
(1970) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 9 of 1968

Pannalal Umesh Kumar

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 22-07-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 9

Citation : (1971) JLJ 269 : (1970) 15 MPLJ 791 : (1970) MPLJ 791 : (1971) 27 STC 199

Hon'ble Judges : Bishambhar Dayal, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : J.S. Verma, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Judgement

K.L. Pandey, J.

At the instance of the assessee, the Tribunal (Board of Revenue) has referred to this court u/s 44 of the M.P. General Sales Tax Act, 1958, for its opinion the following question of law:

Whether or not on the facts and circumstances of the case the imposition of the penalty was legal and justified?

The material facts, as appearing from the statement of the case, are these: The assessee is a registered dealer who manufactures bidis for sale. During the period 1962-63 the assessee purchased goods worth Rs. 18,816 after furnishing declarations that those goods were to be used in the manufacture of other goods for resale. These goods, which were bardana, jhilli, paper, labels, motor tyres and tubes, were not specified in the assessee's registration certificate as being required for use in the manufacture or processing of goods for resale. That constituted a breach of Clause (b) of Section 10 of the Central Sales Tax Act, 1956. Therefore, the Sales Tax Officer, Rewa, levied on the assessee, after giving him an opportunity of being heard, a penalty of Rs. 1,000 u/s 10A of that Act. In

doing so, he observed as follows:

In his R.C. no articles were specified for resale or for use in manufacture, but the dealer had purchased bardana, fatti, jhilli, labels, motor tyres and tubes worth Rs. 18,816 in 1962-63. He has thus falsely represented while purchasing goods that the above goods were specified in his R.C.

In affirming the imposition of penalty the Appellate Assistant Commissioner of Sales Tax stated:"

The application for registration disclosed that the appellant had not mentioned any goods against item 16 required for use in manufacture and the appellant's contention cannot, therefore, be accepted that the goods required should have been specified by the department. It was for him to mention the required goods which he was purchasing in the course of inter-State trade or commerce.

In second appeal, the Tribunal merely restated the facts and affirmed the imposition of penalty. It was in these circumstances that this reference was made at the instance of the assessee.

It is now well settled that a penalty under a provision like Section 10A of the Act is not levied merely because there has been a disregard of the provisions therein mentioned including Section 10(b) of the Act. So, in *Commissioner of Sales Tax v. Bombay General Stores, Shahdol* [1969] 23 S.T.C. 449, a Division Bench of this court stated:

The object of Section 10(b) is to protect the revenue by preventing misuse of registration certificates and we do not think that this object would be defeated by construing the section as embracing the element of *metis rea*. In most cases it would not be in doubt that the article purchased under "C" form is not entered in the registration certificate and in such cases it will be easy to infer that the false representation by furnishing the declaration in "C" form was knowingly or intentionally made. But cases cannot be ruled out where it may be a matter of bona fide dispute whether a particular article purchased by a dealer fell within "the class or classes of goods" specified in his registration certificate. There is nothing in the section to show that the Legislature intended to punish a dealer who honestly though incorrectly represented that a particular article fell within the description of goods specified in his certificate. The presumption of existence of *metis rea* as a necessary constituent of the offence falling under Clause (b) of Section 10 is not rebutted by anything in its object or language and consistent with the presumption it must be held that the word "false" is used in that clause in a restricted sense and does not exclude the element of *mens rea*. In our opinion, in the absence of *mens rea*, a dealer cannot be penalised for contravention of Clause (b) of Section 10. The view that we have taken has also been taken by the Kerala High Court in *Varghese and Sons v. Sales Tax Officer* [1965] 16 S.T.C. 323.

In the Kerala case relied upon by the Division Bench, K.K. Mathew, J., observed:

I think here there is an error of law apparent on the face of the record. There is a clear distinction between a representation which is negligent and one which is fraudulent. The section, as I have already said, requires that the representation must have been made falsely, viz., without any belief in its truth. A representation, however negligent, is not fraudulent. In *Deny v. Peek* (1889) 14 App. Cas. 337 375, Lord Herschell said:

In my opinion making a false statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds.

The same view was taken by the Madras High Court in *Ben Gorm Nilgiri Plantations Co. v. Government of Madras* [1968] 21 S.T.C. 480. Their Lordships observed at pages 481-82:

Section 10(b) of the Central Sales Tax Act punishes a person with a term of imprisonment or fine or with both who "being a registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration". The phrase "falsely represents", as we think, clearly indicates that the falsity of the representation should be with the knowledge of the representation. If he is under an honest belief that what he represents is true, he cannot be said to make a false representation. It appears to us that the gravamen of the offence is the representation of something as true which, in fact and to the knowledge of the representation, is false. We do not think that the offence is an absolute one in the sense that it is not conditional on the presence of mens rea. A learned Single Judge of the High Court of Kerala in *Varghese v. Sales Tax Officer* [1965] 16 S.T.C. 323, construing Section 10(b), said:

I think, it must be proved that the dealer made the representations that the goods purchased were covered by the registration certificate with the knowledge that they were not so covered. It is only when a representation which was false to the knowledge of the firm, which means, to the knowledge of the partners, is made that there would be liability under the section.

In a case arising under the Orissa Sales Tax Act, 1947, the Supreme Court observed in *Hindustan Steel Ltd. Vs. State of Orissa*, as follows:

Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a

consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out.

In this case, the assessee was directed to pay a penalty because the goods were not specified in the registration certificate at the appropriate place and he had "thus falsely represented" that the goods were so specified. In our opinion, that was not enough and it was necessary for the department to further prove that the representation was false to the knowledge of the assessee. There is in this case ground for thinking that the representation, though erroneous, might not have been dishonest because, in the registration certificate, all other columns except the one in which such goods were intended to be specified, had been scored out. What is more, there was nothing to prevent him from so specifying the goods and it is not unlikely that the assessee believed honestly, though erroneously, that he had already so done. Therefore, he explained :

By an oversight the details could not be mentioned, though understood as such by the applicant and the department.

We are of the view that, in the facts and circumstances of the case, the imposition of the penalty was not legal and, in that sense, not justified. We answer the question referred to us accordingly.

In all the circumstances of the case, we leave the parties to bear their own costs.