
(1997) 08 MAD CK 0124

In the Madras High Court

Case No : Tax Case (Revision) No"s. 601 and 608 of 1985

State of Tamil Nadu

APPELLANT

Vs

C.A. Akthar and Company

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 13, 6, 6A

Citation : (1997) 08 MAD CK 0124

Hon'ble Judges : N.V. Balasubramanian, J;M.S. Janarthanam, J

Bench : Division Bench

Judgement

Janarthanam, J.—These actions had been resorted to, to revise the common order of the Tamil Nadu Sales Tax Appellate Tribunal (Second Additional Bench) Madras-104 (for short, "the Tribunal") dated January 8, 1985 and passed in T.A. Nos. 896 and 897 of 1983 relatable to the assessment years 1977-78 and 1980-81.

2. Tvl. C.A. Akthar and Company, having their place of business at No. 64, Sydenhams Road, Madras-3, are the registered dealers under the Central Sales Tax Act, 1956 (Act No. 74 of 1956 - for short "the CST Act"). A certificate of registration was granted in their favour by the Commercial Tax Officer, Purasawalkam Assessment Circle, for the resale of hides and skins and for the use in manufacture of tanning materials, as requested for by them, in their original application for registration. So, they are entitled to purchase hides and skins for resale and the tanning material for use in manufacture against the issue of "C" forms. But, later on, they purchased "machinery goods" for a sum of Rs. 12,194.40 in the year 1977-78, besides purchasing such goods for a sum of Rs. 36,436.37 in the year 1980-81 from outside the State by use of "C" forms, which were not included in the certificate of registration.

3. It is they, it is said, committed an offence u/s 10(b) of the CST Act, punishable u/s 10-A thereof. It appears that in the meantime Purasawalkam Assessment Circle had been bifurcated as "Purasawalkam" and "Vepery" assessment circles.

Consequent on such bifurcation, the assessee-dealers fell within the jurisdiction of Vepery assessment circle.

4. The Deputy Commercial Tax Officer, Vepery Assessment Circle, therefore proposed to levy a penalty of Rs. 1,829 and Rs. 5,465, being one and a half times the tax due under the relevant provisions of the CST Act respectively for the assessment years 1977-78 and 1980-81.

5. To the two separate notices issued for those two assessment years inviting objections, if any, to the proposals as above, they replied, by their letters of even date, February 7, 1983, inter alia, stating that they purchased the goods under consideration for use in the manufacture/processing of goods for the sale in their tannery; that by their letter dated January 27, 1981, they addressed to the Commercial Tax Officer, Purasawalkam Assessment Circle, for certain amendments in the certificate of registration, which had been still pending; that the authority, which factually granted the certificate of registration alone could resort to take action u/s 10-A of the CST Act and that any other authority lacked jurisdiction to initiate such action.

6. The objections, as above, did not find favour with Assessment Officer - Commercial Tax Officer, Vepery Assessment Circle and consequently, he confirmed the proposals for levy of penalty, as stated above.

7. The aggrieved assessee-dealers filed two appeals relating to assessment years 1977-78 and 1980-81 before the Appellate Assistant Commissioner (CT) III, Madras-1, which were taken on his file as AP CST Nos. 27 and 28 of 1983. The said Appellate Assistant Commissioner dismissed those appeals, by his order dated June 10, 1983.

8. The operative portion of the said order reads as under :

"The appellants have purchased machinery goods from outside the State by issue of C forms which were not included in the Registration Certificate issued to them under the CST Act, 1956. Thus it is evident that they committed an offence u/s 10(b) of the CST Act 1956 punishable u/s 10-A of the CST Act, 1956. The Madras High Court in its T.C. Nos. 568 and 573 of 1978 reported in [1980] 45 STC 21 (Coimbatore District Central Co-operative Supply and Marketing Society Ltd. v. State of Tamil Nadu) has held that the levy of penalty for purchase of goods not mentioned in registration certificate is justified. Following the above decision respectfully, I see no reason to interfere in the levy of penalty and accordingly it is sustained."

