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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.105 of 2015

Dhansar Engineering Company Private Limited, a company registered under the Indian Companies Act, 1956, having its office at Dhansar, P.O. & P.S.Dhansar, District-Dhanbad-828106 (Jharkhand), its office in the State of Chhattisgarh, at Magarpara Road, Opposite L.I.C. Office, Bilaspur, District Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Commercial Taxes, having its office at Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur (CG)
2. Divisional Deputy Commissioner, Commercial Taxes, Division-1, Sales Tax Bhawan, Beside District Court, Bilaspur-495001 (CG)
3. Commercial Taxes Officer, Commercial Taxes, Circle-1, Sales Tax Bhawan, Beside District Court, Bilaspur-495001 (CG)

---- Respondents

For Petitioner:	Mr.Amrito Das, Advocate
For Respondents:	Mr.Gary Mukhopadhyay, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/04/2018

1. The petitioner was granted registration certificate under the Central Sales Tax Act, 1956 (hereinafter called as “CST Act 1956”) by the Commercial Tax Officer for machinery and HEMM for activity of mining/job work undertaken by him. Thereafter the petitioner was awarded contract work by Prakash Industries Limited and on the basis of Form-C issued to the petitioner, the petitioner has purchased tippers from Volvo India Limited, Bangalore in the year 2006-07 and 2007-08 and thereafter on 6.5.2008 the petitioner got amended his registration and included dumper, tipper and its parts in the said certificate of registration. On 29.4.2010, assessment was

carried out for aforesaid two assessment years. Thereafter, on 17.7.2012 notice was issued to the petitioner to submit its objection on the audit objection raised by the Accountant General with regard to the benefits claimed under 'Form C' for purchase of tippers prior to the date of amendment in the registration certificate, to which he submitted its objection. On 27.6.2013 order was passed by the Commercial Tax Officer imposing penalty under Section 10 (b) of the CST Act 1956. The petitioner preferred revision before the revisional authority against that order and by the impugned order, the revisional authority affirmed the order passed by the Commercial Tax Officer, against which, this writ petition has been filed by the petitioner herein.

2. Mr.Amrito Das, learned counsel appearing for the petitioner, would submit that the order passed by the revisional authority affirming the order passed by the Commercial Tax Officer is unsustainable and bad in law as the Revenue has not discharged their burden of proof demonstrating that the petitioner has 'falsely represented' thereby establishing the guilty mind i.e. mens rea as required under Section 10(b) of the CST Act 1956 and no specific finding has been recorded either by the Commercial Tax Officer or by the revisional authority. Therefore, the impugned order passed by the revisional authority affirming the order of the Commercial Tax Officer deserves to be set aside.

3. Mr.Gary Mukhopadhyay, learned Government Advocate appearing for the respondents/State, would support the impugned order and submit that the impugned order passed by the revisional authority

affirming the order passed by the Commercial Tax Officer is in accordance with law and the writ petition deserves to be dismissed.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

5. It is correct to say that the original registration certificate was issued for machinery and HEMM for activity of mining/job work undertaken by the petitioner and tippers were added w.e.f. 6.5.2008, but the petitioner purchased tippers prior to amendment of registration certificate. It is the case of the respondents/State that tippers were not included in the registration certificate, therefore, by using Form-C, Tippers could not have been purchased by the petitioner from Volvo India Limited, Bangalore.

6. In order to resolve the dispute, it would be appropriate to notice Section 10(b) of the CST Act 1956 which provides as under:-

> "**10. Penalties**.---If any person-
>
> (a) xxx xxx xxx
>
> (aa) xxx xxx xxx
>
> (b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration."
>
> (c) xxx xxx xxx
>
> (d) xxx xxx xxx
>
> (e) xxx xxx xxx
>
> (f) xxx xxx xxx
>
> he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues."

Section 10-A of the CST Act 1956 provides for imposition of penalty in lieu of prosecution which provides as under:-

> "10A. Imposition of penalty in lieu of prosecution-(1) If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under sub-section (2) of Section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section:
>
> Provided that no prosecution for an offence under Section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.
>
> (2) The penalty imposed upon any dealer under sub-section (1) shall be collected by the Government of India in the manner provided in sub-section (2) of Section 9—
>
> (a) in the case of an offence falling under clause (b) or clause (d) of Section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of sub-section (4) of Section 8 in connection with the purchase of such goods;
>
> (b) in the case of an offence falling under clause (c) of Section 10, in the State in which the person purchasing the goods should have registered himself if the offence had not been committed."

