

(1997) 08 MAD CK 0044

In the Madras High Court

Case No : T.C. (Revision Petition) No. 704 of 1985

Prasad Productions (P) Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8(1), 8(3)

Citation : (1997) 08 MAD CK 0044

Hon'ble Judges : N.V. Balasubramanian, J;M.S. Janarthanam, J

Bench : Division Bench

Judgement

Janarthanam, J.—This revision, at the instance of the assessee, is directed against the order of the Tamil Nadu Sales Tax Appellate Tribunal

(Main Bench), Madras-104 (for short, ""Tribunal"") dated December 18, 1982 and made in T. A. No. 96 of 1982 relating to the assessment year

1979-80.

2. M/s. Prasad Productions (P) Ltd. having their place of business at door No. 2, Sarangapani Street, T. Nagar, Madras-17 are registered dealers

under the Central Sales Tax Act, 1956 (Act No. 74 of 1956 - for short, ""CST Act""). The assessee-dealers, it is said, were granted a certificate of

registration in their favour for purchase of goods or materials on the basis of ""C"" forms issued by selling dealers ""for use in printing and processing

of 35 mm. motion picture colour films, chemicals and other consumable spares for processing and printing machinery"" , pursuant to an application

made in their behalf. It appears, the dealers. subsequent to the issuance of the certificate of registration in their favour purchased goods and

materials for use in manufacture and processing of goods for sale. As a matter of fact, the dealers, it is said, not only used the goods and materials

so purchased for use in manufacture or processing of goods for sale by them, but also used the goods and materials so purchased for job-work of

third parties or manufacturers for sale relatable to motion films.

3. The Commercial Tax Officer, T. Nagar (North) Assessment Circle, finding that the use of goods and materials covered by the certificate of

registration for job-work done to others or manufacturers for sale is violation of the condition of the certificate of registration, issued a notice dated

May 28, 1981 requiring the dealers to show cause as to why penalty proceedings should not be initiated for infraction or violation of the relevant

clause of section 10, u/s 10-A of the CST Act, in lieu of prosecution and requiring them to file objections, if any, to the proposal for initiation of the

penalty proceedings quantifying the penalty in a sum of Rs. 45,036, calculated at 15 per cent on the purchase of the materials and goods on the

basis of "C" forms. By the issuance of such a notice, it was also proposed by the said assessing authority to cancel the registration already granted

to the dealers, in his office CST No. 17596/77-78 dated October 10, 1977.

4. The dealers filed their objections on June 15, 1981, inter alia, contending that they were not guilty of any misrepresentation whatever; that they

had stated the purpose of purchase correctly in their application for the issuance of a certificate of registration and a certificate of registration was

accordingly granted and that the cancellation of the certificate of registration iii the proceedings initiated for imposition of penalty is not proper.

5. The said assessing authority, overruling the objections so made, sustained the proposals made in the notice above stated and issued a notice

levying penalty in a sum of Rs. 45,036.

6. The aggrieved assessee-dealers filed an appeal before the Appellate Assistant Commissioner (C. T.) IV, Madras-1, which was taken on file as

Ap. CST. No. 56 of 1981.

7. The said learned Appellate Assistant Commissioner, in his order dated 13th day of November, 1981, held that the levy of penalty, as had been

done by the assessing authority, is justified. Which he had confirmed and consequently, the appeal was dismissed.

8. The matter did not stop there. It was farther agitated by filing an appeal before the Tribunal, which was taken on its file as T. A. No. 96 of

1982.

9. During the pendency of the said appeal, the Revenue also filed a petition for enhancement in M. P. No. 367 of 1982.

10. (a) The Tribunal, after hearing the arguments of both sides and also perusing the materials available on record, recorded a finding, as below :

9. It cannot therefore be said that the RC was not issued as prescribed under the law. As already held the mention of the class of goods in

a wrong place will not ipso facto nullify the validity of the registration certificate. Believing that the original also should be in the same form as that of

the photostat we hold that the certificate has been issued correctly and that there was no fault on the part of the registering authority. But one

circumstances which weighs in favour of the appellant is that the resale need not be by himself. To this extent there is no finding either in the order

of the registering authority or that of the Appellate Assistant Commissioner, whether the entire purchases were used only in works contract or

whether as contended by the learned authorised representative, there were sales by others in which case as held by the Supreme Court decision

cited by the learned authorised representative there can be no offence. We have no definite information as to what extent there has been misuse of

the "C" forms and, what should be the correct amount of penalty that should have been imposed. So it is not possible for us to totally accept the

enhancement petition filed by the State representative. At best it can be deemed as an escapement which has to be set right by the assessing officer

himself. The enhancement petition is dismissed.

