(2003) 08 AHC CK 0165

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 323, 324, 325 and 326 of 1991

Sanjiv Fabrics APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:
Central Sales Tax (Uttar Pradesh) Rules, 1957 — Rule 8, 8(6)
Central Sales Tax Act, 1956 — Section 10, 10A

Citation : (2004) 137 STC 563

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal and Piyush Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—These four revision petitions arise out of common order dated January 22, 1991 passed by the Trade Tax Tribunal, Meerut, in four Second Appeals Nos. 241 of 1986 (1979-80), '' 211 of 1986 (1981-82), 212 of 1986 (1982-83) and 213 of 1986 (1983-84).

2. All the above revisions arise out of penalty order passed u/s 10(b) of the Central Sales Tax Act, 1956. The sole controversy involved in all these revisions is as to whether, in the facts and circumstances of the case, penalty u/s 10(b) of the Central Sales Tax Act can be imposed or not.

3. The common question of law and facts are involved for the assessment years 1979-80, 1981-82, 1982-83 and 1983-84. The applicant is a registered dealer u/s 7(2) of the Central Sales Tax Act, 1956 and is carrying on business of manufacture and sale of handloom cloths. He was granted registration u/s 7(2) of the Central Act to import raw materials, i.e., "cotton" and "cotton yarn" against form C. Indisputably, for all these assessment years the applicant has imported cotton waste, polythene, sutli and tat. Form C has been issued by the applicant in respect of the aforesaid items also.

4. The department on October 15, 1985 issued a show cause notice for imposition of penalty u/s 10(b) of the Act read with Section 10(a) of the Act for the assessment years 1977-78, 1978-79, 1980-81 (not involved in the present revisions). A reply to the show cause notice was filed on the pleas that the dealer started business from 1977-78 and was under bona fide belief that item cotton includes "cotton waste" also and thus there was no false representation on their part. The Sales Tax Officer did not accept this explanation. But the Tribunal in Second Appeal Nos. 243 of 1986, 242 of 1986, 550 of 1986, for these three assessment years has set aside levy of penalty so far as it relates to "cotton waste". A copy of the order of the Tribunal has been annexed as annexure 4 to the affidavit filed along with the memo of revision. The Tribunal came to the conclusion that so far as the position regarding "cotton waste" is concerned, it was known to the department that the applicants were manufacturing handloom cloths and this was declared in his registration application and it concluded that it was a case of bona fide error and no false representation is involved by order dated April 30, 1987.

5. For the relevant assessment years involved in the present revision same plea was taken by the dealer, which was, not find favour by the authorities below including the Tribunal. The Tribunal distinguished its earlier order on the ground that the matter was remanded and what happened after remand is not clear. The Tribunal took a view that issuance of form C in respect of purchases of "cotton waste", "sutli", "tat" are not covered by the registration certificate. It is a clear case of false representation and the dealer issued form C in respect of these items which shows its mala fide.

6. Heard learned counsel for the parties and perused the record.

7. The applicant is manufacturer of handloom cloths and was authorised to issue form C in respect of purchases of cotton. The dispute in these revisions are, confined with regard to the levy of penalty on the purchases of cotton waste covered by form C. The penalty in question has been levied u/s 10(a) of the Central Sales Tax Act read with Section 10(b) thereof. Under this provision penalty is leviable if a person being a registered dealer falsely represent when purchasing class of goods, his certificate of registration covers the goods of such class. The representation contemplated by this provision is made in form C described in the Central Sales Tax (Registration and Turnover) Rules, 1957. The said form requires certificate "certified that the goods ordered for in our purchase order, number.........dated.........and supplied as per bill No..........dated... are covered by my/our registration certificate No....dated.........issued under the Central Sales Tax Act, 1956". Indisputably "cotton waste" is not covered under the aforesaid certificate. "Cotton" and "cotton waste" are two different commodities known to sales lax laws. How-ever, there is not much distinction from the point of view of ordinary people. The applicant is registered dealer since the assessment year 1977-78 and has been making purchases of "cotton waste" and issuing form C thereof since then. The department earlier than October 15,

1985 raised no objection. This as was submitted by the learned counsel for the applicant is very relevant circumstance for determination of the question "false representation" occurring in Section 10(b) of the Act. False representation is sine qua non for imposition of penalty under the aforesaid section.

8. In State of Rajasthan Vs. Jaipur Udyog Ltd., it was held that unless it is shown that the dealer had made false representation, Section 10A is not attracted. It is necessary in brief, to notice the fact of that case. The respondent before the Supreme Court was holding certificate of registration and in the certificate it was described as "whole manufacturer of cement". It purchased earth moving machines, comprising of bull-dozer, dumper and tipping wagons. The penalty proceeding was initiated as these items were, according to the department not covered by certificate of registration. The matter went before a division Bench of Board of Revenue. Members forming division Bench diferred in their conclusion as to whether purchases in question were covered by the certificate given to the respondents or not. The matter was ultimately referred to the third member who took a view that the purchases in question were not covered by certificate and, as such, the respondent was not entitled to get the benefit of preferential right. The matter was further referred to the High Court. The High Court decided the question in favour of the respondent and against the department. In the backdrop of these facts Supreme Court observed as under :

"Unless it is shown that he had made such a false representation, Section 10A is not attracted. Two Judges of High Court and one Member of the Board of Revenue have come to the conclusion that the respondent was entitled to preferential rate which he claimed. That is the view of the law taken by them. Assuming, without deciding that the view taken by them is incorrect, even then it is impossible to say under the circumstances of the case that the respondent was guilty of making any false representation."

