

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P. No.8867 of 2006

M/s.Touchenglee Stationery Manufacturing
Co. Pvt. Ltd., Tiruvallure - Sriperumbadur
Road, Polluvakkam 602 002.

.. Petitioner

-vs-

The Deputy Commercial Tax Officer,
Tiruvallur Assessment Circle,
Tiruvallur.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records on the file of the respondent pursuant to his proceedings in CST./694639/2003-04 dated 31.01.2006 and quash the same as ultra-vires and contrary to the principles of natural justice.

For Petitioner : Mr.S.Mohan

For Respondent : Mr.S.Kanmani Annamalai
Addl.G.P.

O R D E R

Heard Mr.S.Mohan, learned counsel for the petitioner and Mr.Kanmani Annamalai for the respondent.

2.The petitioner is a manufacturer of stationery items having its unit at Sriperumbadur and registered as a dealer on the file of the respondent under the provisions of the Central Sales Tax Act, 1956 and the Tamil Nadu General Sales Tax Act, 1959. The controversy in the instant case is on account of an entry made in the petitioner's CST registration certificate dated 18.12.1997. In the said certificate, initially there were 13 items under various categories, which would be used by the petitioner for their business activities. Subsequently, the petitioner sought for inclusion of two items, namely, Superior Kerosene Oil (SKO) and SKO-Additive, as Sl.Nos.14 and 15 in the certificate. The certificate was duly amended and in the list of items as against Sl.No.14, it was mentioned as Superior

Kerosene Oil : Consumable with effect from 01.04.2003 and in Sl.No.15, it was mentioned as S.K.O. Additive : Consumable with effect from 01.04.2003. On realising that a mistake has been committed by the respondent while making the entry in the certificate, the petitioner submitted a representation on 25.11.2003, stating that they have noticed that the Superior Kerosene Oil has been included with effect from 01.04.2003 and it has been made in column (b) for use in the manufacture of processing of goods for sale, instead of column (d) for use in generation or distribution of electricity or any other form of power. It was stated that since the Superior Kerosene Oil is used for generation of power, the petitioner requested that the CST certificate may be amended to include it under column (d) with retrospective effect.

3.The respondent acknowledged the said representation on 16.12.2003. Pursuant thereto, an order was passed by the respondent on 12.06.2004 acceding to the request of the petitioner vide their letter dated 25.11.2003 and included it under column (d) for use in generation or distribution of electricity or any other form of power, but only with effect from 16.12.2003 and not from 01.04.2003. Not stopping with that, the respondent precipitated the problem by issuing a notice under Section 10A of the CST Act and informed the petitioner that they propose to demand tax for the difference involved and also propose to impose penalty at 150% under Section 10A. The petitioner submitted a detailed objection, which was verbatim reproduced in the impugned order, however, refused to accept the objections and confirmed the proposal in the said notice.

4.The respondent, in their counter-affidavit, seeks to justify their stand taken in the impugned order by stating that due to inadvertence, the date of effect was noted as 01.04.2003 and therefore, an amendment of the registration certificate was made with effect from 16.12.2003 and an errata was issued and the dealer did not raise any objection to the errata. Further, it is submitted that for the period from 01.04.2003 to 15.12.2003, the petitioner has been falsely representing that the purchase was made for use of generation of electricity, when it was included in the registration certificate under the column for use of manufacture or processing and therefore, the levy of penalty is justified.

5.Two issues fall for consideration in this matter. Firstly, as to whether the amendment which was made in the certificate with effect from 16.12.2003 would date back to the date originally entered, i.e., on 01.04.2003 or was prospective from 16.12.2003. The respondent is candid in admitting that initially the inclusion of the Superior Kerosene Oil under the category 'consumable' was entered and after properly

appreciating the factual position, amended the certificate with effect from 01.04.2003, the date on which that item was included in the list of items in the registration certificate. Subsequently, the order dated 12.06.2004 was passed by restricting it with effect from 16.12.2003. If the respondent has admitted that it is an error and that the item should not have been included in column (b), but should have been included in column (d), then the amendment should take effect from the date of its first inclusion, i.e., 01.04.2003, that is with retrospective effect, failing which no useful purpose would be served in admitting a mistake.

6. Secondly, it has to be seen as to whether this can give rise to a cause of action to invoke Section 10A of the Act. In my considered view, the manner in which the respondent has acted is perverse. On a plain reading of Section 10A (1) would make it evidently clear that such provision can be invoked only when mens rea is established by the authority and a clear finding should be recorded that the dealer, with guilty intention and knowledge and not by oversight or inadvertence or by bonafide mistake or a wrong interpretation of law, had acted. In the instant case, there is no such allegation except for certain loosely worded expression in paragraph 4 of the counter-affidavit. The imposition of penalty at 150% is also equally perverse.

7. Thus, for all the above reasons, the impugned proceedings are held to be wholly illegal and accordingly, are set aside and it is made clear that the amendment made to the petitioner's registration certificate will be effective from 01.04.2003.

The writ petition is, accordingly allowed on the above terms. No costs.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sra

To

The Deputy Commercial Tax Officer,
Tiruvallur Assessment Circle,
Tiruvallur.

+1 CC to Mr. S. Mohan, Advocate sr 55886.

+1 CC to Spl. Govt. Pleader sr 56202.

W.P.No.8867 of 2006

SP(22/09/2017)