

(1969) 07 MAD CK 0013
In the Madras High Court

The State of Madras

APPELLANT

Vs

Thiru Prem Industrial Corporation

RESPONDENT

Date of Decision : 30-07-1969

Acts Referred:

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

Citation : (1970) 1 MLJ 539

Hon'ble Judges : K. Veeraswami, C.J

Bench : Single Bench

Judgement

K. Veeraswami, C.J.—The Revenue seeks to revise an order of the Sales Tax Appellate Tribunal by which it modified the penalty imposed.

It is not in controversy, and indeed, as found by the Tribunal, that the "C" Forms had been misused and thereby an offence was committed within

the scope of Section 10(b) of the Central Sales Tax Act, 1956. The Department levied penalty at 101/2 per cent. on the view that, in the

circumstances, the concessional rate would not be available and that the assessee would be liable to tax at 7 per cent. u/s 8(2). The Tribunal

reduced the penalty to one and a half times the tax, as, in its opinion, for purposes of levying penalty, the rate of tax should be taken as that which

would have been applicable if the offence had not been committed.

2. We think the Tribunal's view is correct. The Department's view does not give effect to the concluding words of Section 10A, "if the offence

had not been committed.

3. The penalty under the section should not exceed one and a half times the tax which would have been levied under the Act in respect of the sale

effected by the assessee if the offence had not been committed u/s 10(b). The

offence under that provision is that a person being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration. The words "" if the offence had not been committed "" clearly points to the result that the tax for purposes of assessing one and a half times thereof is not that which would have been levied on the basis that the "C Forms had not been complied with or have been misused, but, as if they have been used in a proper way. If that were not the case, there would be no meaning to the last words we have referred to.

4. Our attention has been invited to M. Pais and Sons v. The State of Mysore (1966) 17 S.T.C. 161 It is true the Mysore High Court, in this case, took a view which is in support of that taken by the Department in this case. But, with due respect, the decision does not take into account the concluding words "" if the offence had not been committed "" in Section 10-A. The tax case is dismissed.