9. The matter did not stop there, but it was agitated further. The assessee filed appeals before the Tribunal, which were taken on its file as T.A. Nos. 896 and 897 of 1983.

10. The Tribunal, after hearing the arguments on both sides and a perusal of the connected records, allowed the appeals by passing a common order dated January 8, 1985. The rationale or reasoning in the said common order, in pith

and substance, gets reflected as below :

(1) The Deputy Commercial Tax Officer, Vepery Assessment Circle, not being the officer or authority, who actually and factually issued the certificate of registration to the assessee-dealers, is not competent to levy penalty u/s 10-A of the CST Act in lieu of prosecution.

(2) The mens rea being an essential element for levying penalty u/s 10(b) of the CST Act was not established by the department.

(3) If the authorities below had correctly and properly understood the perception and connotation of the rule of contemporanea expositio or contemporaneous exposition - a well-recognised rule of interpretation of statute, they would not have fallen into error in levying penalty as had been done by them.

11. As against the common order of the Tribunal, as above, the Revenue resorted to the present action - Tax Case (Revision) Nos. 601 and 608 of 1985.

12. The questions of the law that crop up for consideration bristle to these :

(1) Whether the Deputy Commercial Tax Officer, Vepery Assessment Circle, not being the officer or a authority, who actually or factually issued the certificate of registration to the assessee-dealers, is not the authority to levy penalty u/s 10-A of the CST Act ?

(2) Whether, on the facts and in the circumstances of the case, the assessee-dealers, being a registered dealers could be construed to have made "false representation" while purchasing any class of goods that the goods of such class were covered by the certificate of registration ?

(3) Whether the non-application of the rule of contemporanea expositio or contemporaneous exposition made the authorities below, as observed by the Tribunal, to fall into error in levying penalty u/s 10-A of the CST Act, in lieu of prosecution ?

13. Point No. 1 : The Tribunal, while recording a finding that the Deputy Commercial Tax Officer, Vepery Assessment Circle, not being the officer or authority, who actually issued the certificate of registration to the assessee-dealers is not the competent authority to levy penalty u/s 10-A of the CST Act, placed implicit reliance upon the decision of the Supreme Court in the case of State of U.P. v. Dyer Meakin Breweries Ltd. [1973] 31 STC 588.

(a) In that case, the Sales Tax Officer, Ghaziabad, by whom the respondent was registered as a dealer under the CST Act, 1956 and was assessed to sales tax for the years 1958-59 and 1959-60, issued a notice to the respondent on January 8, 1960, calling upon it to show cause why penalty should not be imposed u/s 10-A of the Act for misuse during those years of some of the C forms issued to it. Its explanation that the defaults were owing to ignorance of the law was not accepted. On October 31, 1960, the officer issued a notice u/s 10(b) and thereupon the respondent applied for compounding the offence. On January 23,

1961, the Sales Tax Officer again gave an opportunity to the respondent and thereafter imposed penalties in respect of the misuse of the C forms. In the meantime the registration of the respondent had been transferred on March 28, 1960, to the Sales Tax Officer, Lucknow. The High Court on a reference, held that the Sales Tax Officer, Ghaziabad, could not impose the penalties as by the time he made his order the jurisdiction over the respondent had been transferred to the Sales Tax Officer, Lucknow.

(b) On appeal, the Supreme Court reversed the decision of the High Court and held that since the Sales Tax Officer, Ghaziabad, was the authority who granted registration to the respondent, and the certificate of registration granted by him was in force during 1958-59 and 1959-60, and he was the authority, who had assessed it to sales tax for those years, he had competence u/s 10-A to levy the penalties, even though after March 28, 1960, he ceased to be the authority to grant registration. The levy of penalty was one form of levying tax and if that Sales Tax Officer was competent to levy sales tax on the respondent in respect of those assessment years he was equally competent to levy penalty on the respondent in respect of the offences committed during those years. It was further held that the proceedings initiated on January 8, 1960, did not stand terminated as a result of the subsequent notices; that the notices issued by him were not statutory notices and u/s 10-A, the Sales Tax Officer at Ghaziabad was only required to give a reasonable opportunity to the assessee to show cause why penalty should not be imposed.

