(1991) 10 MAD CK 0061

In the Madras High Court

Case No : T.C. No''s. 111 to 115 of 1983 (Revisions No''s. 64 to 68 of 1983)

State of Tamil Nadu — APPELLANT

Vs

Lakshmi and Co. — RESPONDENT

Date of Decision : 25-10-1991

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

Citation : (1991) 10 MAD CK 0061

Hon'ble Judges : A.S. Anand, C.J;Raju, J

Bench : Division Bench

Advocate : T. Promodkumar Chopda, for the Additional Government Pleader, for the Appellant; N. Inbarajan, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The respondents are dealers in rice mill spare parts and accessories. They were registered under the Central Sales Tax Act. During the verification of the accounts by the assessing authority, it transpired that the assessees had purchased oil engine spares from outside the State on concessional rate of tax by issuing "C" forms during the assessment years 1975-76, 1976-77, 1977-78, 1978-79 and 1979-80. The assessing authority was of the opinion that the registration certificate issued to the assessees did not enable them to issue "C" form certificates to purchase from outside the State at concessional rate of tax "oil engine spares" and, therefore the issue of "C" form certificate by the assessees was based on a false representation that they were entitled to purchase oil engine spares also on the basis of the registration certificate issued to them. The assessing authority invoked the provisions of section 10A of the Central Sales Tax Act, and after following the procedure prescribed by law, levied penalty, holding that the assessees had committed an offence u/s 10(b) of the Act. The assessees went up in appeal before the appellate authority who confirmed the penalty, but reduced the same and refixed it. The assessees filed a second appeal before the Tribunal. The Tribunal took the view that though the registration certificate of the assessees did not authorise them to issue "C" forms for purchase of "oil engine spares", yet the assessees had acted under a bona fide impression that oil engine spares also would come within the class of goods mentioned in the registration certificate, and therefore, they were not liable to be penalised u/s 10A of the Act. The Tribunal opined that there was no mens rea established and that the representation made by the assessees was under a bona fide belief that the goods would be covered by the registration certificate. Consequently, the penalty imposed in respect of all the five cases was set aside. The Revenue is in revision before us.

2. Since the five appeals relating to the assessment years 1975-76, 1976-77, 1977-78, 1978-79 and 1979-80 had been consolidated by the appellate authority and disposed of by a common order, and the same course was adopted by the Sales Tax Appellate Tribunal, for the sake of convenience we also dispose of them by a common order as common points of law and fact are involved.

3. The fact that the registration certificate of the assessees issued in form "B" authorises them to purchase for resale "rice mill spare parts and accessories" is not only borne out from the orders of the authorities, but is also patent from the record which has been produced before us by the Revenue. In the face of these patent facts, learned counsel for the assessees-respondents was unable to show that the "oil engine spares" are also used in rice mills which are run on oil engines and the assessees were under a bona fide impression that they could purchaser oil engine spares also from outside the State by issue of "C" forms on the basis of their registration certificate. A similar plea has been raised on behalf of the assessees before the assessing authority as well as before the appellate authority and had failed. The Tribunal, had however, accepted this plea, but in our opinion, it had fallen in error in doing so. The Tribunal failed to take notice of the fact that the assessees are dealer in "rice mill spare parts and accessories". The registration certificate, therefore, authorised them specifically to purchase "rice mill spare parts and accessories" for resale. "Oil engine spares" are admittedly a different commodity, known differently and distinctly in the commercial world. It is not the case of the assessees that the "oil engine spares" could be treated either as "accessories" or "spare parts" of rice mills. The Tribunal, it appears to us, was influenced by the use of the expression "falsely represent" in section 10(b) of the Central Sales Tax Act which expression, according to it, indicated that mens rea is an important ingredient for establishing an offence contemplated therein and that in the absence of any finding of mens rea by the authorities below even where admittedly a "false representation" has been made, penalty u/s 10(b) of the Act could not be levied. The approach of the Tribunal on this aspect is clearly erroneous. On the established facts of this case, we find that the assessees-respondents had made a false representation when they issued "C" forms for purchase of "oil engine spares", which products were not included in the registration certificate at all. In our opinion, there is nothing in section 10A of the Act which requires that mens rea must be established before penalty can be levied under the provision, where on facts, it is found, that the assessees 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. Since, all the authorities including the Tribunal did record a finding that the assessees-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.

4. In Vijaya Electricals v. State of Tamil Nadu [1991] 82 STC 268 this Court had an occasion to consider in depth the ambit and scope of section 10(b) of the Act read with section 10A of the Act. The Bench held that section 10(b) of the Act postulates that if any registered dealer falsely represents when purchasing any class of goods that such goods are covered by the certificate of registration, he is liable to be punished to the extent contained in the section itself. The Bench found that unlike in a criminal case, where it is essential for the prosecution to establish that the accused had a guilty intention or in other words, the requisite mens rea before recording conviction, the obligation on the part of the Revenue, in cases of tax delinquency, would be discharged where it can be shown that the "blameworthy conduct" of the assessee was established, and such a conduct would stand established where the competent authority records a finding that the assessee had made a false representation. The Bench opined :

"Therefore, we hold, to the limited extent that mens rea has application in tax default cases, it would stand established, if the conduct of the assessee is found to be blameworthy, within the meaning of the particular provision of the given tax statute. Where a finding is recorded on facts about the existence of the blameworthy conduct, which the Legislature has treated as an offence or a default on the part of the assessee, like the making of a "false representation", it would attract the provisions of section 10(b) of the Act and no further finding would be required to be recorded about the existence of mens rea on the part of the assessee, as it would be inherently included in the earlier finding. We, therefore, cannot accept the proposition that even if a finding has been recorded on facts by the competent authorities that an assessee has made a "false representation" as contemplated by section 10(b) of the Act, in the absence of an additional finding that the assessee also had the requisite mens rea, he cannot be penalised u/s 10(b) of the Act. The argument has no basis and is absolutely far-fetched."

5. The law laid down in the above decision of the Division Bench is fully applicable to the facts of this case. The Tribunal, therefore, in our opinion, feel in complete error, after recording the finding that the representation made by the assessee was false, to accept the plea of the assessees of acting bona fide and thereupon deleting the penalty. In the established facts and circumstances of the case, the assessing authority had rightly found that the representation made by the assessees, at the time of issuing "C" forms for purchasing the "oil engine spares" was a false representation, and the plea of acting bona fide was therefore unsustainable. The order of the Tribunal, therefore, cannot be sustained. We accordingly, accept the revision filed by the Revenue and set aside the order made by the Tamil Nadu Sales Tax Appellate Tribunal in respect of all

the five revisions. The order of the Appellate Assistant Commissioner is restored. There shall, however, be no order as to costs.

6. Petition allowed.

