

(1991) 04 MAD CK 0072

In the Madras High Court

Case No : Tax Case (Appeal) No. 1222 of 1981

Vijaya Electricals

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8(2), 8(4)

Citation : (1991) 82 STC 268

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : N. Inbarajan, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—Aggrieved by the order of the Joint Commissioner, dated June 2, 1981, passed in suo motu revision of the order of the Appellate Assistant Commissioner, Salem, the assessee has come up in appeal.

2. The appellant, M/s. Vijaya Electricals, Attur, is a registered dealer under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act"). Central sales tax registration certificate No. 6331 held by the applicant, permitted it to purchase machinery and electrical goods for resale from other States u/s 8(4) of the Act. The assessing authority, the Deputy Commercial Tax Officer, checked the accounts of the assessee for the years 1977-78 and 1978-79, wherein it was revealed that the assessee had effected purchase of following goods by issue of C forms :

Rs. Ball-bearings 2,30,758.90 Rubber beltings 10,475.26 Buckets and pipe fittings 50,102.98 Huller parts 9,544.74 ----- 3,00,881.88 -----

3. The assessing authority found that the purchase of the aforesaid goods on the basis of C forms, had been made by the assessee by false representation to the effect that the goods in question were covered by the registration certificate when they were not so covered. The assessing authority, therefore, opined that

the dealer had committed an offense u/s 10(b) of the Act. It was proposed to levy a penalty of Rs. 45,132 u/s 10A of the Act, calculated at one and a half times the tax due, at 10 per cent on the aforesaid purchases. The assessee was consequently called upon to file its objections to the proposed levy of penalty. The assessee, after obtaining extension of time to file objections, filed the same on September 14, 1979. In its objections, the assessee first stated that the value of different commodities, as given in the notice, was wrong. The assessing authority, however, found that the figures which had been arrived at in the notice - relating to the proposed levy of penalty was on the basis of the accounts maintained by the assessee and with reference to form 8 register maintained by it. The objection regarding the alleged incorrect figures of purchase was accordingly turned down.

4. The next objection of the assessee was that since it had not misused C form, penalty proceedings were not called for. According to the assessee, it bona fide believed that the machinery which had been specified in the registration certificate included the working parts of machines and that the goods, viz., ball-bearings, rubber beltings, pipe fittings, huller parts, etc., fell within the category of parts of the machinery and that the same could be bought by giving the C forms. It was, therefore, stated by the assessee that it had not made any false representation. This objection also did not find favour with the assessing authority. It was found that ball-bearings, buckets and pipe fittings and huller parts could not be construed to fall under the general head of "machinery". The assessing authority, on the basis of the material on record found that the assessee had made a false representation and thereby committed an offense u/s 10(b) of the Act. The last plea of the assessee with regard to the levy of penalty at the concessional rate of 4 per cent and not at the penal rate of 10 per cent also did not find favour with the assessing authority. It was, therefore, held that the tax livable u/s 8(2) of the Act was Rs. 30,088 at 10 per cent and consequently, the penalty at one and a half times the tax due, amounting to Rs. 45,132 was levied. Aggrieved by the order of the Deputy Commercial Tax Officer, the assessee disputed the entire levy before the Appellate Assistant Commissioner, the appellate authority. It appears from the proceedings before the appellate authority that besides "ball-bearings, rubber beltings, buckets and pipe fittings and huller parts", the dealer had also purchased other goods like wrenches, spanners, grease, etc., under the cover of C forms. The total value of these items was calculated at Rs. 17,649.81. The appellate authority found that these goods purchased by the assessee under the cover of C forms could not come under the head "machinery" as they were only general goods and not any machinery parts, and were not even the working parts of the machines for producing the desired results and could not be treated as integral parts of motor pumping machines. The assessee was, therefore, held liable to pay penalty on the turnover of Rs. 17,649.81 for misusing the C forms. Penalty was, therefore, levied on the turnover of Rs. 17,649 at 10 per cent being equal to the tax due at the enhanced rate of 10 per cent. So far as the penalty on "ball-bearings, rubber

beltings, buckets and pipe fittings and huller parts", amounting to a total turnover of Rs. 3,00,881.88 was concerned, the appellate authority found that the assessee was under a bona fide impression that the expression "machinery" occurring in the registration certificate issued to it included the machinery parts also and, therefore, no mens rea could be attributed to the action of the assessee, since the representation made by it was under a bona fide belief and, therefore, the penalty levied by the assessing authority was not sustained and was set aside.