(c) The Supreme Court, however, declined to go into the question whether the registration of the respondent as a dealer before the Sales Tax Officer at Ghaziabad was invalid as its head office was at Lucknow, since it involved questions of fact and there was no material on record. The Supreme Court, remanded the case to the High Court for answering other questions.

14. The factual matrix relatable to the case that fell for consideration before the Supreme Court, as above, is altogether different from the factual position getting reflected in the instant case, wherein Purasawalkam Assessment Circle, within whose jurisdiction the assessee-dealers fell, for the purpose of assessment originally, was bifurcated as Purasawalkam and Vepery Assessment Circles. The assessment actually took place for the relevant years under consideration before bifurcation. The only thing that happened subsequent to the bifurcation was imposition of penalty u/s 10-A of the CST Act. Even though the bifurcation took place, admittedly the registered office of the assessee-dealers fell within the jurisdiction of Vepery assessment circle. These factors are distinguishing features, different from the factual position in *State of U. P. Vs. Dyer Meakin Breweries Ltd.*, .

15. Worthy it is, at this juncture, to read the relevant portion of section 10-A of the CST Act, which will satisfy the present need and the relevant portion occurring in sub-section (1) of section 10-A reads :

"10-A. Imposition of penalty in lieu of prosecution. - (1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him or, as the case may be, is competent to grant to him, a certificate of registration under this Act. -

16. From a careful reading of the relevant portion of sub-section (1) of section 10(A), as extracted above, we are able to discern that the power of imposition of penalty for violation of either of clauses (b), (c) or (d) of section 10 inheres in favour of either one of the two authorities, viz., the authority, who granted the assessee-dealers the certificate of registration or the authority, who is competent to grant to him a certificate of registration under this Act.

The phraseology, "who granted to him, or, as the case may be, is competent to grant to him a certificate of registration under this Act" cannot mean anyone other than the one, as we have indicated above. For the sake of emphasis, we may reiterate that the imposition of penalty, is permissible u/s 10-A of the CST Act, either by the authority, who granted the certificate of registration or the authority, who is competent to grant him a certificate of registration. The authority competent to grant him a certificate of registration under the CST Act may be an authority to assess/reassess the assessee, who fell within his jurisdiction.

17. This aspect of the matter may be explained by referring to the relevant statutory provisions and the Rules framed under the CST Act.

(a) Rule 2(cc) of the Central Sales Tax (Registration and Turnover) Rules 1957 defines "prescribed authority" and it reads as under :

"2. In these Rules, unless the context otherwise requires -

(cc) "prescribed authority" means the authority empowered by the Central Government under sub-section (2) of section 9, or the authority prescribed by a State Government under clause (e) of sub-section (4) of section 13, as the case may be."

(b) Sub-section (2) of section 9 of the CST Act reads as under :

"9. Levy and collection of tax and penalties. - (1)...

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the

transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by Rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

(c) Clause (e) of sub-section (4) of section 13 reads as under :

"13. Power to make rules. - (1) The Central Government may, by notification in the Official Gazette, make Rules providing for -

.....

(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make Rules for all or any of the following purposes, namely :-

.....

(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of certificate prescribed under clause (a) of the first proviso to sub-section (2) of section 6 or of declaration prescribed under sub-section (1) of section 6-A or sub-section (4) of section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished."

(d) Sub-section (1) of section 7 provides for registration, on an application being by every dealer, to such authority in the appropriate State, as the Central Government may, by general or special order, specify, and every such application shall contain such particulars, may be prescribed.

