

(1990) 06 MAD CK 0051
In the Madras High Court
Case No : Tax Case No. 1153 of 1980

State of Tamil Nadu

APPELLANT

Vs

K.M. Dharumaraja

RESPONDENT

Date of Decision : 21-06-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10(A), 8(2), 8(4), 9(2)

Citation : (1990) 06 MAD CK 0051

Hon'ble Judges : Venkataswami, J;Raju, J

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader Taxes, for the Appellant; M.V.B. Bhaskaran, for the Respondent

Judgement

Venkataswami, J.—An interesting question on the scope of section 10A read with section 10(b) of the Central Sales Tax Act, 1956, hereinafter called "the Act", arises in this tax case.

2. Brief facts are the following :

On the basis of contravention of section 10(b) of the Act, proceedings were taken against the respondent-assessee u/s 10A of the Act. The assessing officer levied a penalty for contravention of section 10(b) of the Act, which was, on appeal, confirmed by the first appellate authority. Before the Tribunal, on behalf of the respondent-assessee, a contention was raised stating that the penalty levied by the Joint Commercial Tax Officer, Rajapalayam, cannot be sustained inasmuch as the registration certificate was issued by the Assistant Commercial Tax Officer, Rajapalayam. In other words, it was contended on behalf of the respondent-assessee that the authority who issued the registration certificate alone was competent to levy penalty for violation of section 10(b) of the Act. That contention was accepted by the Sales Tax Appellate Tribunal on the basis that the ruling of the Supreme Court reported in State of U.P. v. Dyer Meakin Breweries Ltd. [1973] 31 STC 588, was to that effect. It may be mentioned that the Tribunal did not go into merits of the case. Only on the abovesaid technical

ground regarding the competency of the authority who levied the penalty, the appeal was allowed.

3. Aggrieved by the order of the Tribunal the present revision is preferred by the Revenue. Learned Additional Government Pleader contended that the Tribunal went wrong in interpreting the scope of section 10A and also in understanding the correct position of the ruling of the Supreme Court in *State of U.P. v. Dyer Meakin Breweries Ltd.* [1973] 31 STC 588.

4. Mr. Bhaskaran, learned counsel for the respondent-assessee, submitted that the Tribunal was right in holding that the authority who issued the registration certificate alone could levy penalty for violation of section 10(b) of and the understanding of the ruling of the Supreme Court, by the Tribunal, was correct. To appreciate the rival submissions it is necessary to set out section 10A of the Central Sales Tax Act which reads as follows :

"10A. 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 may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon by way of penalty a sum not exceeding one and a half times the tax which would have been levied under sub-section (2) of section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section :

Provided that no prosecution for an offence u/s 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of section 9 -

(a) in the case of an offence falling under clause (b) or clause (d) of section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods;

(b) in the case of an offence falling under clause (c) of section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed."

From a perusal of the above section we are of the view that it enables not only the authority who issued the registration certificate but the authority who is competent for the time being to issue the certificate also, is entitled to initiate and levy penalty. That appears to be the correct understanding of section 10A. Coming to the judgment of the Supreme Court it is seen that in that judgment the facts were like this. In that case, the Sales Tax Officer, Ghaziabad, granted the registration certificate to the assessee initially. That was subsequently cancelled with effect from 28th March, 1960. Thereafter the Sales Tax Officer,

Lucknow, was the authority who had granted to the assessee the requisite registration certificate. While so, on or about 8th January, 1960, the Sales Tax Officer, Ghaziabad, issued notice to the assessee requiring it to show cause why the penalty proceedings could not be taken against it for having misused the C Forms by purchasing the class of goods which were not mentioned in the registration certificate during the period 1958-59 and 1959-60. Overruling the objections, the Sales Tax Officer, Ghaziabad, levied penalty. That was challenged by filing statutory appeals and ultimately the High Court set aside that penalty on the ground that the Sales Tax Officer, Ghaziabad, had no jurisdiction to initiate proceedings and levy penalty u/s 10A of the Act on the ground that when the proceedings were initiated, it was the Sales Tax Officer, Lucknow, who was competent to initiate and levy penalty. On further appeal to the Supreme Court, the Supreme Court observed as follows :

"There is no dispute that the authority who granted the certificate of registration was the Sales Tax Officer, Ghaziabad. Therefore, prima facie, he was competent to levy penalty on the assessee. But it was contended on behalf of the assessee that on March 28, 1960, the registration before the Sales Tax Officer, Ghaziabad, stood cancelled and thereafter the assessee was registered before the Sales Tax Officer, Lucknow. That being so, the Sales Tax Officer, Ghaziabad, had no jurisdiction to levy penalty on the assessee. This contention overlooks the language of section 10A. That section definitely says that the authority who granted the certificate of registration to an assessee is one of the authorities competent to levy penalty".

This ruling of the Supreme Court has been, if we may say so, misapplied by the Tribunal to hold that the Joint Commercial Tax Officer, Rajapalayam, has no jurisdiction either to initiate or to levy penalty even though he was the competent authority to grant registration certificate at the relevant time. The Tribunal failed to note that the Supreme Court never said that the Sales Tax Officer, Ghaziabad, is the only authority having exclusive jurisdiction to initiate and levy penalty in his capacity as the person who issued the registration certificate initially. Therefore, we have no hesitation to hold that the Tribunal went wrong in holding that the penalty levied by the Joint Commercial Tax Officer, Rajapalayam, cannot be sustained. Accordingly, we set aside the order of the Tribunal. As we pointed out earlier, the Tribunal did not go into the merits of the case. Therefore, we are forced to remand the matter to the Tribunal for considering the case on merits. Accordingly, the tax case is allowed and the matter is remanded to the Tribunal for disposal in accordance with law. No costs.

5. Petition allowed.