7. The imposition of penalty under Section 10(b) read with Section 10-A of the CST Act 1956 came up for consideration before the Supreme Court in the matter of **<u>Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics</u>**[1] in which Their Lordships have held that expression "falsely represents" means guilty mind and

1 (2010) 9 SCC 630

deliberate action in defiance of law and a finding of mens rea is a condition precedent for levying penalty under Section 10(b) read with Section 10-A of the CST Act 1956 and held as under:-

> “23. Section 10 of the Act not only enumerates seven types of violations of the provisions of the Act which constitute an "offence", it also makes them punishable by prosecution and punishment, which ranges from simple imprisonment for a period, which may extend to six months, or fine or both and in a case of continuous offence, the Section provides for a daily fine. Section 10A of the Act provides for the imposition of penalty in lieu of prosecution. It provides that if any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of Section 10 of the Act, a penalty of fine may be imposed. Thus, the violations enumerated in clause (b), clause (c) and clause (d) of Section 10 may not necessarily result in prosecution with the possible imposition of sentence of imprisonment as an alternative is provided in respect of these violations. Therefore, what we are required to construe is whether the words "falsely represents" would cover a mere incorrect representation or would embrace only such representations which have been made knowingly, wilfully and intentionally.
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> 31.It is true that the object of Section 10(b) of the Act is to prevent any misuse of the registration certificate but the legislature has, in the said Section, used the expression "falsely represents" in contradistinction to "wrongly represents." Therefore, what we are required to construe is whether the words "falsely represents" would cover a mere incorrect representation or would embrace only such representations which are knowingly, wilfully and intentionally false.
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> 36. In view of the above, we are of the considered opinion that the use of the expression "falsely represents" is indicative of the fact that the offence under Section 10(b) of the Act comes into existence only where a dealer acts deliberately in defiance of law or is guilty of contumacious or dishonest conduct. Therefore, in proceedings for levy of penalty under Section 10A of the Act, burden would be on the revenue to prove the existence of circumstances constituting the said offence.

> 37. Furthermore, it is evident from the heading of Section 10A of the Act that for breach of any provision of the Act, constituting an offence under Section 10 of the Act, ordinary remedy is prosecution which may entail a sentence of imprisonment and the penalty under Section 10A of the Act is only in lieu of prosecution. In light of the language employed in the Section and the nature of penalty contemplated therein, we find it difficult to hold that all types of omissions or commissions in the use of Form `C' will be embraced in the expression "false representation". In our opinion, therefore, a finding of mens rea is a condition precedent for levying penalty under Section 10(b) read with Section 10A of the Act. ”

8. Thus, the Supreme Court has clearly held that in proceedings for levy of penalty under Section 10-A of the Act, burden would be on the Revenue, to prove the existence of circumstances constituting the said offence and a finding of mens rea is a condition precedent under Section 10(b) read with Section 10-A of the CST Act 1956.

9. Reverting to the facts of the instant case, the Commercial Tax Officer has simply recorded a finding that dumper, tipper and parts were came to be included in the registration Form-C on 6.5.2008, therefore, purchase of tippers by using Form-C could not have been made by the petitioner and explanation is not acceptable and proceeded to levy the penalty under Section 10(b) read with Section 10-A of the CST Act 1956. In a revision filed before the revisional authority against the order of penalty, the revisional authority also recorded the same finding relying upon some judgments and affirmed the order of the Commercial Tax Officer. The two authorities were required to clearly record a finding whether the petitioner's case falls within the meaning of “falsely represents” under Section 10(b) of the CST Act 1956 and as

interpreted by the Supreme Court in **Sanjiv Fabrics** (supra), particularly in paras 31, 36 and 37, whether there is any mens rea on the part of the petitioner and whether the Revenue has discharged its burden of proof in terms of the judgment of the Supreme Court in **Sanjiv Fabrics** (supra), but that has not been done and the revisional authority has simply reiterated the finding of the Commercial Tax Officer and affirmed the order of the Commercial Tax Officer, which cannot be sustained.

10. As a fallout and consequence of the above-stated discussion, the impugned order dated 26.12.2014 (Annexure P/1) passed by respondent No.2-Divisional Deputy Commissioner, Commercial Taxes is hereby set aside. The matter is remitted to the revisional authority for considering the matter afresh in the light of observation made herein-above and principles of law laid down in this regard by the Supreme Court in **Sanjiv Fabrics** (supra). The revisional authority shall consider and dispose of the matter within a period of three months from the date of receipt of certified copy of this order after hearing the parties and taking into consideration the material available on record and submitted by the parties.

11. The writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-