IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5391 of 2007 & M.P.No.2 of 2007

M/s.NEPC Agro Foods Limited,
Rep. by Chief Executive,
Kavarkkal Estate,
Waterfalls Estate Post, Valparai. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Valparai, Coimbatore District. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in CST No.319126/2003-04 quash the order dated 20.07.2005 as the same is patently erroneous in law.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.K.Venkatesh, Government Advocate

O R D E R

Heard Mr.S.Raveekumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.The short issue, which falls for consideration in this writ petition is whether the respondent was right in levying penalty under Section 10-A of the Central Sales Tax Act, 1956 (in short “CST Act”). A notice was issued by the respondent to the petitioner dated 30.06.2005, which is sequel to the checking of accounts and on perusal of Form-8 register extract filed by the petitioner for the year 2003-04. The allegation against the petitioner is that they have purchased Wind Mill and other spare parts for mills and the Form 'B 'certificate issued to the petitioner for registration under the provisions of the CST Act does not include the Wind Mill. The petitioner pointed out that they have purchased the Wind Mill for generation of power and the Form 'B' certificate empowers them to effect such purchases.

In spite of such explanation, the respondent has passed the impugned order dated 20.07.2005, confirming the proposal in the notice dated 30.06.2005, stating that the Wind Mill has not been specifically included in the Form 'B' Certificate. This order is put to challenge in this present writ petition.

3.On perusal of the Form 'B' Certificate, it is seen that registration has been issued for purchase of goods for use in the generation or distribution of electricity or any other form of power. The term 'any other form of power' should be construed to mean other non-conventional forms of power and one such non-conventional form being power generated by Wind Mill. The proper interpretation to be given to the said entry in the Form 'B' Certificate is by reading into it as power to deal with goods for use in the generation of power, which includes generation of power by Wind Mill. Therefore, the interpretation given by the respondent in the impugned order is incorrect.

4.That apart, the impugned order levies penalty under Section 10-A of the CST Act. Even in the show cause notice, dated 30.06.2005, there is no allegation that the petitioner made a false statement knowing fully well that the certificate of registration does not cover the items.

5.The Hon'ble Full Bench of this Court in the case of State of Tamil Nadu v. Nu-Tread Tyres reported in [2006] 148 STC 256 (Mad) [FB] has held that Section 10(b) of the CST Act provides for an offence if any 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 expression “falsely represents”, clearly shows that the element of mens rea is the necessary component of the offence. In the absence of mens rea, resort to penal provision would not be proper unless it is established that the conduct of the dealer was contumacious or that there was delibrate violation of the statutory provision or wilful disregard thereof. If the registered dealer honestly believes that any particular goods are embraced by the certificate of registration and on that belief makes a representation, he cannot be held guilty of the offence under Section 10(b) of the CST Act and no penalty can be imposed under Section 10-A of the CST Act. Therefore, mens rea is an essential ingredient for the levy of penalty under Section 10(b) of the CST Act.

6.Applying the above decision, it has to be held that the levy of penalty is not authorized, as there is no allegation of false representation or mis-representation on the part of the petitioner. Thus, on both the issues, the petitioner is entitled for the relief as prayed for. For the above reasons, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

The Deputy Commercial Tax Officer,
Valparai, Coimbatore District.

W.P.No.5391 of 2007

AD(CO)
RMP(08/11/17)