

(2013) 11 MAD CK 0147

In the Madras High Court

Case No : Tax Case (Revision) No. 172 of 2009

Shoetek Agencies

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2014) 68 VST 19

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Judgement

T.S. Sivagnanam, J.—This revision by the assessee is directed against the order dated April 29, 2009 passed by the Sales Tax Appellate Tribunal (Additional Bench), Chennai in S.T.A. No. 189 of 2007 for the assessment year 2004-05. Under the provisions of the Central Sales Tax Act 1956 ("the CST Act"), the assessee was issued a notice by the assessing officer dated October 21, 2005 stating that they have purchased machinery, which was not included in the CST registration certificate and therefore, proposed to levy penalty at 150 per cent of the tax due on the turnover u/s 10(b) of the CST Act. The assessee was granted 15 days time to file its objections. The assessee by its reply dated November 5, 2005 stated that all sales tax affairs were managed by its accounts officer and he acted on the bona fide belief that the said machinery also enjoy concessional rate of tax at four per cent. and C forms can be issued by any registered dealer. Further it was stated that it took up the matter before the consultant, after receiving the notice dated October 21, 2005 and that the accounts officer had no occasion to understand the provisions of law to that extent and the mistake committed was only bona fide and not intentional and along with the explanation, the affidavit of the accounts officer was also filed. The assessing officer, by order dated November 30, 2005, did not accept the explanation of the assessee in toto to deny all the facts pleaded, but, however, reduced the penalty to 100 per cent of the tax due.

2. Aggrieved by the same, the assessee preferred appeal to the Appellate

Assistant Commissioner. The Appellate Assistant Commissioner after considering the entire facts and the bona fides of the assessee, allowed the appeal.

3. Aggrieved by the same, the State preferred appeal to the Sales Tax Appellate Tribunal (the Tribunal) in S.T.A. No. 189 of 2007.

4. The Tribunal after considering the facts, observed that the assessee ought to have been careful enough to issue C form declaration only in respect of such goods, which are authorized in the form B certificate issued to them. By placing reliance on the decision of the Division Bench judgment of this court in the case of Vijaya Electricals Vs. State of Tamil Nadu, , the Tribunal reversed the decision of the first appellate authority and restored the penalty imposed by the assessing officer.

5. Aggrieved by the same, the assessee has preferred this tax case (revision), which has been admitted on the following substantial questions of law:

(1) Whether the Tribunal has committed an error of law in holding that if the goods purchased do not appear in the registration certificate in form B, a false representation would have been made?

(2) Whether when a plea of ignorance of law is taken, the correctness of which is also not doubted, can mens rea be justifiably inferred?

(3) Whether the omission of the Tribunal to follow the binding judgment of the Full Bench of this honourable court reported in The State of Tamilnadu Vs. Tvl. Nu-Tread Tyres, has resulted in the Tribunal deciding the question of law before it erroneously?

6. We have heard Mr. Vasumithran, learned counsel appearing for the assessee and Mr. Manokar Sundaram, learned Additional Government Pleader (Taxes), for the State.

7. The short issue, which falls for our consideration is as follows:

(1) Whether the Tribunal was justified in reversing the order passed by the Appellate Assistant Commissioner in deleting the penalty levied?

(2) Whether the Tribunal has recorded any justifiable reason to reject the explanation given by the assessee as not been bona fide?

8. To decide the question raised in this case, we may straightaway refer to the decision of the Full Bench of this court in the case of The State of Tamilnadu Vs. Tvl. Nu-Tread Tyres, . In the said decision, the honourable Full Bench of this court held that the use of the word "falsely" in section 10(b) of the CST Act implies that the person making the representation knew that the certificate of registration does not cover that item but knowing fully well that it does not, states that it is covered. The honourable Full Bench held that, the expression "falsely represents" clearly shows that the element of mens rea is the necessary component of the offence and in the absence of mens rea, resorting to penal

provision would not be proper unless it is established that the conduct of the dealer was contumacious or that there was deliberate violation of the statutory provision or willful disregard thereof.

9. From the facts of the case, stated above, it is clear that the assessing officer while issuing notice dated October 21, 2005 did not make any specific allegation that there was an element of mens rea on the part of the assessee and that the conduct of the dealer was contumacious and they have deliberately violated the statutory provisions and what is stated is that the said item of machinery was not included in the CST registration certificate. The assessee in response to such notice submitted their explanation on November 5, 2005 setting out the fact that owing to the bona fide circumstances, they thought they would be entitled to the concessional rate of tax of four per cent. To substantiate such claim, the affidavit of the accounts officer of the assessee was also filed. The assessing officer did not outrightly reject the explanation offered by the assessee, but proceeded to partially accept the same and reduced the levy of penalty to 100 per cent though the proposal was 150 per cent. On appeal, before the Appellate Assistant Commissioner, the first appellate authority, after taking note of the entire facts as well as the finding of the Full Bench judgment of this court cited supra, deleted the penalty. Unfortunately, the Tribunal, while considering the appeal filed by the State, did not examine the facts of the case thoroughly rather it gave a peculiar finding that the assessee ought to have been careful enough to issue C form declaration only in respect of such goods, which are authorised in the form B certificate issued to them. Such a finding would not be sufficient to uphold the penalty levied by the assessing officer. As held by the Full Bench of this court, there should have been mens rea on the part of the assessee to deliberately violate the statutory provision or their conduct should be of contumacious nature. In the absence of any such finding rendered by the Tribunal, we have no hesitation to hold that the order of the Tribunal is erroneous and not in consonance with the law laid down by the Full Bench of this court. Further more, we are also satisfied with the explanation given by the assessee that their conduct was neither deliberate nor contumacious. In the result, the order passed by the Tribunal is set aside and the order passed by the first appellate authority stands confirmed and the tax case (revision) is allowed. No costs.