

(1999) 11 KAR CK 0067
In the Karnataka High Court
Case No : S.T.R.P. No. 12 of 1996

Motorola India Electronics Private Limited	APPELLANT
Vs	
State of Karnataka	RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Central Sales Tax Act, 1956 — Section 10 (b), 10 A, 7 (1)

Citation : (2000) 118 STC 560

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : S. Narayan, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. The order of the Karnataka Appellate Tribunal dated August 31, 1995 has been assailed in this revision. An order u/s 10A of the Central Sales Tax Act, 1956 was passed levying the penalty u/s 10(b) for purchase of modular furniture which was considered to be a capital asset. The goods were purchased in between November 26, 1991 and March 26, 1992, to the extent of Rs. 42,45,428. It was found that there was clear misuse of "C" forms and penalty at 1 1/2 times of the local rate of 13 per cent was levied.
2. In appeal, it was found that there was an amendment in the Central sales tax registration which was valid from July 20, 1992 and that the modular furniture is used to support and house the Computer and seat the programmers and that the panels are used to partition the factory space and allows for necessary privacy and concentration of mental faculties of the programmer.
3. The assessee is an 100 per cent export oriented unit and is entitled even for refund of Central sales tax under the Import and Export Policy of the Government of India 1992-97. It was found that the goods were not covered under certificate of registration at the time of purchase and as such, the penalty

was upheld.

4. Before the Tribunal, it was contended that, the Assistant Commissioner of Commercial Taxes, 24th Circle, Bangalore, which has levied the penalty, was not competent to levy since the registration certificate was granted by the Assistant Commercial Tax Officer. It was also submitted that, the penalty is excessive. On both these questions, the Tribunal considered the contention of the assessee and it was found that the Assistant Commissioner of Commercial Taxes was the competent authority who could issue the certificate of registration and therefore, the first contention has no force. On the second point, the penalty amount was, however, directed to be levied at 6 per cent of the total purchase.

5. Arguments of the learned counsel for both the parties heard.

6. So far as the first point is concerned, it may be observed that, u/s 10A of the Central Sales Tax Act, the penalty could be levied by the authority who has granted the certificate of registration, for, he is competent to grant the certificate of registration under the Act. Section 7 of the Central Sales Tax Act, 1956 deals with the registration of dealers. Application u/s 7(1) of the Central Sales Tax Act, 1956 has to be submitted to such authority in the appropriate State as the Central Government may, by general or special order, specify. Rule 5 of the Central Sales Tax (Registration and Turnover) Rules, 1957, refers to notified authority who can grant the certificate of registration. The Central Government has issued a notification on February 22, 1957 under which, authority competent to register under local sales tax law of the State is authorised to grant the certificate of registration. u/s 10A(1) of the Karnataka Sales Tax Act read with Rule 4 of the Karnataka Sales Tax Rules, 1957, Commercial Taxes Officer and Assistant Commissioner of Commercial Taxes are the registering authority.

7. It may be a fact that the Assistant Commercial Tax Officer might have granted the registration to the petitioner, but it cannot be denied that the Assistant Commissioner of Commercial Taxes is competent to grant the certificate of registration and therefore, penalty u/s 10-A can be levied by him. The order of the Tribunal, therefore, does not suffer from any illegality in this regard.

8. So far as the second question is concerned, it may be observed that the penalty levied by the assessing authority and upheld by the first appellate authority, of 19.5 per cent has been reduced to 6 per cent by the Tribunal as the assessee is an export oriented unit and these items were subsequently entered in the certificate of registration and it was found that the local rate of tax in the selling State was 6 per cent. We need not go to the reasoning of the Tribunal, but the fact remains that the penalty was reduced to 6 per cent of the amount of total purchase. A contention is raised by the learned counsel for the assessee that, at the time of purchase, 10 per cent tax was charged in the Bill and the "C" forms were issued subsequently and therefore, there is no contravention of Section 10(b) of the Central Sales Tax Act, 1956. We are not able to appreciate this contention. If the "C" forms are issued, in respect of the purchase, which are

not covered by the certificate of registration, on the date when the purchase is made, though the form is issued subsequently when registration certificate is amended the offence is committed. It is for the assessee, thereafter, to satisfy that there was a reasonable cause. The reason-able cause which was stated, was only that the assessee was an export, oriented unit and it was first year of business and the modular furniture form part of the equipments, i.e., total unit of computers which was even accepted by the assessing authority at a later date. We need not go to the various contentions which have been raised. The fact remains that, at the time of purchase of items, the said items were not covered by certificate of registration. Even if the "C" form is issued, subsequently, after the amendment, then, it will not cover the transactions of purchases which have been made before the date of amendment of the certificate of registration. In these circumstances, since substantial relief has already been given by the Tribunal, we are not inclined to grant further relief.

The revision petition having no force, is accordingly dismissed.