5. The Joint Commissioner took up the matter in suo motu revision. During the proceedings before the Joint Commissioner, it appears, the controversy was restricted to the levy of penalty only on the purchase of ball-bearings by issue of C forms to the extent of Rs. 2,30,758.90. The other goods, viz., rubber beltings, buckets and pipe fittings and huller parts, do not appear to have been made a subject of the suo motu revision by the Joint Commissioner, who proposed to revise the order of the Appellate Assistant Commissioner only on the relief granted with regard to the purchase of "ball-bearings". It was proposed to restore the order of the assessing authority to the extent of levy of penalty with regard to the purchase of ball-bearings for an amount of Rs. 2,30,758.90. Consequently, objections were invited from the assessee, who reiterated what it had urged before the assessing authority as well as the first appellate authority. It was maintained on behalf of the assessee that unless it could be shown that the representation made by the assessee was false to its knowledge and was deliberately made, the penalty provisions u/s 10(b) of the Act could not be attracted. It was the case of the assessee that the mere representation based on a bona fide belief would not bring the assessee within the mischief of the provision of section 10(b) of the Act since the entertainment of the bona fide belief itself would negative the existence of mens rea on the part of the assessee, the establishment of which, it was asserted, was essential to invoke the penalty provisions contained in section 10(b) of the Act.

6. The Joint Commissioner, however, negatived all the pleas. It was found that the plea of bona fide belief that the certificate of registration was comprehensive enough to include ball-bearings was "too far-fetched, unreasonable and baseless". The Joint Commissioner concluded that "the only possible inference in the circumstances was that the petitioner had acted mala fide in making what was clearly a false representation. The petitioner, had, therefore, the necessary mens rea to attract penalty under the Central Act". In returning these findings, the Joint Commissioner relied upon the judgment of the Kerala High Court, reported in *Integrated Enterprises v. State of Kerala* [1980] 46 STC 103. Consequently, the proposal to restore penalty on the purchase of ball-bearings to the extent of Rs. 2,30,758.90 was confirmed, but the levy was restricted to Rs. 23,076 being 10 per cent of the tax due on the purchase turnover. The assessee has come up in appeal.

7. Appearing for the assessee, its learned counsel, Mr. N. Inbarajan, reiterated

the submissions which had been made before the Joint Commissioner. He went on to add that since neither the Deputy Commercial Tax Officer, Attur, nor the Joint Commissioner had returned any positive finding about the existence of mens rea on the part of the assessee, no resort could be had to the penalty proceedings. Argued Mr. Inbarajan that the plain phraseology of section 10(b) of the Act clearly indicated that mens rea is an important ingredient for the offence contemplated therein and since the assessee had acted bona fide, there could be no mens rea on its part and consequently, it could not be subjected to the penalty proceedings. Learned counsel relied upon certain judgments, which we shall refer to during the course of our discussion.

8. The facts are not in dispute. The registration certificate of the assessee authorised it to purchase "machinery and electrical goods only". Ball-bearings, which were purchased by the assessee of the value of Rs. 2,30,758.90, were rightly found by the assessing authority as also by the Joint Commissioner as not covered by the registration certificate. Ball-bearings purchased by the assessee on the basis of C forms could neither be construed as "machinery" nor as "electrical goods". The assessee could not be said to bona fide belief that "ball-bearings" are "machinery". The plea of bona fide belief was rightly negatived both by the assessing authority as well as the Joint Commissioner. The appellate authority had fallen in error to hold otherwise and that too, on the basis of surmises and conjectures. The representation made by the assessee was, therefore, not a true representation. Could it then be said that the assessee could not be clothed with the requisite mens rea to be penalised u/s 10(b) of the Act ?

9. Learned counsel for the assessee relied upon the judgment reported in *Varghese v. Sales Tax Officer* [1965] 16 STC 323, in support of his submissions. In that case, a learned singly Judge of the Kerala High Court held that mens rea is an essential ingredient for the commission of an offence u/s 10(b) of the Act. It was also held that in order to constitute an offence u/s 10(b) of the Act, it must be proved that the dealer had made the representation that the goods were covered by the registration certificate with the knowledge that they were not so covered and that "unless there was a finding that the said representation made by the assessee was false", the imposition of penalty in lieu of prosecution u/s 10A of the Act would be illegal. In returning the finding that mens rea is an essential ingredient of the offence u/s 10(b) of the Act, the learned Judge of the Kerala High Court referred to a number of judgments under the English law, mainly concerned with existence of mens rea for an offence under the criminal law. It was found on facts in that case that the representation which had been made by the assessee might have been made negligently but was not made fraudulently.