18. Reverting to the factual matrix of the instant case, the Deputy Commercial Tax Officer, Purasawalkam assessment circle, within whose jurisdiction the assessee-dealers fell for the purpose of assessment, assessed the dealers for the relevant assessment years in question and before the commencement of the proceedings for imposition of penalty, Purasawalkam assessment circle, came to be bifurcated, as Purasawalkam and Vepery assessment circles. Admittedly, the assessee-dealers fell within the jurisdiction of Vepery assessment circle subsequent to bifurcation. The resultant position is that the Deputy Commercial Tax Officer, Purasawalkam assessment circle was the authority, who originally granted the certificate of registration to the assessee-dealers and also assessed the dealers for the relevant years in question. The Deputy Commercial tax

Officer, Vepery assessment circle, actually imposed penalty upon the assessee-dealers u/s 10-A, in lieu of prosecution for certain refractions or violations of the relevant provisions of the CST Act. The Deputy Commercial Tax Officer, Vepery assessment circle, on the face of the provisions, we have extracted above, cannot at all be stated to be an authority not competent to impose penalty under the sanguine provisions adumbrated u/s 10-A of the CST Act.

19. This sort of finer aspects of distinction, the Tribunal was unable to comprehend and that perhaps was the reason for it to have fallen in error in saying that Deputy Commercial Tax Officer. Vepery assessment circle, was not the competent authority to impose penalty u/s 10-A of the CST Act, in lieu of prosecution. We therefore hold that the Deputy Commercial Tax Officer, Vepery assessment circle is the competent authority to levy penalty u/s 10-A of the CST Act and this point is answered accordingly.

20. Point No. 2 : We shall now enter into arena of discussion relatable to the question as to whether it is incumbent on the part of the department to establish the means rea element, before ever penalty is levied u/s 10(b) of the CST Act. The Tribunal, as already noticed, recorded a finding that the establishment of such an element is necessary and the department having failed to establish such an element, it goes without saying that imposition of penalty upon the assessee-dealers is not sustainable. While recording such a finding, the Tribunal in fact, referred to certain decisions of superior courts of jurisdiction. The question is whether such a finding can be allowed to stand as it is. We are of opinion that such a finding cannot at all be allowed to stand, inasmuch as the legal position, pertaining as on date, is quite contrary to what the Tribunal said as the legal position relatable to the establishment of means rea by the department in section 10(b) of the CST Act.

21. (a) The Division Bench of this Court in *Vijaya Electricals v. State of Tamil Nadu* [1991] 82 STC 268 came to consider a question as the one now involved in the instant case. The said Division Bench noticed all existing precedents, inclusive of the precedents noticed by the Tribunal and entered into a scintillating discussion relatable to the precedents referred to therein. This apart, the Bench also took into consideration the application of the doctrine of mens rea in case of tax delinquency, as had been nicely summed up in "*Corpus Juris Secundum*".

(b) the Bench did not stop there and went further in considering the question of "*bona fides*", as opposed to "*mala fides*", by referring to the relevant provisions in Indian Penal Code as well as the Madras General Clauses Act relatable to the meaning and connotation of "*good faith*", an essential ingredient of "*bona fide*".

(c) Ultimately, the Bench said that there is nothing in section 10-A of the CST Act which requires that means rea must be proved before penalty can be levied under that provision if on facts, it is found that the assessee has made a "*false representation*". Once a finding is recorded by the competent authority that the assessee has made a "*false representation*", that would clearly attract the

provisions of section 10(b) of the CST Act and no further finding is required that the assessee had also be mens rea.

(d) Under the criminal law, mens rea is considered as "guilty intention", but when it is relatable to tax delinquency, which is a civil obligation, it implies a "blameworthy conduct". The recording of a finding that the assessee had made a false representation by itself shows the establishment of the blameworthy conduct, which would be the establishment of mens rea to the limited extent applicable to civil obligations.

(e) The Bench also expressed, in no uncertain terms, as to the methodology to be adopted in establishing the "blameworthy conduct" on the part of the assessee-dealer. Unequivocally, the Bench said that such an act of "blameworthy conduct" may be proved either expressly by adduction of direct evidence or impliedly, by making legitimate inference from established facts on record.

22. Reverting to the instant case, the facts established, as found by the authorities below, consist of the following :

(1) The assessee-dealers are having certificate of registration for purchase of hides and skins for resale and for purchase of tanning materials for use in manufacture against the issue of C forms;

(2) The purchase of "machinery goods" is not included in the certificate of registration;

(3) The assessee-dealers purchased "machinery goods" against the issue of C forms during the relevant assessment years;

(4) The assessee-dealers had been dealing in hides and skins and tanning materials for quite long.

