(1994) 11 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 5 of 1987 (Revision No. 4 of 1987)

State of Tamil Nadu APPELLANT

Vs

Amrutanjan Ltd. RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 10A(1)

Citation : (1994) 11 MAD CK 0036

Hon'ble Judges : P. Shanmugam, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The State of Tamil Nadu is the petitioner herein. M/s. Amurutanjan Limited is the respondent. The respondent is a

registered dealer under the Central Sales Tax Act, 1956 (hereinafter referred to as ""the CST Act""). During the year 1982-83 they have issued the

following ""C"" forms with declarations that the articles purchased are intended for resale or for use in the manufacture of other goods for sale. But

the goods purchased were not resold or used in the manufacture of other goods for resale. They have been actually used for other purposes.

C form No. Nature of goods Value

21-4-82 J/9 69057 standard head acid 19,481

transaction battery

6-8-82 J/9 702599 directional dot 67,950

matrix printed visual display

unit

6-8-82 J/9 702600 HCL 8C/2 floppy- 1,16,960 driva dala

20-12-82 J/9 702784 Video screen 85,000

2,89,391

According to the Commercial Tax Officer, the dealers have purchased the goods not mentioned in the registration certificate by issuing the C form.

This is an offence punishable u/s 10(b) of the CST Act. It was therefore proposed to levy a penalty of Rs. 52,000 at 1 1/2 times of the tax due on

the turnover involved u/s 10A(1) of the CST Act. By way of explanation, the respondent, in their letter dated February 10, 1984, stated that the C

forms were issued in support of the purchase made for the purpose of their research and development and the sole objective of which is to make

the goods commercially expedient. They have also stated that they were under bona fide impression that the C forms can be issued to these goods

which are incidental and ancillary to the business. Hence they requested to drop the proposals for the levy of penalty u/s 10A(1) of the CST Act.

The assessing authorities found that the respondent is guilty of an offence u/s 10(b) of the CST Act because the goods purchased by them against

C form are not covered by the certificate. Accordingly, penalty was levied. On appeal, the Appellate Assistant Commissioner, while confirming the

penalty, reduced the quantum from Rs. 52,000 to Rs. 34,667. Accordingly, the order passed by the Commercial Tax Officer was modified to that

extent. On further appeal by the respondent, the Tribunal deleted the, penalty levied by the authorities below. Aggrieved, the State is in revision

before this Court.

2. Learned Additional Government Pleader (Taxes), submitted as under :

The Tribunal ought not to have deleted the penalty of Rs. 34,667 levied u/s 10A of the CST Act. The Tribunal failed to note that the goods

involved in the purchase on the issue of C forms were computer parts which were not included in the registration certificate. The Tribunal''s

observation that mens rea should be established by the department to levy the penalty u/s 10A of the Act is not correct in law. The assessee has

not resold or used the goods in the manufacture of other goods for resale, but the goods purchased were used for other purposes only which

warrants a penalty u/s 10A of the CST Act. Having held that section 10A of the CST Act has been rightly invoked the Tribunal ought to have

affirmed the penalty levied by the lower authorities. According to learned Additional Government Pleader (Taxes), if once it is known that the

respondent herein has issued C forms with regard to the goods which are not enumerated in the registration certificate, that itself would amount to

submitting a false declaration as contemplated u/s 10(b) of the Act. Again it was submitted that false representation was made with the knowledge

of the assessee and therefore penalty is leviable u/s 10(b) of the Act. The Revenue has established mens rea in submitting false statements by the

respondent herein. For all these reasons, it was submitted that the Appellate Tribunal was not correct in deleting the penalty levied u/s 10(b) of the

Act.

3. On the other hand, learned counsel for the respondent submitted as under :

Penalty u/s 10(b) of the Act cannot be levied without giving a categorical finding that the respondent herein has made a false statement knowing

fully well that the articles mentioned in C forms are not the articles enumerated in the registration certificate. Penalty proceedings are quasi-criminal

in nature and it is for the department to establish mens rea or guilty mind in submitting the C forms by the respondent. It was further submitted that

the computer will be used in processing, testing the quality of goods manufactured and dealt in by the respondent. The words ""goods for use in

manufacture"" are so wide as to include not only the goods like raw materials used in manufacture, but also capital goods that are used in

manufacture or processing of goods, in which the assessee is a dealer. The respondent has not made any false representation and they had with

bona fide belief issued the C forms. Therefore, the penalty is not leviable. Neither the Commercial Tax Officer nor the Appellate Assistant

Commissioner gave a categorical finding that the respondent has made false representation. In the absence of such a finding, it is not possible to

levy the penalty. The Revenue has not established mens rea to make out a case u/s 10(b), (c) and (d) of the Act. There is no conscious disregard

of law on the part of the respondent in submitting the C forms. It was therefore pleaded that the Appellate Tribunal was correct in deleting the penalty levied by the authorities below.