10. Reliance was also placed on *Commissioner of Sales Tax v. Bombay General Stores* [1969] 23 STC 449, wherein a Division Bench of the Madhya Pradesh High Court held that in the absence of mens rea, a dealer cannot be penalised for

contravention of section 10(b) of the Act. The Bench referred to certain judgments under the English law to demonstrate the difference between bona fide belief and the making of a negligently untrue statement. The Bench opined that there was nothing in section 10(b) of the Act to show that the Legislature intended to punish a dealer who honestly, though incorrectly represents that a particular article fell within the description of the goods specified in a certificate and went on to hold that in the absence of mens rea a dealer cannot be penalised for contravention of clause (b) of section 10. In arriving at this conclusion, the Bench relied upon the judgment of the Kerala High Court, reported in *Varghese v. Sales Tax Officer* [1965] 16 STC 323. The penalty was set aside on the ground that no finding had been recorded by the authorities to the effect that the assessee in that case had made any false representation and that he had the requisite mens rea.

11. Reliance was also placed on *Sri Lakshmi Machine Works Vs. The State of Madras*, wherein it was held that section 10(b) of the Act specifically uses the words "falsely represents", which shows that mere representation based on a bona fide belief would not bring an assessee within the mischief of that provision. Merely because the plea entertained by the assessee turned out to be not proper or correct, it did not imply that the issue of C form certificate was on the basis of a false representation. The Bench then opined that whether there is mens rea or not in a given cases, is a question of fact, to be decided on the facts of each case, but since no finding had been recorded that the representation made by the assessee was false, the proceedings u/s 10(b) of the Act could not be sustained.

12. In *State of Tamil Nadu Vs. Gemini Studios*, it was held that when purchasing goods by issuing C forms, a mere representation based on a bona fide belief by the assessee registered under the Act that the goods are covered by his certificate of registration will not bring him within the mischief of section 10(b) of the Act. The Bench held that the representation, in order to come within that provision, should be a false representation to the knowledge of the assessee. The Bench went on to hold that since in that case neither the assessing authority nor the first appellate authority had rendered any finding to the effect that the assessee did not or could not have entertained any bona fide belief, no offence u/s 10(b) of the Act could be said to have been committed and the imposition of penalty u/s 10A of the Act was not legal.

13. In *A.S. Mohammedkutty and Company Vs. Sales Tax Officer and Others*, it was held that to bring home an offence u/s 10(b) of the Act, mens rea must be established, but the question, whether in such a case the dealer entertained a bona fide belief that the goods are covered by the registration certificate is to be determined by the facts of each case. In the absence of a specific finding that the assessee had made false representation, the proceedings u/s 10(b) of the Act could not be maintained.

14. In reply, learned Government Advocate (Taxes) relied upon the judgment of

a Division Bench of this Court, reported in Coimbatore District Central Co-operative Supply and Marketing Society Ltd. v. State of Tamil Nadu [1980] 45 STC 21. In that case, the plea of the assessee was that under a bona fide impression that they were entitled to purchase the goods by the issue of C forms, in view of the entries in the registration certificate, they could not be said to have committed any offence u/s 10(b) of the Act when it was found that the goods purchased by them were actually not so covered. The Bench opined that "bona fide" is not an expression of art but is a positive circumstance which has to be established by relevant and acceptable materials. It was found that since the assessee had not made a truthful representation, it was an equation of a false representation and, therefore, the plea of bona fides, set out by the assessee was not a justifiable contention and the finding recorded by the authorities that false representation had been made by the assessee justified the penalty proceedings.

15. Reliance was also placed on the judgment of a Division Bench of the Kerala High Court in Integrated Enterprises v. State of Kerala [1980] 46 STC 103. In that case, the certificate of registration of the assessee did not include bottle coolers but, despite this, the assessee certified in the relative C forms that bottle coolers purchased by them by the issuance of C forms were covered by the certificate of registration. This representation was found to be a false representation and the explanation of the assessee that they bona fide believed that the registration certificate was comprehensive enough to include all categories and classes of goods relating to their business and that the sale and purchase of bottle coolers were part of their business could afford no valued defence. The Bench found that there was no basis for the plea of "bona fide belief" that the certificate of registration which contained only three brands of cool drink was comprehensive enough to include everything in which the petitioner dealt. The plea was found to be too far-fetched, unreasonable and baseless and that the only possible inference, in the circumstances, was that the assessee had acted mala fide in making what was clearly a false representation. The Bench accordingly upheld the finding of the assessing authority and the Tribunal that the assessee had the necessary mens rea to attract the penalty.

