Sales Tax Act, 1948 — Section 10 A, 23

Citation : (1965) 2 MysLJ 620 : (1966) 17 STC 161

Hon'ble Judges : K.S. Hegde, J;C. Honniah, J

Bench : Division Bench

Advocate : V. Krishna Murthy, V. Tarakaram and P. Vasudeva Aithal, for the Appellant; G.B. Kulkarni, Government Pleader, for the Respondent

Judgement

Hedge, J.—These are revision petitions u/s 23 of the Mysore Sales Tax Act, 1957. They raise an identical question of law for consideration. Therefore, it would be convenient to deal with them together.

2. In application u/s 23 of the Mysore Sales Tax Act of 1957, the only grounds that the High Court can consider are (1) whether the Appellate Tribunal has failed to decide a question of law of (2) whether it has decided a question of law erroneously. So far as questions of fact are concerned, the findings reached by the Tribunal are final and conclusive. It is not open to this Court to go into their correctness. We shall now examine the contentions advanced in these cases bearing in mind the limitations imposed on this Court by the aforementioned section 23.

3. The petitioner in S.T.R.P. No. 15 of 1965 is a "dealer" in Mangalore. He has obtained a registration certificate under the Central Sales Tax Act, 1956, to be hereinafter referred to as the "Act" for his inter-State purchases of tin provisions, patent goods, medicine, tobacco, medicated wines and denatured spirits, cigars and cigarettes. In respect of those goods the Sales Tax Authorities had issued the petitioner during the year 1961-62, the necessary "C" Forms. It appears that the petitioner had used some of those "C" Forms for purchasing in the course of

inter-State trade goods not covered by his certificate of registration. Those goods are petromaxes, tapes, toilets, battery cells, glassware, essences etc. The Commercial Tax Officer, Mangalore, on examination of the accounts of the petitioner came to the conclusion at the petitioner had falsely represented to his sellers while purchasing those goods that they were covered by his certificate of registration. Therefore, he proceeded against him u/s 10-A of the Act and called upon him to show cause why penalty should not be imposed on him as provided by that section. In response to that show cause notice, the petitioner represented as follows :

"They (partners of the petitioner-firm) did not represent when purchasing goods that the said goods were covered by their certificate of registration. The objectors were under a bona fide belief that if they furnished the ''C'' Form they were required to pay only 1 per cent. as C.S.T. and thus would be in an advantageous position. They did not know nor did the authorities inform them that the goods in question should be entered in their certificate of registration. If they knew it they would have readily applied for inclusion of the said goods in their certificate of registration. Hence if at all, the irregularity if any is only technical and no offence u/s 10(b) could be held to have been committee."

4. Rejecting that contention, the Commercial Tax Officer imposed on the petitioners a penalty of Rs. 920.58. The petitioner''s appeal against that order to the Deputy Commissioner of Commercial Taxes was unsuccessful.

5. Before the Sales Tax Appellate Tribunal, it was contended on behalf of the petitioner that the representation made by him to has sellers outside the State of Mysore cannot be said to be "false" within the meaning of that expression found in section 10(b) of that Act. Rejecting that contention, this is what the Tribunal said :

"The next contention of Sri Aithala is that there was no false representation as contemplation u/s 10(b). The goods not covered by registration certificate have been purchased by issue of ''C'' Form. It is not the case of the appellant-firm that it did so by ignorance. We find that the person in management is an educated person. He had not applied for purchases of toilet, petromax, etc., to be included in the certificate when he applied for certificate of registration; when an educated party issued ''C'' Form in respect of goods not covered by certificate of registration the ordinary presumption is that he did so by falsely representing that the goods were covered by the certificate of registration. The ''C'' Form is a certificate that the goods in the purchase order or purchased are covered by the registration certificate issued to the dealer. There is no force in the contention of the appellant that there was no false representation."

6. One Mr. Babu Rao is the petitioner in S.T.R.P. Nos. 16 and 17 of 1965. S.T.R.P. No. 16 of 1965 relates to his assessment for the assessment year 1960-61 and S.T.R.P. No. 17 of 1965 relates to his assessment for the assessment year 1961-62. In these cases also penalty was levied by the Commercial Tax Officer,

Mangalore, u/s 10A of the Act. Sri Babu Rao is a manufacturer of soap. In his application for certificate of registration, u/s 8 of the Act, he had included the following goods : (1) Coconut oil, (2) perfumes (3) silicate, (4) caustic soda, (5) nails, (6) colours, (7) strappings, (8) papers and (9) rosin. In addition to these goods, during the assessment year 1960-61, he purchased two consignments of maroti oil worth Rs. 4,049,20 by issued ''C'' Form. In the year 1961-62, he purchased maroti oil and groundnut oil of the value of Rs. 22,803.85. On the ground that by purchasing martoil oil and groundnut oil during the relevant assessment years the petitioner had committed offences u/s 10(b) of the Act, the Commercial Tax Officer proceeded to levy on him penalty u/s 10-A of the Act. It appears to have been represented before the Sales Tax Appellate Tribunal on behalf of Sri Babu Rao that he had purchased groundnut and maroti oil by oversight under the belief that they were also included in his certificate of registration. The Tribunal rejected that contention as having no merit. Section 10(b) of the Act says :

"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 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."