4. We have heard the rival submissions.

5. The point for consideration is whether the capital goods in which the assessee is not a dealer, but which it requires to manufacture or pack the

goods for sale/resale is the class of goods which the purchaser is entitled to under registration certificate. The computer components purchased by

the dealer are not covered by the registration certificate of the dealer. According to the assessee computer when installed in Research and

Development department, of the assessee will be used in processing of goods for sale or resale. The computer will be used in processing, testing

the quality of goods manufactured and dealt with by the assessee. According to the assessee the words ""the goods for ..... use in manufacture"" are

so wide as to include not only the goods like raw materials used in manufacture but also capital goods that are used in manufacture or processing

of goods. For the levy of penalty u/s 10(b) of the Act, there must be conscious disregard of the provisions of law by the assessee while issuing C

forms by including the goods which are not stated in the registration certificate. According to the learned counsel for the assessee no definite finding

was given either by the assessing officer or the Appellate Assistant Commissioner with regard to the conscious disregard of law in making the false

representation. In the absence of such a specific finding it was submitted that penalty is not exigible.

6. In Dharmapuri District Co-operative Sugar Mills Limited Vs. State of Tamil Nadu, it was pointed out that ""for imposition of penalty, it is

necessary to find that the act or omission of the assessee was intentional and whether mens rea was present"".

7. While considering what is bona fide representation, this Court in The Coimbatore District Central Co-Operative Supply and Marketing Society

Ltd. Vs. The State of Tamil Nadu, held that ""bona fide is not an expression of art but is a positive circumstance which has to be established by

relevant and acceptable materials. The petitioner had not made a truthful representation which was an equation of a false representation and, in the

circumstances of the case, the plea of bona fides set out by the petitioner for a lenient view was not a justifiable contention. A lenient view having

been already taken by the appellate authorities, there was no reason for any interference"".

8. In State of Tamil Nadu v. Lakshmi and Co. [1992] 87 STC 345 (Mad.) this Court was of the view that ""there is nothing in section 10A of the

Central Sales Tax Act, 1956, which requires that mens rea must be established before penalty can be levied under the provision, where on facts, it

is found that the dealer had in fact made a false representation. The making of a false representation is the sine qua non for invoking the provisions

of section 10(b) of the Act"". It was further held that ""since all the authorities including the Tribunal did record a finding that the respondents had

made a false representation, that would clearly attract the provisions of section 10(b) of the Act, and the existence of mens rea would be inherent

in that finding. The levy of penalty was justified"".

9. In Bisra Limestone Company Ltd. v. Sales Tax Officer [1971] 27 STC 531 (Ori), it was laid down, ""the ingredient of the offence u/s 10(b) is

false representation. Therefore even though there may be an ultimate finding that the goods are not covered by the certificate of registration no

offence u/s 10(b) would be made out if there is no false representation. To bring home the offence u/s 10(b), guilty animus or mens rea is essential.

In the absence of mens rea, no penalty can be imposed u/s 10A"".

10. Before the assessing authority, the assessee herein submitted that they were under the bona fide impression that C forms can be issued to those

goods which are incidental and ancillary to the business. The assessing authority held that ""they are found guilty of offence u/s 10(b) of the CST

Act because the goods purchased by them against C forms are not covered by the certificates"". The assessee is not using the computer in

manufacturing and processing their goods. The assessee is not selling or reselling the computer in their business. In fact, the computer has no nexus

to their manufacturing and processing activities. According to the assessee the computer is used to test the quality of their products after

manufacture. Therefore computer is used not for manufacturing or processing their goods. The authorities below pointed out that ""C"" forms were

used to purchase the spare parts in computer, having known that they are not enumerated in the registration certificate. There cannot be any bona

fide on the part of the assessee in their saying that spare parts to the computer are incidental and ancillary to their manufacturing and processing activities. Using ""C"" forms to purchase goods which are not enumerated in the registration certificate is nothing but conscious utter disregard of law

and it would amount to making false representation. Therefore, penalty is exigible u/s 10(b) of the Act. The mens rea or the guilty mind of the

assessee is established in issuing C forms for purchase of goods which are not stated in the registration certificate and hence the authorities below

correctly invoked the provisions of section 10A of the Act. The Tribunal without assigning proper reasons cancelled the penalty. The authorities

below after considering that the assessee has issued ""C"" forms to purchase the goods which are not stated in the registration certificate held that

penalty is exigible u/s 10(b) of the Act. In the abovesaid circumstances we consider that there is no justification on the part of the Tribunal in

cancellation of penalty levied u/s 10(b) of the Act. In that view of the matter the order of the Tribunal in cancelling the penalty is set aside and the

order passed by the Appellate Assistant Commissioner in imposing penalty u/s 10(b) of the Act stands restored. Accordingly, the revision filed by

the department stands allowed. No costs.

11. Petition allowed.