16. After taking note of the judgments cited at the Bar, we now proceed to answer the question posed in the easier part of the judgment.

17. Section 10(b) of the Act postulates that if any registered dealer falsely represents when purchasing any class of goods that such goods are covered by the certificate of registration, he is liable to be punished to the extent contained in the section itself. Section 10A of the Act contemplates that if any person is found guilty of an offence under clause (b) of section 10, the competent authority may, after following the procedure prescribed in the section, in lieu of prosecution, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied in respect of the sale to him of the goods, if the sale fell within section 8(2) of the Act. It is, thus, clear that

what is imposed by section 10A of the Act is a civil obligation while what is contemplated u/s 10(b) is a "sentence". The creation of an offence by a statute proceeds on the assumption that the society suffers injury by the act or omission of the deflator and in most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent to discourage repetition of an offence. In the case of proceedings u/s 10A of the Act, however, it seems that the intention of the Legislature is to emphasise the fact of loss of revenue and to provide for remedy for such a loss. This becomes evident from the terms in which the penalty falls to be measured u/s 10A of the Act itself. Therefore, unless there is something in the language of the statute indicating the need to also establish the element of mens rea in proceedings u/s 10A of the Act, it would be generally sufficient to prove that the default in complying with the statute had occurred in the manner envisaged by section 10(b) of the Act. In our opinion, there is nothing in section 10A which requires that mens rea must be proved before penalty can be levied under that provision if on fact, it is found that the assessee had made a "false representation". It is the making of a "false representation" which is, indeed the sine qua non for invoking the provisions of section 10(b) of the Act. Once a finding is recorded by the competent authority that the assessee has made a false representation, that would clearly attach the provisions of section 10(b) of the Act and, in our opinion, no further finding is required that the assessee had also the mens rea. The statute does not contemplate that. Even otherwise, mens rea is a state of mind. Under the criminal law, mens rea is considered as the "guilty intention", but when it is relatable to tax delinquency, which is a civil obligation, it implies a "blameworthy conduct". Therefore, unlike in criminal cases, where it is essential for the prosecution to establish that the accused had a guilty intention or, in other words, the requisite mens rea before recording conviction, the obligation on the part of the Revenue, in cases of tax delinquency, would be discharged where it can be shown that the "blameworthy conduct" of the assessee was established, like by recording a finding that the assessee had made a "false representation" and the like. The recording of such a finding by itself shows the establishment of the blameworthy conduct, which would be the establishment of mens rea to the limited extent applicable to civil obligations. Mens rea can be established either by direct evidence or by drawing inferences from the established facts and circumstances of a given case. To the extent that mens rea is the blameworthy conduct, it goes without saying that the making of a "false representation", which has been made an offence u/s 10(b) of the Act, would bring the case of the defaulting party within the ambit of that section. The application of the doctrine of mens rea in cases of tax delinquency has been nicely summed up in "Carpus Juris Secundum", Volume 85, at page 580 in paragraph 1923, where it is stated thus :

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

18. We are in agreement with the above statement. Therefore, we hold, to the limited extent that mens rea has application in tax default cases, it would stand established, if the conduct of the assessee is found to be blameworthy, within the meaning of the particular provision of the given tax statute. Where a finding is recorded on facts about the existence of the blameworthy conduct, which the Legislature has treated as an offence or a default on the part of the assessee, like the making of a "false representation", it would attract the provisions of section 10(b) of the Act and no further finding would be required to be recorded about the existence of mens rea on the part of the assessee, as it would be inherently included in the earlier finding. We, therefore, cannot accept the proposition that even if a finding has been recorded on facts by the competent authorities that an assessee has made a "false representation", as contemplated by section 10(b) of the Act, in the absence of an additional finding that the assessee also had the requisite mens rea, he cannot be penalised u/s 10(b) of the Act. The argument has no basis and is absolutely far-fetched.

19. Of course, in the judgments relied upon by the learned counsel for the assessee, which have been dealt with by us elsewhere, it has been stated that mens rea is an essential ingredient to establish an offence u/s 10(b) of the Act and in each one of those cases, the penalty proceedings were set aside. We are, however, relieved of the necessity to deal with those judgments in extenso for, in each one of those cases, it was found that the statutory authority had not returned any finding either as regards the existence of mens rea or even to the extent that the assessee in those cases could be said to have made any "false representation". Since the making of a false representation, whether expressly or impliedly, is the sine quo non for invoking the provisions of section 10(b) of the Act, the absence of a finding from the statutory authority in that behalf would necessarily lead to the conclusion that the provisions of section 10(b) of the Act are not attracted. None of those judgments is any authority for the proposition that in addition to recording a finding that the assessee had made a "false representation", an additional finding to the effect that the assessee also had the requisite mens rea, is necessary to attract the provisions of section 10(b) of the Act. On the other hand, in our opinion, the judgment reported in *The Coimbatore District Central Co-Operative Supply and Marketing Society Ltd. Vs. The State of Tamil Nadu*, which we have dealt with elsewhere and which has been relied upon by the learned Government Advocate (Taxes), applies with all force to the facts and circumstances of the present case.

