
(1997) 08 MAD CK 0055

In the Madras High Court

Case No : Tax Case (Revision) No. 633 of 1985

Rajrajan Electrical Equipments

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-08-1997

Acts Referred:

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

Citation : (1997) 08 MAD CK 0055

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

Bench : Division Bench

Advocate : V. Srikanth and C. Venkatraman, for the Appellant; S. Sudarsanam, Government Advocate (Taxes), for the Respondent

Judgement

Janarthanam, J.—This tax (revision) case, 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 "the Tribunal") dated March 4, 1985 and made in T.A. No. 592 of 1984 relating to the assessment year 1981-82.

2. Tvl. Rajrajan Electrical Equipments, having their place of business at No. 162, Linghi Chetti Street, Madras I are dealers in "electrical

equipments". They had been granted a "certificate of registration" under the Central Sales Tax Act, 1956 (Act No. 74 of 1956 - for short "the

CST Act") for the purchase of "electrical equipments" on the basis of "C" forms for the purpose of resale, pursuant to the application made

therefore by them. This aspect of the matter, we are able to trace out from the original certificate of registration produced for our perusal.

3. It appears, subsequent to the issuance of certificate of registration, they have purchased aluminium extrusions, aluminium sheets, spring disc and

lightning arrestors, on the basis of "C" forms to the tune of Rs. 3,26,622 relating to the assessment year 1981-82. According to the certificate of

registration, the assessee-dealers were not entitled to purchase the items, as mentioned above, on the basis of "C" forms. But, non-

else, the assessee-dealers purchased those items on the basis of "C" forms, for the purpose of fabrication and supply of bus ducts, to the Chief

Engineer, Electricity Projects Construction, Vidyut Soudha, Hyderabad, pursuant to the contract entered into by them.

4. The Commercial Tax Officer, Esplanade Assessment Circle, Madras-108, finding the items so purchased, not being covered by the certificate

of registration, issued a notice dated February 21, 1983 requiring them to show cause why they should not be levied, a penalty of Rs. 54,993 at

15 per cent of the total purchases to the tune of Rs. 3,26,622 requiring them to file objections, if any, to the proposals so made.

5. The assessee-dealers, to the proposals as abovementioned, filed their objections, inter alia, stating that the aluminium extrusions, aluminium sheets,

spring disc and lightning arrestors were used in the "electrical equipments" supplied by them to the Chief Engineer, Electricity Projects

Construction, Vidyut Soudha, Hyderabad, in Andhra Pradesh; they had not intentionally committed any offence on the issue of "C" forms in the

purchase of the goods abovementioned in the show cause notice attracting levy of penalty and in such circumstances, they prayed that the

proposed levy of penalty might be dropped.

6. The assessing officer, overruling their objections, confirmed the proposals and a notice in form No. 54 has been issued demanding payment of

penalty to the tune of Rs. 54,993.

7. The aggrieved assessee preferred an appeal in AP. CST. No. 2 of 1984 before the Appellate Assistant Commissioner (CT) I, "Kuralagam

Annexe", Sixth Floor, Madras-108.

8. The said Appellate Assistant Commissioner after hearing the arguments of both sides and taking into consideration the relevant materials

available on record, minuted the operative portion of his order dated February 3, 1984 as below :

5 It is clear that the aluminium items though of ISI specifications will not fall under "electrical equipment" for which the appellants have been

authorised to buy by their certificate of registration. Hence the levy of penalty by the Commercial Tax Officer is in order. The Commercial Tax

Officer has stated that he has levied penalty at 15 per cent on a turnover of Rs. 3,26,622. Penalty at 15 per cent of Rs. 3,26,622 works (out) to

Rs. 48,993. It is not known how the Commercial Tax Officer has levied Rs. 54,993. As the appellants have already paid 4 per cent sales tax on

their purchase under Central Sales Tax Act, a lenient view is taken and the penalty is reduced to Rs. 19,597 representing 6 per cent of the

purchase turnover.

Thus the appeal stands modified.

9. The assessee did not leave the matter there. It has been agitated further. He filed an appeal before the Tribunal, which was taken on file, as T.A.