(b) After recording a finding as above, the Tribunal recorded the operative portion of the order, which is getting reflected as below :

10. In fine we hold that there was no mistake in the certificate of registration issued. It has however to be found out as to what extent there had

been misuse of the goods purchased against the "C" forms. If there had been any sale of the processed goods either by the appellants or by

somebody else, to that extent they may not liable for any penalty at all. These points have to be examined afresh by the assessing authority himself.

Therefore we remand the matter to the registering authority for de novo re-examination and passing orders afresh after due notice.

11. Aggrieved by the order of the Tribunal as above, the assessee-dealers resorted to the present action.

12. The question of law that arises for consideration is that the legality or otherwise of the order of remand, in the instant case, depends upon the determination of the issue as to whether it is necessary for the assessee-registered dealers, not only to use the goods and materials purchased on the basis of "C" forms issued by the selling dealer - in the manufacture or processing of goods, but also to effect sales of such goods in order to avoid penalty proceedings, in lieu of prosecution u/s 10-A for refraction or violation of the relevant clause of section 10, on the face of the avowed use of the phraseology or the expression, "for use by him in the manufacture or processing of goods for sale" in section 8(3)(b) of the CST Act.

13. It is not as if the question so posed did not at all arise for consideration in the courts or superior courts of jurisdiction and the plain fact is that such a question had been considered in a scintillating fashion by the apex Court of this country in the case of Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd. [1981] 48 STC 239.

(a) In that case, the respondent-company, a registered dealer under, the CST Act, as well as the Punjab General Sales Tax Act, 1948, carried on the business of manufacturing and processing textiles at Faridabad. It purchased goods in the course of inter-State trade on the basis of its certificate of registration and furnished to the selling dealers declarations in form "C" stating that these goods were purchased for use by the dealer in the manufacture of goods for sale.

(b) On the strength of such declarations, the selling dealers were taxed at a concessional rate u/s 8(1)(b) of the Central Act. The goods purchased were used by the respondent partly for sizing, bleaching and dyeing of its own textiles and partly for sizing, bleaching and dyeing of textiles belonging to third parties on job-basis.

(c) The Excise and Taxation Officer issued notice for the imposition of penalty on the respondent on the ground that it had used the goods purchased partly in manufacturing its own goods for sale and partly for doing job-work for other parties, and that the job-work did not constitute sale and therefore the respondent had contravened section 10 of the Act.

(d) A writ petition filed by the respondent to have the notices quashed was dismissed by a single Judge of the High Court, but allowed by a Division Bench.

(e) On appeal by the Assessing Authorities the Supreme Court held, affirming the decision of the Division Bench of the High Court that section

8(3)(b) would clearly cover a case where a registered dealer manufactured or processed goods for a third party on a job-contract and used in the

manufacture or processing of such goods, materials purchased by him against his certificate of registration and the declarations in form "C", so long

as the manufactured or processed goods were intended for sale by such third party.

(f) The expression used by the Legislature as well as the rule-making authority was simply, "for use in the manufacture of goods for

sale" without any addition of words indicating that the sale must be by any particular individual. The Legislature had designedly abstained from

using any words of limitation indicating that the sale should be by the registered dealer manufacturing the goods. Where the Legislature wanted to

restrict the sale to one by the registered dealer himself, the Legislature used the qualifying words "by him", after the words "for resale" in one part,

of section 8(3)(b), but while enacting another part of section 8(3)(b), the Legislature did not qualify the words "for sale" by adding the words "by

him". This deliberate omission clearly indicated that the Legislature did not intend that the sale of the manufactured goods should be restricted to

the registered dealer manufacturing the goods. The word "one" was followed by the words "by him" clearly indicating that the use of the goods

purchased in the manufacture of goods for sale must be by the registered dealer himself but the words "by him" were significantly absent after the

words "for sale".