(5) They are the persons, who applied for registration praying for inclusion of hides and skins and tanning materials either for the purpose of sale or for use in manufacture and such being the case, they must be presumed to have specified knowledge of the goods they can purchase by the issue of C forms.

23. The authorities below noticed these aspects and simply stated that the assessee-dealers are liable to be dealt with u/s 10-A by way of imposition of penalty in a specified sum, in lieu of prosecution for refraction or violation they have committed. To put it differently, of course, the authorities did not say specifically that from the established facts, as above, a legitimate inference could be drawn as relatable to the "blameworthy conduct" on the part of the assessee-dealers. The authorities not stating so, on the facts and in the circumstances of the case, is of no consequence, when especially a finding relatable to the established facts as above are there, when they recorded a finding that the assessee-dealers are liable to be dealt with u/s 10-A of the CST Act, in lieu of prosecution.

24. For the reasons as above, the finding of the Tribunal that the element of

means rea for levying penalty u/s 10(b) of the CST Act has to be established by the dependent, before ever imposition of penalty was resorted to deserves to be set aside and the same is accordingly set aside and this point is answered accordingly.

25. Point No. 3 : No doubt true it is, the rule of *contemporanea expositio* or contemporaneous exposition is a well-recognised rule of interpretation of statute by the taxing authorities in their day-to-day activity of implementation of the relevant provisions of the taxig statutes. The Tribunal, of course, mentioned by way of reference, the instructions alleged to have been issued by the Board of Revenue in L. Dis. No. A2/2312/17 dated February 26, 1980. But the instructions so issued by the Board of Revenue had not been extracted in its order. Before us also, the instructions so issued, as stated above, by the Board of Revenue, have not been placed for our perusal and consideration. By the showing of the Tribunal, in its own order, we are able to infer that the Board of Revenue issued instructions to consider the purchases not included in the certificate of registration, by issue of C forms, at the time of purchases, either for resale of user, manufacture is a technical defect and therefore, the department has to take a lenient view of the matter, except, in the circumstances specified in the Government order. We are also unable to decipher from its order what are the matters, in respect of which a lenient view could be taken and what are the matters, in respect of which, such a view is not permissible.

26. From the limited extent, we are able to discern from the order of the Tribunal that it is pretty certain that in the matter of imposition of any penalty u/s 10-A of the CST Act, a lenient view has to be taken under certain circumstances. But, that does not mean, penalty imposable u/s 10-A of the CST Act is deleted or abrogated by such instructions. If there be any such instructions, we are rather afraid that such instructions cannot act against the very written provisions of the statute and if we allow such instructions to prevail over the written provisions of the statute, it goes without saying that the statutory provisions shall remain in the statute book as a dead-letter and nothing further. In this view of the matter, we are unable to affix our seal of approval on the finding recorded by the Tribunal, as referred to above, on the question of non-application of the rule of *contemporanea expositio* or contemporaneous exposition by the authorities below, relatable to the decision of the question of imposition of penalty u/s 10-A of the CST Act on the assessee-dealers. The concomitant consequence to flow therefrom is that this finding deserves to be set aside and the same is accordingly set aside. This point is accordingly answered.

27. For the reasons as above, the common order of the Tribunal setting aside the imposition of penalty upon the assessee-dealers by the Appellate Assistant Commissioner (CT) III, Madras-I deserves to be set aside and the common order of the said Appellate Assistant Commissioner deserves to be restored.

28. In fine, both these tax cases (revision) are allowed. The common order of the Tribunal setting aside the common order of the Appellate Assistant Commissioner

(CT) III, Madras-1 imposing penalty upon the assessee-dealers u/s 10-A of the CST Act, in lieu of prosecution is set aside and the common order of the said Appellate Assistant Commissioner is ordered to be restored. There shall, however, be no order, in the circumstances, as to costs.

29. Petitions allowed.