(1973) 09 KAR CK 0003

In the Karnataka High Court

Case No : S.T.A. No. 2 of 1972

Shivananda Electric Co., Raichur — APPELLANT

Vs

State of Mysore — RESPONDENT

Date of Decision : 16-09-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10 (d), 10 A
Mysore Sales Tax Act, 1957 — Section 22 A

Citation : (1974) 33 STC 348

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; M.P. Chandrakantaraj Urs, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, C.J.—This is an appeal by a dealer under the Central Sales Tax Act, 1956, hereinafter called the Act, and it is directed against the order of the Commissioner of Commercial Taxes in Mysore made in Case No. S.M.R. 85 of 1970-71 dated 21st October, 1971, by which the order of the Deputy Commissioner of Commercial Taxes, Gulbarga Division, Bellary, dated 17th January, 1970, was revised and a penalty of Rs. 3,000 was imposed on the dealer u/s 10A of the Act for contravention of section 10(d). During the assessment year 1963-64 the dealer had purchased electrical goods from outside the State by issuing C forms which are intended for purpose of resale only. Instead of reselling the goods, the dealer used the same in execution of works contract which they were not entitled to. The use of goods purchased on issue of C forms in contravention of section 10(d) attracts penalty u/s 10A of the Act. Therefore, the Commercial Tax Officer issued a show cause notice proposing to impose penalty. The dealer did not offer any explanation showing reasonable excuse for not making use of the goods for the purpose of resale. Therefore, the Commercial Tax Officer imposed a penalty of Rs. 4,406. Against the said order, the dealer preferred an appeal before the Deputy Commissioner of Commercial Taxes, Gulbarga Division. Before the Deputy Commissioner of Commercial Taxes, the dealer appears to have urged that the department had not proved mens rea which is required to be proved before levying penalty and, therefore, the levy was illegal. The Deputy Commissioner purporting to follow the decision of this court in State of Mysore v. S. S. Umandi [1969] 24 S.T.C. 11 : 1969 Kar. L.J. 25, allowed the appeal and set aside the order of the Commercial Tax Officer.

2. The Commissioner of Commercial Taxes in exercise of the powers u/s 22A of the Mysore Sales Tax Act, 1957, issued notice to the dealer and after hearing the dealer''s Advocate, made an order dated 21st October, 1971, by which the order of the Deputy Commissioner was set aside and a penalty of Rs. 3,000 was imposed.

3. The relevant portion of section 10 reads thus :

"10. Penalties. - If any person ....

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

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; ...."

Section 10A provides for imposition of penalty in lieu of prosecution. The penalty u/s 10 is attracted when a dealer after purchasing goods for any of the purposes specified in clause (b) of sub-section (3) of section 8 fails, without reasonable excuse, to make use of the goods for any such purpose. It is undisputed that the dealer did not make use of the goods for the purpose specified in the C form. He will not be liable to penalty if there was reasonable excuse for not making use of the goods for the purpose specified in the C form. When a show cause notice was issued as to why penalty should not be imposed, it was the duty of the dealer to offer the excuse, if any, in order to exonerate him form the penalty contemplated u/s 10. The dealer did not offer any such excuse.

4. Sri B. V. Katageri, learned counsel for the appellant, submitted that before the appellate authority the excuse for not making use of the goods for the purpose for which they were intends was offered. We asked the learned counsel to produce the copy of the appeal memorandum which he was unable to produce. He has not filed a copy of the appeal memorandum as part of the appeal papers. It does not appear from the order of the Deputy Commissioner that any such excuse was pleaded even before him. All that it appears to have been urged was that it was for the department to prove mens rea in order to attract penalty. It was not argued by Sri Katageri that this court has laid down any such law. It was finally submitted by Sri Katageri that we may remit the matter to the Deputy Commissioner to consider whether there was any reasonable excuse for not making use of the goods for the purpose specified in the C form. We are unable to accede to his request in view of the conduct of the party. There was no explanation offered before us as to why such explanation was not offered before

the Commercial Tax Officer. From the order of the Commissioner also it is seen that no such excuse was pleaded before him. In these circumstances, we see no grounds calling for interference with the order of the Commissioner under appeal.

5. Accordingly, the appeal fails and is dismissed with costs. Advocate''s fee Rs. 100.

6. Appeal dismissed.