No. 592 of 1984. The operative portion of the order of the Tribunal dated March 4, 1985 is reflected in paragraphs 5 and 6, as below :

5. We heard the arguments of both the sides and perused the connected records. The learned authorised representative filed a letter given by one

of the partners of the appellants. According to that letter, it was stated that, "we hereby confirm that the aluminium sheets and extrusions, etc., used

in the ""bus ducts"", manufactured by us are of electrical grade and those ""bus ducts"" are used in power stations along with generators unit as

electrical current transmission equipments". Though this Tribunal has been consistently holding that any item belonging to the same class of goods

will be entitled for relief, the question that arises for consideration in this case is whether the items like aluminium extrusions, aluminium sheets,

spring disc and lightning arrestors will fall under the broad classification of "electrical equipments". Though the learned authorised representative

contended that those items of purchases have been made use of in the "bus ducts" used in power stations along with generators, we are unable to

agree with the learned authorised representative that those aluminum sheets and other items will form part of electrical equipments mentioned in the

registration certificate issued under CST Act. As we are unable to agree that the items in dispute will fall under the class of goods relating to

electrical equipments, we find no reason to interfere with the order of the learned Appellate Assistant Commissioner.

6. In the result, the appeal is dismissed.

10. Aggrieved by the order above, the assessee-dealers resorted to the present action.

11. The question that now crops up for consideration is as to :

Whether, on the facts and in the circumstances of the cases, the assessee, being a registered dealer, could be construed to have made false

representations in purchasing any class of goods that goods of such class were covered by the certificate of registration ?

12. It is not as if the question so posed did not at all arise for consideration before the superior courts of jurisdiction and the plain fact is that such a

question did arise for consideration in this Court in the case of *Vijaya Electricals v. State of Tamil Nadu* [1991] 82 STC 268. A division Bench of

this Court took into consideration all the authorities available on the subject and ultimately rendered its conclusion, in the light of the factual matrix

of the case reflected as below :

(a) A certificate of registration granted to the appellant-dealer under CST Act, authorised it to purchase ""machinery and electrical goods only"". The

appellant purchased ball-bearings on the basis of "C" forms. On the ground that ball-bearings were not covered by the appellant's certificate of

registration, penalty was imposed on the appellant u/s 10A of CST Act, for an offence u/s 10(b) thereof.

(b) The Bench, in the process of rendering a decision, said that there is nothing in section 10A of the CST Act which requires that mens rea must

be proved before penalty can be levied under that provision if on facts, it is found that the assessee has made a ""false representation"". Once a

finding is recorded by the competent authority that the assessee has made a ""false representation"", that would clearly attract the provisions of

section 10(b) of the CST Act and no further finding is required that the assessee had also the mens rea.

(c) Under the criminal law, the Bench would say, mens rea is considered as the ""guilty intention"", but, when it is relatable to tax delinquency, which

is a civil obligation, it implies a ""blameworthy conduct"". The recording of a finding that the assessee had made a ""false representation"" by itself

shows the establishment of the blameworthy conduct, which would be the establishment of mens rea to the limited extent applicable to civil

obligations.

(d) The Bench further said as to the methodology of proof of the "blame-worthy conduct" on the part of the assessee-dealer. What the Bench

would say in this connection is that the "blameworthy conduct" of the assessee-dealers is capable of being proved either expressly or by way of

implications from the established facts and circumstances of the case. The established facts, according to the Bench, may consist of,

(i) the certificate of registration covering the goods, which can be purchased on the basis of the issue of "C" forms; and

(ii) the conduct of the assessee-dealers in purchasing the items of goods not covered by the certificate of registration, on the basis of "C" forms.

(e) From the two established facts, the Bench would say, it is legitimately permissible to infer that if the assessee-dealers have exercised proper

care and caution, it would have been possible for them that they are entitled to purchase goods, only covered by the certificate of registration. The

fact that they have been dealing in the goods specified by the certificate of registration itself would point out that they had not exercised proper care

and caution in effecting the purchase of goods, not covered by the certificate of registration.

13. In the case on hand, it is explicitly crystal clear, from the perusal of the certificate of registration, that the assessee-dealers were authorised to

purchase "electrical equipments only" for the purpose of resale and they were not at all granted any permission to purchase an item to use for the

manufacture of electrical equipments. What they have purchased are items of goods for the purpose of manufacture of bus ducts, which they called

as "electrical equipment" for making supply to the Chief Engineer, Electricity Projects Construction, Vidyut Soudha, Hyderabad. The assessee-

dealers had been dealing with electrical equipments, ever since the date of their registration under the relevant provisions of the CST Act. It is

presumed that they know pretty well that they are entitled to deal with only in "electrical equipments" and not purchase items of goods for the

manufacture of "electrical equipments" on the basis of "C" forms. In such circumstances, it is legitimately permissible to make an inference of

blameworthy conduct" on their part. No doubt true it is, no such finding had been recorded by the authorities below, as we have stated above.

The authorities below found the establishment of primordial facts for making legitimate inference. Such being the case, we are of the opinion that

there being no specific finding by way of inference is of no consequence.

14. For the reasons, as above, the tax (revision) case deserves to be dismissed and the same is accordingly dismissed. No costs.

15. Petition dismissed.