

(1968) 12 KAR CK 0005
In the Karnataka High Court
Case No : S.T.R.P. No"s. 86 and 87 of 1967

The State of Mysore

APPELLANT

Vs

S.S. Umandi

RESPONDENT

Date of Decision : 03-12-1968

Acts Referred:

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

Citation : (1969) 1 MysLJ 167 : (1969) 24 STC 11

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : Vasudeva Reddy for E.S. Venkataramaiah, Special Government Pleader, for the Appellant; C.J. Chouta for B. V. Deshpande, for the Respondent

Judgement

Somnath Iyer, J.—These revision petitions are presented by the State Government against the order of remand made by the Sales Tax Appellate Tribunal in two appeals the source of which was a proceeding commenced u/s 10A of the Central Sales Tax Act. The Commercial Tax Officer found the respondent, who was a manufacturer of sarees, guilty of offences under clauses (b) and (d) of section 10 of the Central Sales Tax Act which will be referred to as "the Act" in the course of this judgment. So, he imposed a penalty of Re. 250 with respect to each of those offences.

2. But in appeal the penalty with respect to the offence u/s 10(b) was set aside by the Deputy Commissioner, but with respect to the offence u/s 10(d) he confirmed the order of the Commercial Tax Officer.

3. But in the further appeal to the Sales Tax Appellate Tribunal there was a remand of the matter to the Deputy Commissioner only with respect to the offence referred to in clause (d) of section 10. The Tribunal dissented from the view taken by the Deputy Commissioner that mens rea was not an ingredient of the offence to which section 10(d) refers. In the opinion of the Tribunal it was the duty of the Commercial Tax Officer to record a finding with respect to the existence of mens rea even with respect to that offence. So, there was a remand

by the Tribunal to the Deputy Commissioner for a disposal of the appeal according to law.

4. It is this order which is called in question in this revision petition and Mr. Vasudeva Reddy appearing for Government very rightly contends that the Tribunal was in error in proceeding on the assumption that mens rea is an ingredient of the offence of which section 10(d) speaks. It is clear that it is not.

5. Section 10(d) speaks of the failure by the person who purchased goods for the purposes specified in section 8(3)(b) of the Act to make use of those goods for those purposes without reasonable excuse. The only three ingredients which constitute the offence u/s 10(d) are, firstly, the purchase of goods for any of the purposes specified in section 8(3)(b) secondly, the failure to make use of those goods for those purposes, and thirdly the absence of reasonable excuse for such failure.

6. It is thus manifest that mens rea, as the Tribunal calls it, is not one of the ingredients of an offence u/s 10(d) It is clear that the Tribunal was mistaking the ingredients of section 10(b) for those which constitute an offence u/s 10(d). An offence is committed u/s 10(b) when a registered dealer makes a purchase of goods on the false representation that those goods are covered by his certificate of registration. The expression "falsely represents" occurring in that clause has been interpreted as referring to the ingredient of mens rea, and so no offence is committed u/s 10(b) unless the registered dealer makes a representation that goods purchased by him are covered by his certificate of registration although he knows that they are not so covered. But no such false representation need be established with respect to an offence u/s 10(d). That being so, the view taken by the Tribunal on that matter cannot be sustained.

7. But that does not mean that we can decide this revision petition in favour of the Government. On the contrary, it is clear that we should set aside the penalty imposed by the Commercial Tax Officer even with respect to the offence u/s 10(d).

8. The Commercial Tax Officer whose duty it was to find out that goods purchased for the purposes of section 8(3)(b) were not used for those purposes and that the failure to use those goods for those purposes did not have the support of reasonable excuse, did not record any such finding. There was no discussion by him of the question whether there was any reasonable excuse for the failure on the part of the respondent to make use of the goods purchased by him for the purposes referred to in section 8(3)(b). The Deputy Commissioner who did not observe this imperfection in the order made by the Commercial Tax Officer proceeded on the mistaken assumption that the Commercial Tax Officer did record a finding that there was no reasonable excuse for the failure to make use of the goods for the stated purposes and was also not right in thinking that the duty to establish the existence of reasonable excuse was that of the assessee. In S.T.R.Ps. Nos. 64 and 65 of 1967 [Since reported as Manjunatha

Tyre Retreading Works v. The State of Mysore [1969] 23 STC 428. this Court made the enunciation that it is for the Commercial Tax Officer to record a positive finding in cases like the present one that there was no reasonable excuse for the failure to make use of the goods for the purposes of section 8(3) (b) and that finding the Commercial Tax Officer did not record.

9. Although the assessee has not challenged the order of remand made by the Sales Tax Appellate Tribunal, it is clear that in the revision petitions presented by the Government against that order of remand, it is our duty to make a proper order. We have the power to suitably amend the order made by the Tribunal, and since the Commercial Tax Officer himself did not record findings as to the existence of the ingredients which constitute an offence u/s 10(d), any further expenditure of time by the Deputy Commissioner over the matter, would be quite unjustified.

10. So, we set aside the order of remand made by the Sales Tax Appellate Tribunal and we also set aside the order of the Commercial Tax Officer by which a penalty was imposed in respect of the offence u/s 10(d) and the order of the Deputy Commissioner by which he confirmed the imposition of that penalty by the Commercial Tax Officer. The order of the Deputy Commissioner by which he set aside the order of the Commercial Tax Officer imposing a penalty u/s 10(b) remains undisturbed. In consequence the penalties imposed by the Commercial Tax Officer in respect of both the offences hereby stand set aside. No costs.

11. Orders set aside.