Section 10A provides :

"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 of exceeding one-and-a half times the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed :

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."

7. The learned counsel for the petitioners urged that section 10(b) is a penal section. It provides for imposition of imprisonment. The language of the section indicates that before these can be any conviction under that section, the assessing authority will have to establish the required mens rea. In other words, the contention was that the concerned authority will have to prove that the dealer concerned had deliberately made a false statement and a mere untrue statement is not sufficient. On the other hand, it was contended by the learned Government Pleader that the provision in question had been enacted in statute for the purpose of facilitating the realisation of the tax and the expression "false" found in section 10(b) merely means "untrue". He further contended that even if we should accept the contention of the petitioner that for an offence u/s 10(b)

rea is necessary, in the cases before us that requirement is available. It was said that on the findings reached in these cases, we should come to the conclusion that the petitioners had falsely represented to their sellers outside the State that the goods in question are included in their registration certificates.

8. The learned Government Pleader as mentioned earlier contended that the words "falsely represented" in section 10(b) does not mean anything more than saying that the dealer concerned had made untrue representations. In support of this contention of his, he invited our attention to the decision in Pearl Assurance Company, Ltd. v. Bromley 49 ILR 446. On behalf of the assessees, it was contended that the rule laid down in that decision is inapplicable to cases like the present one, where the petitioners are dealt with under a penal provision. Section 10(b) provides for imprisonment. Hence before a person can be held guilty under that provision a guilty intention must be established. The contention was that the expression "falsely represents" should be held to apply only to representations which are not only untrue but made with a deliberate purpose. A mere wrong statement or an untrue statement does not come within the scope of those words. In support of this contention our attention was invited to paragraph 508 of Halsubury''s Laws of England, Third Edition, Volume 10. The passage in question reads :

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, wilfulness or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute. In some cases, the courts have concluded that despite the absence of express language the intention of the Legislature was that mens rea was a necessary ingredient of the offence. In others, the statute has been interpreted as creating a strict liability irrespective of mens rea. Instances of this strict liability have arisen on the legislation concerning food and drugs, liquor licensing, and other matter."

9. In foot-note ''1'' to paragraph 508 it is stated that "the basis of interpretation is that unless a statute clearly or by necessary implication rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criming unless he has a guilty mind."

Bouvier''s Law Dictionary, Volume I, page 1181, explains the "false" thus :

"Applied to the intentional act of a responsible being, it implies a purpose to deceive. In a statute prescribing punishment for false statements in making an entry of imported goods, ''false'' means more than incorrect or erroneous. It implies wrong or culpable negligence, and signifies knowingly or negligently untrue."

P. Ramanatha Aiyar in his Law Lexicon of British India explains the term "false" as follows :-

"Erroneous, untrue, the opposite of correct, or true. The term does not necessarily involve turpitude of mind. In the more important uses in jurisprudence the word implies something more than a mere untruth; it is an untruth coupled with a lying intent, or an intent to deceive or to perpetrate some treachery or fraud. The true meaning of the term must, as in other instances, often be determined by the context ......"

10. Our attention was also invited to the decision of the Kerala High Court in P. K. Verghese & Sons v. Sales Tax Officer, Special Circle, Ernakulam [1965] 16 S.T.C. 323, wherein the Court was called upon to interpret section 10(b) of the Act. In that case the Court laid down :-

"that in order to constitute an offence u/s 10(b) of the Central Sales Tax Act, 1956, it must be proved that the dealer made the representation that the good purchased were covered by the registration certificate with the knowledge that they were not so covered. Where there was no finding that the representations made by the petitioner was false, namely that the ''C'' Form declarations were issued without the belief that the goods purchased were covered by the registration certificate, the imposition of penalty u/s 10-A would be illegal. The Court further held that mens rea is an essential ingredient for the commission of an offence u/s 10(b)."

11. In support of their contention, the petitioner also relied on the decision of the High Court of Madhya Pradesh in S. R. Kalani & Co. v. C. L. Sharma and Another [1965] 16 S.T.C. 756. Both on principle and on authority, we think that the interpretation sought to be placed by the learned counsel for the petitioners on the expression "falsely represents" in section 10(b) of the Act, appears to be correct. But then, we have to see what exactly are the facts found in each of these cases.

