(2006) 01 AHC CK 0220

In the Allahabad High Court

Case No : Sales Tax Revision No. 500 of 1992

The Commissioner, Sales Tax — APPELLANT

Vs

S/S Bhawani Paper Mills Ltd. — RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 7, 8(2)
Income Tax Act, 1961 — Section 171(1), 271(1)
Uttar Pradesh Sales Tax Act, 1948 — Section 4A

Citation : (2006) 147 STC 324

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : B.K. Pandey and B.R. Tripathi and S.C, for the Appellant; Bharat Ji Agarwal, R.S. Agrawal and Piyush Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri B.K. Pandey, learned standing counsel, appearing for the revisionist and Sri Bharat Ji Agarwal appearing for the respondents.

2. This sales tax revision has been filed against the judgment and order dated 4th November, 1991 passed by the Sales Tax Tribunal Bench-I, Allahabad dismissing the second appeal filed by the Commissioner of Sales Tax against the judgment and order dated 22nd December, 1989 passed by this Assistant Commissioner allowing the appeal of the assessee.

3. An order u/s 10A of the Central Sales Tax Act, 1956 (hereinafter referred to as the Act) was passed by Sales Tax Officer dated 25th July, 1989 imposing penalty on the assessee. The Sales Tax Officer found that assessee purchased, goods utilising Form-C which goods were not covered u/s 7 of the Act. The reply of the assessee that dyes, colour, starch, lubricants and caustic soda are included in chemicals was not accepted. The assessee filed an appeal before the Assistant Commissioner (Judicial) which appeal has been allowed by the appellate authority vide its order dated 22nd December, 1989. The appellate authority held

that assessee bonafidely imported the goods treating them to be covered by his registration certificate u/s 7 of the Act and there being no deliberate misrepresentation in purchasing the goods by Form-C, assessee is not liable to be fastened with any penalty. The appellate authority also observed that caustic soda which has been imported by the assessee is used in industrial unit and it cannot be said that the said item is not included in chemicals. The cotton linter purchased by assessee is also a type of cotton wastes. The soap stone and soap stone powder have been purchased treating themselves to be chemical. The appellate authority recorded finding that there was no malafide on the part of assessee in importing the said goods and Form-C was issued under bonafide belief that the said articles were covered by registration certificate, hence there does not appear any violation of Section 10(b) of the Act. Second appeal was filed by the department which too has been dismissed by the second appellate authority vide its judgment and order dated 4th November, 1991

4. Sri B.K. Pandey, learned standing counsel, submitted that the exemption granted u/s 4-A of the U.P. Sales Tax Act has no relevance with regard to purchase made by the assessee and the assessee having not paid sales tax on the said purchase according to rate fixed, penalty was rightly imposed u/s 10A of the Central Sales Tax Act, 1956. He further submitted that the articles purchased by the assessee were not covered by registration certificate and import of the said article by Form-C itself suggest that there was false representation by the assessee.

5. I have considered the submissions and perused the record.

6. The first appellate authority in its judgment had recorded categorical finding that the assessee imported the goods including caustic soda, cotton linter and stone powder bonafidely believing it to be covered within the registration certificate granted to the assessee u/s 7 of the Act. The first appellate authority has itself noted the items included in the registration certificate which is to the following effect;--

(i) All kinds of machines required for manufacturing and production of papers, Pulping Instrument Iron and Steel. Chemicals and Pulp, Irons formers Generators and all others Electrical goods and Equipment. Builder pipe fitting and others fitting. Fans Exhaust air condition moters Hassan cotton and Wast paper Jute rages asbestor sheet angle seed.

7. The items which were purchased by the assesses included dyes, starch, colour, soap stone, lubricants, caustic dye, caustic soda, cotton linter and some other items. The first appellate authority has recorded finding that dyes, colour and caustic soda are known in the market as chemicals and purchasing the said items treating to be covered under the registration certificate was a bonafide act on the part of the assessee. The Sales Tax Tribunal also affirmed the said finding. The Tribunal in the judgment recorded finding, that intention of the dealer was not malafide in importing the aforesaid goods and at best it can be said that there

was a technical default on the part of the assessee in importing the aforesaid goods against Form-C and for attracting the provisions of Section 10A of the Act mere technical breach is not enough.

8. Section 10A of the Act provides that if any person purchasing goods is guilty of an offence under Clause (b) or clause (c) or clause (d) of Section 10, the competent authority may after giving him a reasonable opportunity of being heard impose upon him [by way of penalty a sum not exceeding one-and-a-half times of the tax which would have been levied under Sub-section (2) of Section 8 in respect of the sale to him of the goods. The provisions of Section 10 of the Act which are relevant for the present case, are extracted below:--

10. Penalities

If any person,--

(a) ...

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

(c) ...

9. Section 10(b) is attracted only when registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration. The words which are relevant in this sub-section are "falsely represents". False representation indicates representation which is Known to be false. The element of Knowledge of falsehood is inherent in the concept. In the present case finding has been recorded by both the appellate authorities that purchase by the assessee was bonafide and there is no material to come to conclusion that there was any intention of false representation on the part of the assessee. The action of assessee was held not to be malafide. The first appellate authority although has returned finding that the items purchased by the assessee can be included in the chemicals In common parlance but even if it is assumed that they were not strictly covered under the registration certificate of the assessee that itself was not sufficient for attracting the penalty. The element of false representation was required to be further proved for imposition of penalty. While dealing with the provisions of penalty u/s 171(1) of the Income Tax Act, 1961 which provided for imposition of penalty on concealment of particulars of income or furnishing inaccurate particulars, the Apex Court in K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, observed as under--

One of the amendments made to the abovementioned provisions is the omission of the word "deliberately" from the expression "deliberately furnished inaccurate particulars of such income". It is implicit in the word "concealed" that there has been deliberate act, on the part of the assessee. The meaning of the word "concealment" as found in the shorter Oxford English Dictionary third edition, Volume 1 is as follows:- "In law the intentional suppress/on of truth or fact known to the injury or prejudice of another.

The word "concealment" inherently carried with it the element of mens rea. Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if it takes out the case from the purview of non-disclosed, it cannot by itself take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of the Tax therein. In order that a penalty u/s 271(1)(iii) may be imposed, it has to be proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income.

10. In the above case, the Apex Court while considering the word "concealment" held that word "concealment" inherently carried with it the element of mens rea. The words "false representation" used in Section 10(b) is more strong word which require an overt act with an element of mens res. There being finding of both the authorities that action of purchase of the aforesaid goods was bona fide act of assessee under bonafide belief that said goods are covered by registration certificate, the provisions of penalty u/s 10(b) of the Act is not attracted. No case has been made out for imposing penalty on the assessee. The first appellate authority has considered the entire materials on record and has come to the conclusion which are fully supported from materials on record. The findings recorded by both the appellate authorities that the purchase by the assessee was under bonafide belief, the present was not a case for imposition of any penalty. No infirmity could be pointed out in the orders passed by both the appellate authorities which may warrant interference by this Court in its revisional jurisdiction.

11. I do not find any merit in the revision and the same is dismissed.