(g) In so interpreting the phraseology or expression, as adumbrated in section 8(3)(b), the apex Court said that a statute must be construed

according to its plain language and neither should anything be added nor should anything be subtracted unless there are adequate grounds to justify

the inference that the Legislature clearly so intended.

14. On the face of such a lucid interpretation made by the apex Court of this country relating to the phraseology "for use by him in the manufacture

or processing of goods for sale", our task in that regard is rather simplified, in the sense of ourselves to do nothing but to tread on the path chosen

by the apex Court, inasmuch as such an interpretation is binding on us under

article 141 of the Constitution of India.

15. In the instant case, the assessee-dealers used the goods and materials purchased, as covered by the certificate of registration, for processing

motion films of third parties on job-work basis. Whether the user of the goods and materials so purchased would tantamount to infraction or

violation of any of the relevant clause of section 10, for the imposition of penalty, in lieu of prosecution u/s 10A of the CST Act is, in fact, a

question implicitly necessary to be decided. The taxing authorities, namely, the assessing authority and the lower appellate authority found, as a

matter of fact, that the assessee-dealers used the goods and materials so purchased in the process of motion films of third parties, on job-work

basis. When the goods and materials so purchased had been used by the assessee-dealers, as had been found by the taxing authorities, puzzling it

is for us, to understand as to how the order of assessment, as has been made by the Tribunal, is sustainable, on the facts and in the circumstances

of the case, when especially, on the face of the decision rendered by the apex Court of this country in the case of East India Cotton Mfg. Co. Ltd.

[1981] 48 STC 239. The dictates of common sense would point out that motion films made are only for the purpose of exhibition, by way of sale.

For the sake of emphasis, we may again reiterate that the assessee-dealers were found fault with by the taxing authorities for the use of the goods

and materials covered by their certificate of registration, in the processing of motion films to third parties on job-work basis. The user of the goods

and materials so purchased for such user, as has been found by the taxing authorities, on the face of the decision of the East India Cotton Mfg. Co.

Ltd. [1981] 48 STC 239, rendered by the Supreme Court cannot at all be stated to be an infraction or violation of any of the relevant clauses of

section 10 of the CST Act. Further, there need not be actual sales of the motion films by third parties. What is required is that the motion films

took place is of no consequence. In such state of affairs, we rather feel that the remand as made by the Tribunal is not at all justified and the

Tribunal by itself could have passed the necessary and requisite order as relatable to the penalty imposed by the taxing authorities below.

16. The incidental question that arises for consideration, in such a situation, is as to whether it is necessary for this Court to set aside the order of

remand so made by the Tribunal and remit it back to the Tribunal now for deciding the correctness or otherwise of the question as respects the

imposition of penalty by the taxing authorities below. We rather feel, on the facts and in the circumstances of the case, that if the matter is again

remitted to the Tribunal, it will be causing prejudice to the cause of justice. The reasons are rather obvious. The Democle's sword of penalty

imposed upon the assessee-dealers by the taxing authorities has been hanging over their heads for quite long since 1979-80, the assessment year.

If the matter is remitted back to the Tribunal, the same would be pending there for some more time, if not pretty long. Further it would add to the

burden of the Tribunal in the disposal of cases. In such a situation, we rather feel that it won't be besides justice to decide the matter here itself,

without remitting it back to the Tribunal for consideration.

17. Since we have already found, as had been found by the taxing authorities that the goods and materials covered by the certificate of registration

had been used in the processing of motion films by third parties on job-work basis. The assessee-dealers cannot at all be said to have infringed or

violated the relevant clause of section 10, for invocation of the imposition of penalty u/s 10-A of the CST Act in lieu of prosecution. Such being the

case, it goes without saying that the penalty, as had been imposed upon the assessee-dealers by the taxing authorities deserves to be set aside.

18. In fine, the tax case (revision) is allowed. The order of remand by the Tribunal is set aside. The penalty imposed upon the assessee-dealers by

the taxing authorities is also set aside. There shall, however, be no order, in the circumstances of the case, as to costs.

19. Petition allowed.