20. Coming now to the case on hand, the Deputy Commercial Tax Officer had negatived the plea of the assessee that it had acted bona fide. It was found by the assessing authority that "ball-bearings" could not, by any stretch of imagination, be considered to have been included in the goods specified in the certificate of registration. A careful reading of the goods specified in the certificate of registration unmistakably shows that "ball-bearings" could not be said to be included in the certificate, as they are distinctly separate goods. The dealer, who has been dealing with these commodities for a long time must be

presumed to know the difference between the machinery and ball-bearings. If, knowing as to what was contained in the certificate of registration, and there is nothing on record to show that the assessee had no such knowledge, the assessee used the C form declarations to purchase ball-bearings, undoubtedly, the representation made by the assessee was "false". When a representation is made intentionally or knowingly that it is not true, the representation would, unmistakably, be a "false representation". With a view to save himself from the penal consequences envisaged by section 10(b) of the Act, the assessee took the plea of acting "bona fide". What he did in fact, was to raise the plea of acting in "good faith". Under the Indian Penal Code, section 52 defines "good faith" and states that nothing is said to be done or believed in good faith, which is done or believed without due care and attention. It is not the case of the assessee that it had taken due care and paid due attention to study the entry in the certificate of registration before making purchases on the basis of the C forms. As a matter of fact, the subsequent conduct of the assessee in seeking to get included in the certificate of registration, a number of other goods, including "ball-bearings", with effect from May 18, 1980, as is apparent from the amendment made to the certificate of registration by the Deputy Commercial Tax Officer, dated July 5, 1980 (available at page 29 of the typed set), goes to show that the assessee could not be said to have earlier acted in goods faith when it purchased the ball-bearings on furnishing C form declarations. Though there is some variance about the concept of "good faith" in criminal law from that under the civil law, but we find that under the Madras General Clauses Act also the expression "good faith" has been defined in the same manner as in the Indian Penal Code, unlike in the Central General Clause Act of 1897 and it insists on due care and attention as an indispensable element for acting in "good faith". In the facts and circumstances of this case, the assessing authority rightly found, on facts, that the representation made by the assessee at the time of purchasing ball-bearings was a "false representation" and that the plea of acting "bona fide" was unsustainable. The Joint Commissioner, in the suo motu revision proceedings also concurred with the findings of fact and found that since there are separate entries in the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, for machinery and ball-bearings, the two articles were separate and distinct and not the same and no assessee, who had acted with due care and attention, could ever construe that "ball-bearings" were included in the certificate. The Joint Commissioner, therefore, found on facts that the assessee had not made a truthful representation, which was an equation of false representation and, on the basis of that finding of fact, while rejecting the plea of bona fides, the assessee was held to have acted mala fide and thereby to have committed an offence contemplated u/s 10(b) of the Act by the making of "false representations". Since clear findings have been record on the facts of the case of the effect that the representation made by the assessee was "false representation" and that it had been knowingly made by the assessee, the Joint Commissioner as well as the assessing authority were justified in holding that the assessee had committed an offence punishable u/s 10(b) of the Act. The findings

have been record after careful application of mind and are based on the relevant material available on the record. In the facts and circumstances of the case, the plea of bona fides set out by the assessee was totally misconceived and was rightly rejected. Since the finding recorded, on facts, by the authorities is based on the material on record and is neither perverse nor otherwise unreasonable, the conclusion becomes irresistible that the assessee had made a false representation and committed an offence u/s 10(b) of the Act. The finding to the contrary recorded by the first appellate authority is based on surmises and conjectures and cannot be preferred over the findings recorded by the assessing authority as well as the Joint Commissioner regarding the making of the "false representation" by the assessee to secure a benefit to which it actually was not entitled.

21. Thus, in the facts and circumstances of the instant case, construing the provisions of section 10(b), read with section 10A of the Act strictly, we find that the assessee 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. The order of the Joint Commissioner under appeal, therefore, does not call for any interference. The appeal fails and is dismissed. No costs.

22. Appeal dismissed.