(1973) 01 MAD CK 0012

In the Madras High Court

Case No : Tax Case No. 159 of 1969 (Appeal No. 3 of 1969) .

Sri Lakshmi Machine Works APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 31-01-1973

Acts Referred:
Central Sales Tax Act, 1956 — Section 10, 8

Citation : (1973) 32 STC 407

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Srinivasan and K.C. Rajappa, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—This is an appeal filed against the order of the Board of Revenue cancelling the order passed by the Appellate Assistant

Commissioner and restoring the order of the assessing authority levying a penalty of Rs. 12,579 u/s 10A of the Central Sales Tax Act. The

assessees are manufacturers of textile machinery. They had imported asbestos sheets worth Rs. 96,756.65 from outside the State and had issued

C forms in respect of the said purchase of asbestos sheets. The assessing authority took the view that the registration certificate issued to the

assessees by the registering authority constituted Under that Act did not enable them to issue C form certificates in respect of asbestos sheets and

that the issue of C form certificates by the assessees was Under a misrepresentation that they are entitled to purchase asbestos sheets Under the

registration certificates issued to them. He, therefore, invoked the provisions of Section 10A and levied the penalty holding that the assessees have committed an offence u/s 10(b) of the Act.

2. There was an appeal by the assessees to the Appellate Assistant Commissioner, who set aside the order holding that for an offence u/s 10(b) it

should be clearly established that there was the necessary mens rea on the part of the assessees while giving the C form certificates and that on the

materials on record it cannot be said that the assessees issued the C form certificates Under a false representation, According to the Appellate

Assistant Commissioner, the assessees were Under the bona fide impression that asbestos sheets purchased and used for the erection of plant and

equipment will come Under the term ""sheets"" occurring in item 11 of column 16(b) in the registration certificate issued to the assessees. Having

found that mens rea on the part of the assessees has not been established, the Appellate Assistant Commissioner cancelled the order of penalty on

the ground that an offence u/s 10(b) has not been made out.

3. Thereafter, the Board of Revenue called for the records of the Appellate Assistant Commissioner and initiated suo motu re visional proceedings

after giving a show cause notice to the assessees. The Board of Revenue ultimately revised the order of the Appellate Assistant Commissioner and

restored the order of penalty levied by the assessing authority on the ground that the assessees could not have had any genuine belief that the

asbestos sheets purchased by them would be one of the items referred to in the registration certificate. According to the Board of Revenue, the

word ""sheets"" occurring in item 11 of column 16(b) in the registration certificate will take in only sheets of a specified category like plastic,

moulding and insulating materials and sheets and that the word will not include asbestos sheets in question. The Board of Revenue was not inclined

to accept the assessees'' case that they had genuinely believed that the registration certificate covered asbestos sheets as well. The Board of

Revenue proceeded on its interpretation of the entries in the registration certificate that asbestos sheets cannot be included within the word ""sheets

and held that the assessees are not justified in construing the word ""sheets"" against the plain language used in the registration certificate and that the

word ""sheets"" should be given the ordinary meaning which a prudent person would give to it. The entire reasoning given by the Board of Revenue

in its order shows that the word ""sheets"" occurring in the registration certificate cannot be reasonably construed to include asbestos sheets and that

such an interpretation as suggested by the assessees would be unreasonable. The Board of Revenue also says that the assessees should have

acquainted themselves with the true position Under the Act and the Rules and the assessees'' interpretation of the word ""sheets"" occurring in the

registration certificate will be contrary to the provisions of the Act and the Rules. It may be that the Board is right in saying that the word ""sheets

occurring in the registration certificate cannot be construed so as to take within its fold asbestos sheets and the issue of the C form certificates by

the assessees on the assumption that the word ""sheets"" will include asbestos sheets may not be in accord with the Act or the Rules. But the

question here is whether an offence u/s 10(b) is made out. Section 10(b) specifically uses the words ""falsely represents"", which shows that mere

representation based on a bona fide belief will not bring the assessees within the mischief of that provision. The representation should be false to

the knowledge of the assessees. The Board of Revenue nowhere finds that the assessees made representations knowing them to be false. The

assessees came forward with a case that they were Under the bona fide belief that the certificate of registration included asbestos sheets purchased

by them as the goods purchased are sheets used for the erection of plant and equipment which are incidental to the manufacture of goods. Merely

because that belief turns out to be not proper or correct, does not mean that the issue of C form certificate was on the basis of false representation.

The phrase ""falsely represents"" in Clause (b) indicates that mens rea is an important ingredient for the offence contemplated in Sub-clause (b). In

this case, the Appellate Assistant Commissioner held that there is no mens rea established and that the representation has been made Under a bona

fide belief that the goods were included in the registration certificate. We find that the Board had no other material, apart from the materials

available before the Appellate Assistant Commissioner, to hold that the assessees had made false representations by issuing the C form certificate.

It must be remembered that the Board of Revenue was exercising suo motu power of revision against the order of an appellate authority which on

the facts found that there is no mens rea. The question whether there is mens rea or not is one of fact to be decided on the facts of the case. As already stated, the Board of Revenue merely took the view that the issue, of a C form certificate is not proper in the circumstances of this case. But

that will not lead to the inference that there was necessary material so as to bring the assessees within the mischief of Section 10(b).

4. In State of Rajasthan v. Jaipur Udyog Limited [1972] 30 S.T.C. 565 , a similar question arose. There the only question was whether the

assessee was guilty of falsely representing that the goods purchased were covered by the registration certificate. The Supreme Court, expressed

the view that unless it is shown that the assessee had made such a false representation, Section 10A will not stand attracted. In that case, the

Board of Revenue as well as the High Court had come to the conclusion that the assessee was entitled to the concessional rate which he had

claimed. The State disputed that decision and went before the Supreme Court. The Supreme Court said :

Assuming, without deciding, that the view taken by them (Board of Revenue and the High Court) is incorrect, even then it is impossible to say

Under the circumstances of the case that the respondent (assessee) was guilty of making any false representation.

5. The view taken by their Lordships of the Supreme Court in that case was where there is a possibility of two views in the matter as to whether

the goods purchased are covered by the registration certificate or not, the mere issue of a C form certificate by the assessee without any further

circumstance or material will not lead to the conclusion that the assessee has made false representation. We are, therefore, of the view that in this

case, the Board of Revenue is not right in interfering with the order passed by the Appellate Assistant Commissioner.

6. In the present case, we have also to point out that the penalty levied is 1 1/2 times the enhanced rate of tax. This court has consistently held that

the penalty leviable u/s 10A is 1 1/2 times the concessional rate of tax payable u/s 8(1). Therefore, the penalty leviable in this case is considerably

low. But, in view of our setting aside the order of penalty, we are not going into the question of the quantum of penalty leviable. The tax case is

therefore allowed. There will be no order as to costs.