
(1997) 10 MAD CK 0086

In the Madras High Court

Case No : Tax Case No. 395 of 1994 (Revision No. 193 of 1994)

State of Tamil Nadu

APPELLANT

Vs

Photo Centre

RESPONDENT

Date of Decision : 20-10-1997

Acts Referred:

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

Citation : (1997) 10 MAD CK 0086

Hon'ble Judges : M.S. Janarthanam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Judgement

Janarthanam, J.—This revision, at the instance of the Revenue, is directed against the order dated November 3, 1993, of the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Madras-104 (for short "the Tribunal") and made in T.A. No. 144 of 1993 relating to the assessment year 1982-83.

2. The assessee-dealer, Tvl. Photo Centre, having their place of business at 424, T.H. Road, Madras-21, are registered dealers under the Central Sales Tax Act, 1956 (for short "the CST Act"). The dealers made an application in form "A" for incorporation in the certificate of registration of certain class of goods for resale and certain other classes of goods for use in manufacture or processing of goods for sale. Photographic chemicals, colour and blue and white, photographic papers, films, colour and blue and white, xerox processing chemicals, xerox plates, photo albums, mounts and frames as per the said application were intended to be incorporated under the caption "for re-sale".

3. Photographic equipments and machinery for colour and black and white, xerox machinery, air-conditioner (for lab use), xerox plates and chemicals (black and white, colour and xerox) were as per the application intended to be incorporated under the caption "for use and manufacture or processing of goods for sale".

4. While issuing the form "B" certificate, it appears the class or classes of goods intended for re-sale and intended for use in manufacture or processing of goods

for sale, had been included inadvertently under the caption "for re-sale".

5. It appears the assessee-dealers purchased electrostatic photo copying equipments and accessories to the tune of Rs. 39,311 during the said assessment year. The equipments so purchased, it appears, had been utilised by the assessee-dealers in the process of manufacture or processing of goods for sale on job works, which sort of an activity is now conceded by the Revenue, as being referred to as "works contract". In the order dated April 5, 1991 of the Commercial Tax Officer, Washemanpet Assessment Circle, relating to the imposition of penalty, after complying with the requisite procedure, quantified sum of Rs. 5,896 u/s 10A for refraction or violation of section 10(b)(c) and 10(d) of the CST Act.

6. The aggrieved assessee-dealers filed an appeal in C.S.T. No. 215 of 1991 before the Appellate Assistant Commissioner (CT)-1, Madras City, who in turn, in the light of the materials available on record, reduced the quantum of penalty to Rs. 2,948 as against Rs. 5,896 imposed by the assessing officer.

7. The aggrieved assessee-dealers agitated the matter further and they in fact, filed an appeal in T.A. No. 144 of 1993 before the Tribunal, which, in turn, on taking into consideration the relevant materials available in the file, allowed the appeal, setting aside the penalty by order dated November 3, 1993 giving rise to the present action - T.C. (R) Petition No. 395 of 1994.

8. From the pith and submission of Mr. K. Elango, learned Government Advocate, representing the Revenue and Mr. Trilok Chand Chopta, learned counsel appearing for the assessee-dealers, the one and the only question that emerges for consideration is as to :

"Whether the order of the Tribunal in setting aside the orders of the Appellate Assistant Commissioner and the assessing officer, in the sense of cancelling the penalty imposed upon the assessee-dealers, on the facts and in the circumstances of the case, is sustainable in law ?

9. The gravamen of the accusation against the assessee-dealers is that they have not used the machineries and equipments incorporated in the certificate of registration under the head for use in manufacture or process of goods for sale, for the purpose for which they were purchased, availing, concessional rate of taxation at four per cent.

10. Sub-section (1) and sub-section (3)(b) of section 8 of the CST Act, relevant for our present purpose, read as under :

8. Rates of tax on sales in the course of inter-State trade or commerce. -

(1) Every dealer, who in the course of inter-State trade or commerce, -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the

description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

.....

3. The goods referred to in clause (b) of sub-section (1) -

(a)

(b) 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".

11. Section 8(3)(b), as extracted above, consists of two parts. The first part of the said sub-section is relatable to 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. The second part of the said sub-section is relatable to goods for use by him in the manufacture or processing of goods for sale. Under the first part of the said sub-section, resale is to be effected by the registered dealer himself and under the second part of the said sub-section, what is required is the goods incorporated in the certificate of registration under the caption "for use in the manufacture or processing of goods for sale" must have to be used by him in manufacture or processing of goods and it is not required that the manufactured or processed goods are to be sold by him and this is made clear by the absence of the word "by him" after the word "sale". Such being the case, it is very well open for the dealer like the assessee-dealers to use the goods so purchased availing concessional rate of taxation in the manufacture or processing of goods for sale by others, in the sense of doing job-work.

12. In this view of the matter, it cannot at all be stated that the utilisation of the equipments and machineries for doing job-works for others is a refraction or violation falling u/s 10(d) of the C.S.T. Act, calling for imposition of penalty u/s 10-A in lieu of prosecution. Therefore, the order of the Tribunal in setting aside the imposition of penalty of the assessee-dealers, as had been imposed by the Appellate Assistant Commissioner and the assessing officer is perfectly justified in law.

13. The revision, therefore, fails and the same is, accordingly, dismissed. No costs.

14. Petition dismissed.