This argument was further developed by the learned counsel for the applicant on the basis of the Central Sales Tax (Uttar Pradesh) Rules, 1957. These Rules have been framed in exercise of powers conferred by Sub-sections (3) and (4) of Section 13 of the Central Sales Tax Act, 1956. Rule 8 of the aforesaid Rules is relevant for the purposes of present case :

9. He argued that the details of the purchases against form C are required to be furnished in pursuance of the Central Sales Tax (Uttar Pradesh) Rules, 1957. Reliance was placed upon Sub-rule (3) of Rule 8 thereof. Rule 8 prescribes a procedure for issuance of form of declaration or certificate and the matter incidental thereto. A perusal of the said rule shows that registered dealer who wishes to obtain blank form of declaration or certificate, referred to in Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, shall apply to the concerned Sales Tax Officer and if the concerned Sales Tax Officer is satisfied with the requisition of the dealer for blank forms that it is genuine, he may issue the same in such numbers as he may deem fit. Under Sub-rule (6) of Rule 8 a dealer has to maintain a register in respect of declaration form or certificate

issued to him by the Sales Tax Officer. In this register the dealer is required to mention number of details, such as dates, etc., including the description of goods. Placing reliance upon this form under rule 8 it was submitted that the applicant had been maintaining and submitting form 4 regularly in the ordinary course of business and at no point of time any objection for misuse of the forms was raised by the department. Therefore according to him this is vital circumstance ; it should have been taken into account to judge the bona fides of the applicant. He further submitted that the mistake of issuing form C in respect of the goods for which there was no authorisation under the certificate continued for a long period of time. Both the applicant as well as department were under some mistake and, therefore, in the facts of the present case, no penalty is leviable on the applicant.

10. I find sufficient force in the aforesaid argument. The Sales Tax Officer is supposed to be expert on the subject. The Sales Tax Officer from the assessment year 1977-78 up to October 15, 1985 raised no objection with regard to the issuance of form "C" for "cotton waste" and in view of these facts one cannot say as observed by the Supreme Court in the above case, that false representation was made by the dealer.

11. This Court in the case of Commissioner of Sales Tax v. Kashi Prasad Ram Chandra Lal [2001] 122 STC 567 : 2001 UPTC 173 had occasion to interpret the word "falsely represents" as occurred in Section 10(b) and it has been held that Section 10(b) of the Central Sales Tax Act, 1956 provides for levy of penalty if any person being registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by a certificate of registration. Thus for levying penalty u/s 10(b) of the Act the dealer should falsely represent that the goods are covered by the certificate of registration. The word falsely implies deliberate act, which has been done knowingly. The false representation and wrong representation both stand on different footing. In the present case there is no finding by the Tribunal that there was any deliberate representation by the dealer. A line of distinction has to be drawn in-between "false representation" and "wrong representation". "Wrong representation" may be on account of some inadvertence or some omission. "False representation" takes place when a person knowingly makes representation for certain things when he knew that he is not entitled to make the said representation. This Section 10(b) has to be read with Section 10A of the Act. Section 10A provides imposition of penalty in lieu of prosecution. Section 10 provides penalties and also simple imprisonment, which may extend to six months or with a fine or with both.

12. There is another notable feature in the present case. As soon as penalty notice dated October 15, 1985 was issued to the dealer it applied for amendment of certificate of registration for inclusion of "cotton waste" in the certificate. The department granted the said amendment on October 15, 1985 and the dealer-applicant became entitled to purchase "cotton waste" against form C. The case of the dealer in reply to the show cause notice was that it bona fidely believed that

"cotton waste" is also covered in "cotton". As soon as the mistake was realised necessary application for amendment was filed. This action of the dealer itself shows its bona fide. The representation in order to attract Section 10(b) should be false representation to the knowledge of the assessee. If the assessee bona fidely believes that the goods are covered by certificate of registration, but it ultimately turned out to be incorrect, it will not attract the provisions of Section 10(b) of the Act. The use of the word "falsely" implies that the persons making representation knew that certificate of registration does not cover the item, but knowingly fully well that it does not, represents that issuing form "C" covers it.

13. It is also submitted that mens rea is necessary ingredients for imposition of penalty under the aforesaid section. However, this plea has been repelled by this Court in case of Commissioner of Sales Tax v. Rama and Sons 1999 UPTC 425. I am bound by the aforesaid judgment.

14. Supreme Court in the case of R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another, a judgment of seven honourable Judges has held that "no mens rea no crime" has long been eroded specially regarding economic crime. That was the case under sales tax of State of Gujarat.

15. Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , has observed that there is no presumption that every person knows law. It is often said that everyone is presumed to know law, but that is not correct statement ; there is no such maxim known to law.

16. When tax laws are so complex the administration should proceed specially in the penalty matter from the view of ordinary citizen who is always willing to comply with the conditions of law. The assessee as soon as it came to know about its fault filed application for amendment of registration certificate. Some fault was on the part of the department also for maintaining silence over the period of about eight years.

17. The upshot of the above discussion is that in the facts of the present case the finding of the Tribunal that it was a case of false representation cannot be sustained. The Tribunal while recording the said finding has failed to consider relevant facts which were available on record, and as such, this finding is vitiated.

18. All the revisions are allowed. The penalty orders are hereby set aside so far as it relates to "cotton waste". In respect of other items the penalty order having not been challenged is maintained.