12. An mentioned earlier, the Sales Tax Appellate Tribunal had come to the conclusion in the case of the petitioner in S.T.R.P. No. 15 of 1965 that the representations made by him in the ''C'' Forms given by him to his sellers outside the State, are false representations. It may be noted that in the ''C'' Form, there is a clause to the effect that the goods purchased are covered by the registration certificate obtained by the buyer. It is not the case of the petitioner in S.T.R.P. No. 15 of 1965 that the ''C'' Form issued by him did not contain that clause. Therefore, there is no denying of the fact that he did represent to his sellers that the goods purchased by him were included in his registration certificate. The question is whether he made that representation ignorantly or deliberately. In this connection, we have to look to the explanation given by him. One of the explanations given by him is that he did not make such a representation. This certainly is an untrue statement. ''C'' Forms are printed forms. That form contains a clause to the effect that the goods purchased are included in the buyer''s registration certificate. The second explanation given by the petitioner, to quote his own words, was, "the objectors were under a bona fide belief that if they furnish the ''C'' Form, they were required to pay only one per cent. as C.S.T.

and thus would be in an advantageous position". This clearly brings out the intention of the petitioner. He gave the ''C'' Forms with a view to pay sales tax at a lower rate than that provided. His grievance that the Sales Tax Authorities did not educate him as to the true position in law has only to be stated to be rejected. The Sales Tax Authorities have no duty to acquaint the assessees about their duties under the Act. From the facts found, we are satisfied that the petitioner in S.T.R.P. No. 15 of 1965 had made false representations to his sellers deliberately.

13. It was next contended by Mr. Krishna Murthy, the learned counsel for the petitioner in S.T.R.P. No. 15 of 1965 that the order of the Tribunal did not contain a specific finding as to the existence of any mens rea and therefore no penalty could have been levied on his client. It is true that the Tribunal did not speak of any mens rea. But the Tribunal definitely stated that the petitioner falsely represented to his sellers that the goods in question are included in his registration certificate. That is the requirement of the law.

14. We are unable to agree with Mr. Krishna Murthy that incorrect representations were made by his client under a mistaken impression of the law. That contention is belied by their explanation. Hence it is not necessary to consider whether ignorance of law can be considered as a valid excuse. The fact that they were making similar representations in the past is not a relevant circumstance.

15. Another contention advanced by Mr. Krishna Murthy was that before imposing penalty u/s 10-A, the authorities under the Act should have first come to the conclusion that the sales in question were exigible to tax under the Sales Tax laws prevailing in the State from which those goods were purchased. No such contention appears to have been taken before the authorities below. All the authorities have proceeded on the basis that those sales were exigible to tax in the States from where they were purchased. The contention of Mr. Krishna Murthy raises a mixed question of law and fact. Therefore, he cannot be permitted to take that contention for the first time in this Court.

16. It was next urged by Mr. Krishna Murthy that in levying penalty, the Commercial Tax Officer had erroneously taken into consideration the petitioner''s purchases of tinned tea and confectionery. This contention again does not appear to have been taken before the authorities below. From the materials on record, we are unable to come to the conclusion that while computing the quantum of penalty payable by the petitioner any purchase of tinned tea or confectionery by him had been taken into consideration.

17. The last contention advanced by Mr. Krishna Murthy was that on a true interpretation of section 10-A it is clear that his client should have been levied penalty only at 1 1/2 per cent. of the disputed turnover and not at the rate of 10 1/2 per cent. as done by the authorities below. This contention again does not appear to be correct. All sales of goods validly covered by "C" Forms are liable to

be taxed at 1 per cent. on their turnover. Such of the goods which are not validly covered by "C" Forms are liable to be taxed at 7 per cent. of the turnover. The penalty provided by section 10-A is 1 1/2 times the tax leviable. We have earlier come to the conclusion that the goods with which we are concerned in these cases were not covered by any valid "C" Forms and, therefore, sales tax was leviable on them at 7 per cent. of the turnover. If that be so, as we think it is so, the penalty on that turnover was leviable at 10 1/2 per cent. of the turnover.

18. From the foregoing, it is seen, S.T.R.P. No. 15 of 1965 fails and the same is dismissed. No costs.

19. Now coming to S.T.R.P. Nos. 16 and 17 of 1965, the principal contention urged by Sri Aithala, the learned counsel for the petitioner was that the representation made by his client to the purchaser is not an incorrect representation inasmuch as what section 10(b) requires is the inclusion of a class of goods in the registration certificate and not necessary each of the goods purchased. It was contended on his behalf that the inclusion of coconut oil in his registration certificate entitles him to purchase maroti oil as well as groundnut oil. Section 10(b) speaks of class of goods being covered by registration certificate and it further refers to the purchase of class of goods. The language of section 10(b) is by no means dealer. The learned Government Pleader contended that while obtaining the certificate of registration, it is open for a dealer either to include therein particular goods or class of goods, e.g., it is open for a dealer either to get included in his registration certificate "oil" as a class or "coconut oil" or any other oil in particular. If his registration certificate includes "oils" then it is open to him to purchase any oil. But if, on the other hand, it includes only coconut oil, then coconut oil can only be purchased. This also is a possible explanation. But we have not gone into the correct interpretation of the provision, as in our opinion on the facts established, it is not possible to say that the petitioner in S.T.R.P. Nos. 16 and 17 of 1965 had made deliberate false representations to his sellers. The petitioner is a manufacturer of soap. He was purchasing coconut oil as a raw material for his manufacture of soap. Evidently, he had purchased maroti oil as well as groundnut oil also for that purpose, possibly because of the enormous increase in the price of coconut oil. Hence it cannot be said that he had a guilty mind.

20. For the reasons mentioned above, S.T.R.P. Nos. 16 and 17 of 1965 are allowed and the orders impugned quashed. No costs.

21. Ordered accordingly.

