

(1973) 03 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 2970 of 1970

Rajalakshmi Textiles Finishing Mills and Another	APPELLANT
Vs	
STO, Cannanore	RESPONDENT

Date of Decision : 09-03-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 7, 8, 8(3)(b)
Constitution of India, 1950 — Article 226

Citation : (1973) KLJ 498

Hon'ble Judges : M.U. Issac, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; N. Dharmadan, Government Pleader, for the Respondent

Judgement

M.U. Issac, J.—The second petitioner got himself registered as a dealer under S. 7 of the Central Sales Tax Act, 1956 in his capacity as managing partner of a firm, the first respondent. Ex. P2 dated 31-7-1965 is a copy of the certificate of Registration issued to him by the respondent, the Sales Tax Officer, Cannanore. Pursuant to that certificate, the firm purchased a large quantity of machinery and machinery parts for establishing a plant for calendering under "C" Forms issued by him. The respondent considered that the above purchases were not covered by the certificate of registration, and the first respondent had thereby committed offences under Clauses (b) and (d) of S. 10 of the Act. He, therefore, issued a notice, Ex. P3 dated 3-8-1966, to the first 3 respondent calling upon it to show cause why a penalty of one and a half times the tax which would have been levied under the Act in respect of those purchases should not be imposed on him under S. 10A of the Act. The first petitioner filed O.P. No. 3139 of 1966 in this Court to quash the above notice. This Court dismissed that petition stating that it was then premature to move this Court under Art. 226 of the Constitution. The respondent again issued a notice, Ex. P4 dated 22-1-1970, more or less in the same terms as Ex. P3. The first petitioner submitted a detailed explanation, Ex. P5 dated 12-2-1970. The respondent rejected the explanation and passed an

order Ex. P6 dated 23-3-1970 holding that the first petitioner was guilty of the offences under Clauses (b) and (d) of S. 10, and imposing on it a penalty of Rs. 47,433-66 which is equal to one and a half times the tax which would have been levied in respect of the goods purchased by the first respondent if those purchases were not covered by "C" forms. The writ petition has been filed to quash the above order. The first point raised by the petitioner is that the purchases were covered by the certificate of registration. The goods that would be covered by the certificate of registration are goods of the description referred to in S. 8(3)(b) of the Act. They are only goods intended for resale, or for the use by him in the manufacture or processing of goods for sale etc. The goods purchased by the first petitioner were admittedly for constructing a plant for manufacture of goods; and according to the petitioner the said goods would be covered by the certificate of registration. I am unable to accept this contention. Goods purchased for erection of a plant are not obviously "goods for use in the manufacture or processing of goods for sale". The purchases would not, therefore, be covered by the certificate of registration.

2. The second point raised by the petitioners is that even assuming that the purchases are not covered by the certificate of registration, the petitioners have not committed any offence under Clause (b) or (d) of S. 10 of the Act. It is necessary to read the above provision.

10. PENALTIES. If any person:

(a) * * *

(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; or

(c) * * *

d. after purchasing any goods for any of the purposes specified in Clause (b) of sub-s.(3) of S. 8 fails, without reasonable excuse, to make use of the goods for any such purchase;

e. * * *

f. * * *

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.

Counsel for the petitioners submits rightly that Clause (d) is attracted only when a dealer buys goods covered by the certificate of registration, and fails to make use of them for the purpose for which they were bought. If the goods purchased are not covered by the certificate of registration, as held by the respondent Clause (d) has clearly no application. Regarding the application of Clause (b) of S. 10, counsel submits that a false representation by the dealer purchasing the

goods that they are covered by the certificate of registration is the most important ingredient of the offence, and that there is no such finding in the impugned order Ex. P6. Counsel is right in this respect also. It is clear from Clause (b) that a false representation is the basis of the liability created by that clause. If a registered dealer honestly believes that certain goods are covered by the certificate of registration, and on that honest belief, he buys those goods by issuing the requisite "C" Forms it would not amount to any false representation, though the goods he purchased would not actually be covered by the certificate of registration. It is clear from Ex. P6 that the respondent has not considered this matter. The relevant part of that order reads:

I have carefully examined the contents of the objection filed. The firm has not adduced any valid evidence in support of this contention that there was no misuse of "C" forms. The Honourable High Court of Kerala in the Writ Petition filed by the firm has held that the authority who granted or is competent to grant certificate of registration under the Act is competent to impose upon the person who purchases the goods on the strength of the certificate a penalty not exceeding 1 1/2 times of the tax which would have been levied under the Act in respect of the sale of goods if the offence had not been committed also upheld the penalty proceedings initiated as correct.

This Court did not say anything like that in the previous writ petition; which was dismissed on the short ground that it was premature for the petitioner to move this Court on receipt of a show cause notice from the respondent instead of showing cause before him. The respondent has misdirected himself in proceeding on the assumption that this Court has upheld the penalty proceedings initiated by him as correct. The impugned order is thus based on an unwarranted assumption. It also failed to consider whether the essential ingredient necessary to constitute the offence has been established. The said order cannot, therefore, be sustained.

3. The third point raised by counsel for the petitioner is that the quantum of penalty imposed by the respondent is on an erroneous assumption. that he was bound to impose one and a half times the tax that would have been levied in respect of the goods purchased by a dealer, if the offence had not been committed, irrespective of the facts and circumstances of the case. In other words, he has no discretion in the matter. I had occasion to consider this question in *O.P. Paramesivan v. State of Kerala* (1971 (1) TLR 1241), wherein I pointed out that the quantum of penalty has to be fixed in exercise of the discretion vested in the authority; and it must depend on the gravity of the offence, which in turn depends on the attending facts and circumstances. I have also pointed out in that decision that the amount of penalty should be always something more than the tax evaded, and that otherwise it would not be imposition of penalty. For the reasons stated above, I quash the impugned order Ex. P6. The respondent will be at liberty to take up the case to his file and dispose of the matter afresh in the light of this decision after giving a reasonable

opportunity to the petitioners for being heard. In the circumstances of the case there will be no order as to costs.