(1994) 12 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 761 of 1983 (Revision No. 261 of 1983)

State of Tamil Nadu APPELLANT

Vs

Shiyal Chemicals RESPONDENT

Date of Decision : 12-12-1994

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

Citation : (1994) 12 MAD CK 0045

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner herein. The assessee, Shiyal Chemicals is a dealer in chemicals and registered under the Central Sales Tax Act and the assessee purchased a machinery for a sum of Rs. 18,262.40 by issuing C forms during the assessment year 1978-79. The assessment officer levied a penalty at 1 1/2 times the tax due of 10 per cent on the above turnover treating the above purchases by issuing C forms in contravention of the provisions of section 10(b) of the Central Sales Tax Act, 1956. On appeal, the Appellate Assistant Commissioner reduced the penalty to Rs. 1,826. Aggrieved by this order the assessee filed an appeal before the Appellate Tribunal. The Appellate Tribunal considering the facts that the assessee has already intimated to the department by a letter dated July 21, 1971 for inclusion of machinery in the registration certificate, deleted penalty levied by the Appellate Assistant Commissioner. It is against that order, the present revision has been filed by the department.

2. Learned Additional Government Pleader (Taxes) submitted that the department has established the conduct of the assessee in purchasing the machinery, while they were not included in the registration certificate. The assessee deliberately issued C forms for purchase of machineries even though, the assessee knew that the machineries were not enumerated in the registration certificate. Learned Additional Government Pleader (Taxes) further pointed out

that the assessee has no proof to show that the letter dated July 21, 1971 was sent by the assessee. According to the Additional Government Pleader (Taxes) there is no evidence on record to show that the letter dated July 21, 1971 pertains to this matter. Therefore, the learned Additional Government Pleader (Taxes) submits that the Tribunal was not correct in deleting the penalty sustained by the Appellate Assistant Commissioner.

3. On the other hand, the learned counsel for the assessee submitted that the assessee has already intimated the assessing officer by a letter dated July 21, 1971, for the inclusion of the machineries in the registration certificate. There was no reply from the department. Therefore, the assessee believed that the department has accepted for inclusion of purchase of machineries in the certificate of registration. Therefore, according to the learned counsel the purchase of machineries by using the C forms does not amount to any mala fide conduct on his part. Therefore, it was submitted that the Tribunal was correct in deleting the penalty levied by the authorities below.

4. We have heard the learned counsel for the assessee as well as the learned counsel for the department. It remains to be seen that the assessee is a registered dealer in chemicals. In the assessment year 1978-79, the assessee purchased machineries for a sum of Rs. 18,262.40, by issuing C forms. According to the assessee, he intimated to the department by letter dated July 21, 1971 for the inclusion of machineries in the certificate of registration. Therefore, according to the assessee, the purchase of machineries by issuing C forms does not reflect the blameworthy conduct on its part. The Appellate Assistant Commissioner in his order pointed out that he verified the records in the presence of the counsel for the assessee as well as the departmental representative. According to the Appellate Assistant Commissioner, he found that the letter dated July 21, 1971 has no connection or nexus with the subject-matter in issue. The assessee has not produced any positive evidence to show that a letter dated July 21, 1971 was sent requesting the assessing authorities to include the machineries in the registration certificate. Mere filing of a delivery book is not sufficient to show that a letter of such kind as pleaded by the assessee, would have been sent to the assessing authority. Therefore, in the absence of any positive evidence on the side of the assessee it is not possible to accept that the assessee sent a letter dated July 21, 1971 requesting to include the machineries in the registration certificate. Our attention was drawn to the decision of this Court in the case of Vijaya Electricals v. State of Tamil Nadu [1991] 82 STC 268. According to the facts arising in that case, the certificate of registration granted to the appellant-dealer under the Central Sales Tax Act, 1956, authorised to purchase the machinery and electrical goods only. The appellant purchased the ball-bearings on the basis of C forms. On the ground that the goods purchased were not covered by the certificate of registration, the penalty was imposed on the appellant u/s 10A of the Act for an offence u/s 10(b) of the Act. While considering these facts, this Court has held :

"Moreover, the subsequent attempt by the dealer to having ball-bearings included in its certificate of registration showed that the dealer could not be said to have earlier acted in good faith when it purchased the ball-bearings on furnishing C form declarations. Therefore, the dealer was rightly penalised for making a false representation, as contemplated by section 10(b) of the Act and the authorities rightly imposed the penalty in lieu of prosecution, after following the procedure envisaged by section 10A of the Act."

5. According to the facts arising in the present case, the assessee submitted that letter dated July 21, 1971 was sent to the department requesting the department to include the machineries in the certificate of registration. There was no reply from the department. The assessee kept quiet till 1978. According to the assessee, the department would be deemed to have accepted the letter sent by the assessee. But according to the department, no such letter was received by the department. It is for the assessee to prove with positive evidence that letter dated July 21, 1971 was sent to the department. In order to support his contention the assessee filed the delivery note book. There is nothing in the delivery note book to show the letter of this nature was sent to the department. The Appellate Assistant Commissioner who examined this letter in the presence of the counsel appearing on both sides, pointed out that there is no nexus between the alleged letter and the subject-matter in issue. All these aspects would go to show that the assessee was not correct in purchasing the machineries by using C forms, when the machineries are not included in the registration certificate. This would amount to false representation warranting penalty u/s 10(b) of the Act. Thus considering the facts arising in this case, in the light of the decision stated in Vijaya Electricals Vs. State of Tamil Nadu, , we hold that the Tribunal was not correct in deleting penalty sustained by the Appellate Assistant Commissioner. In fact, the Appellate Assistant Commissioner was very reasonable in restricting the penalty to Rs. 1,826. Therefore, we set aside the order passed by the Tribunal and restore the order passed by the Appellate Assistant Commissioner.

In the result the appeal is allowed. No costs.

6. Appeal allowed.

