
(1976) 03 AP CK 0002

In the Andhra Pradesh High Court

Case No : Tax Revision Petition No's. 55 and 56 of 1975

STATE OF ANDHRA PRADESH

APPELLANT

Vs

HINDUSTAN SHIPYARD LTD.

RESPONDENT

Date of Decision : 30-03-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 10(d), 10A, 10A(1), 8(3)(b)

Citation : (1977) 6 CTR 31(2)

Hon'ble Judges : Obul Reddy, C.J

Bench : Division Bench

Judgement

Obul Reddy, C.J. - These two revisions preferred by the petitioners, the State of Andhra Pradesh, arise out of the order of the Sales Tax Appellate Tribunal allowing the two appeals, T. A. Nos. 94 and 95 of 1975, preferred by the respondent, the Hindustan Shipyard Ltd. Visakhapatnam, against the orders of the Commercial Tax Officer, Visakhapatnam, confirming the order of the Assistant Commercial Tax Officer, Visakhapatnam, levying a total penalty of Rs. 62,27,073.27 for the two assessment years 1972-73 and 1973-74.

2. The facts leading to the filing of these two revisions are these : The respondent, the Hindustan Shipyard Ltd. is a registered dealer under the Andhra Pradesh General Sales Tax Act and the Central Sales Tax Act. It obtained C forms and issued them to the sellers from whom it purchases the goods required for ship-building activity. The turnover relating to the purchase of goods is exempted from tax under the Central Act between the period 1st July, 1957, to 31st March, 1967. The Commercial Tax Officer issued notice proposing to assess the respondent on the amounts received towards ship construction work. Then the respondent filed a writ petition challenging the said notice contending that the terms of the contract entered into by it with the ship-owners would that the transactions are not sales of ships but are only works contracts, which are not liable to be taxed. That contention was upheld by this having regard to the

definition of "works contract" in S. 2(1)(t) of the Pradesh General Sales Tax Act.

3. The case of the petitioner (State of Andhra) is that, even after the said decision, the respondent, taking advantage of its registration under the Central Sales Tax Act, is issuing C forms for its inter-State purchases. C forms cannot be issued for purposes not specified in S. 8(3)(b) of the Central Sales Tax or in the C form itself. The respondent issued C forms representing that the goods purchased for use by it in the manufacture or processing of goods for sale with the knowledge that the goods manufactured by it were not sold, that there was no element of sale in the ship-building, activity, and that the respondent was only executing works contracts. It is, therefore, the case of the petitioner that, when the respondent had failed, without reasonable excuse, to make use of the goods for any of the purposes referred to in S. 8(3) (b) or in the C form itself, the penal provision in S. 10(d) is attracted.

4. Therefore, the only question that arises in these two revisions is whether the goods purchased by the respondent were used without reasonable excuse so as to render it liable for penalty under Ss. 10(d) and 10A. The Hindustan Shipyard is a Government of India concern in the public sector under the control and supervision of the Ministry of Transport and Shipping. The Government of India, to avoid unnecessary litigation, required the petitioner to exempt the Hindustan Shipyard from sales tax both in respect of ship-building and ship repairing activities permanently under S. 9 of the Andhra Pradesh General Sales Tax Act. The State Government granted exemption only for ten years from 1957 to 1967. The request of the respondent for permanent exemption after 1967 was rejected. That led to the filing of a writ petition in this court challenging the notice of assessment issued by the Commercial Tax Officer, and this court, as already referred to, allowed that writ petition : see *Hindustan Shipyard Ltd. vs. Commercial Tax Officer*.

5. Mr. D. V. Sastry, the learned Government Pleader for the petitioner, contended that if there is violation of the provision of S. 8(3)(b) of the Central Sales Tax Act, then S. 10, which provides for levy of penalty, is automatically attracted. According to him, the respondent has no excuse at all to issue C forms and obtain concession after the decision of this court and, therefore, It is a case where the respondent acted without any sort of excuse in making use of the C forms, S. 8 of the Central Sales Tax Act provides for rates of tax on sales in the course of inter-State trade or commerce, S. 8(1) (b) says that every dealer, who, in the course of inter-State trade or commerce, sells to a registered dealer other than the Government goods of the description referred to in sub-S. (3) shall be liable to pay tax under the Act which shall be four per cent of his turnover Clause (b) of sub-S. (3) of S. 8 reads :

"The Goods referred to in clause (b) of sub-S. (1) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the

manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power."

6. S. 10(d), which is relevant in this case, reads :

"If any person -

after purchasing any goods for any of the purposes specified in clause (b) or clause (c) or clause (d) of sub-S. (3) of s. 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; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continue."

7. S. 10A(1) provides for imposition of penalty, in lieu of prosecution, of a sum not exceeding one-and-a-half the tax which would have been levied under sub-S. (2) of s. 8 in respect of the sale to any person of the goods if the sale had been a sale falling that sub-section.

8. It is not the case of the respondent that the goods purchased by it were used in the manufactured or processing of goods for sale. There is no gainsaying the fact that there is contravention of clause (b) of sub-S. (3) of S. 8 but the question is whether reasonable cause for such use is shown by the respondent.

9. The learned Government Pleader relied upon the decision in Bapu and Company s. State of Madras to show that the penalty provision is attracted for contravention of the provision of S. 8(3)(b). The learned Judges in that case held that it was only where the use for another purpose was without reasonable excuse that penalty would be justified and that, where reasonable excuse was shown, no penalty could be levied.

10. The Mysore High court in Shivadanda Electric Co. vs. State of Mysore and S. S. Umadi vs. Mysore on the facts presented in these two cases, found that the assessee had contravened the declaration given by him and hence committed an offence under S. 10(d) for which he was liable to pay penalty under S. 10A. The question whether there was reasonable excuse has to be determined on the facts of each case. The Mysore cases cannot, therefore, render any assistance in deciding the question of reasonable excuse in this case.

11. In this case, the respondent relied upon the certificate of registration which authorised it to make use of the articles purchased in the manufacture of goods. According to the respondent, it was under the bona fide belief that the certificate of registration empowered it to use the goods for manufacturing purposes; it had used them in the execution of works contracts and not with any deliberate intention to contravene the requirements of S. 8(3)(b). It would appear from the facts that the respondent is technically guilty of contravention, but not in conscious disregard of the requirements of s. 8(3)(b) read with s. 10(d) of the

Central Sales Tax Act. The sales tax authorities were equally aware of the decision of this court reported in Hindustan Shipyard Limited vs. Commercial Tax Officer and yet no exception was taken by them to the declaration made by the respondent in the C forms. The declaration made in the C forms is in accordance with the registration certificate issued under the Central Sales Tax Act. It is also stated by Mr. W. V. V. Sundara Rao appearing for the respondent that after it has been discovered that C forms cannot be made use of for the goods purchased in the execution of works contracts, the respondent has not issued any C forms and that it would establish its bona fides. It does not appear that the respondent had any motive to escape liability in using the C forms for the goods purchased from outside the State in the execution of works contracts, i.e. ship-building contracts. The respondent, being a public sector undertaking under the Ministry of Transport and Shipping, cannot be said to have deliberately or wilfully made use of the goods purchased by it for a purpose other than the purposes specified in S. 8(3)(b).

12. We are, therefore, of the opinion that it is a case of technical breach of the provisions of S. 8(3)(b) in the bona fide belief that it could issue C forms by virtue of the certificate of registration. Therefore, on the facts and in the circumstances of the case, we confirm the order of the Sales Tax Appellate Tribunal and dismiss the revisions without costs. Advocates fee Rs. 100 in each.