IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2018

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

T.C.(R).No.125 of 2018

Kromatics and Insulants Pvt. Limited,
No.d-8, Mogapair Road,
Chennai - 600 037. ... Petitioner

Vs.

The Commercial Tax Officer,
State of Tamil Nadu,
J.J.Nagar Assessment Circle,
38 & 39 JJ Complex, Thirumangalam,
Anna Nagar, Chennai-600 040. ... Respondent

Prayer: Tax Case Revision is filed under Section 60(1) of the TNGST Act, 1959, to revise the order dated 10.05.2018, made in T.A.No.80 of 2017, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For Petitioner ... Mr.N.Inbarajan

For Respondent ... Mr.V.Hari Babu
Additional Govt. Pleader (Taxes)

O R D E R

(Order of the Court was made by **S.MANIKUMAR, J)**

Instant Tax Case Revision is filed, to revise the order, dated 10.05.2018, made in T.A.No.80 of 2017, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. It is the case of the petitioner that, the petitioner/dealer is engaged in the manufacture of colour paste. They are Registered dealers on the file of the Commercial Tax Officer/Assistant Commissioner of Commercial Taxes, J.J.Nagar Assessment Circle, Chennai. On 25.02.2015 to 20.04.2015, the Enforcement Wing Officers, Chennai, have inspected the place of business of the dealer. On verification of Form 8 Register, showed that they have purchased some items, by issuing 'C' Forms, even though those items were not included in the certificate of Registration issued to them, under the Central Sales Tax Act, 1956. Thus, the dealer has falsely represented, while purchasing goods of such class, as goods are covered by certificate of registration, issued under the Central Sales Tax Act, 1956 which is an offence under Section 10(b) of the CST Act, 1956 of which warrants levy of penalty under Section 10-A of the CST Act,

1956 as shown below:-

Sl.No.	Name of the seller	TIN/CST No.	Commodity	Purchase Value	Tax 25% Penalty at 150%
1.	Bihanicontainers	29640071052	Packing Materials	Rs.8813061	Rs.660980
2.	Hitechplast Ltd. Pondicherry	34040008783			

3. The Commercial Tax Officer, Chennai, proposed to levy penalty of Rs.6,60,980.00/-, under Section 10(A) of Central Sales Tax Act, 1956. Accordingly, a notice was issued to the dealer, for filing of their objections if any, to the said proposal. The dealer has filed a objection letter, stating that their CST Registration certificate issued while they were an assessee in Mylapore Assessment Circle and got omitted to be endorsed in the new Registration Certificate while they transferred their business from Mylapore to Koyambedu assessment circle and finally requested to drop the proposal to levy penalty under Section 10-A of the Act. Vide proceeding dated 30.05.2016, in CST/796643/2007-08, the Commercial Tax Officer, J.J.Nagar Assessment Circle, Chennai, confirmed the penalty and it reads thus:-

"I have carefully gone through their objections. They admit the existence of the defect charged. The reason put forth by the dealer that their CST Registration Certificate were omitted to endorse while they were an assesse in the jurisdiction of Mylapore Assessment Circle was not proved materially. Hence, over rule their objections as not

convincing and confirm my proposal to levy penalty u/s 10-A of the Act for the year 2007-08 as detailed below:-

Penalty levied u/s 10-A of CST Act, 1956	*Rs.660980.00*
Penalty paid	*Rs. NIL*

Balance	*Rs.660980.00*

A demand notice in Form 54 is issued."

4. Being aggrieved by the assessment order, dealer has filed an appeal in AP.No.15/2016/CST, before the Appellate Deputy Commissioner (CT) (South), Chennai. Vide order dated 21.07.2017, in AP.No.15/2016/CST, the Appellate Deputy Commissioner (CT) (South), Chennai, ordered as hereunder:-

"I have carefully considered the arguments of the Advocate appeared for the appellant, with the available records and the impugned Assessment order passed by the Assessing Officer. The point to be considered in the appeal is whether the containers purchased by the appellant on issue of C Form is correct or otherwise, though it is not found place in the certificate of registration issued in Form-B, considering the provision of Section 8(3)(d) of CST Act. The relevant provision of Section 8(3)(d) of CST Act, is extracted below:-

" Section 8(3)(d): are containers or other materials used for the packing of any goods or classed of goods specified in the certificate of registration referred to in

clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

The verification of the registration certificate issued in Form-B revealed that the appellants are eligible to purchase resins and paints coating, color plates, chemicals alone. Further, under column (c) for use in packing of goods sale / resale has been noted as NIL. Therefore, the appellants are not eligible to purchase the packing materials as per Section 8(3)(c) of CST Act. Further, the judgments of the Hon'ble Madras High Court reported in 35 VST 1 (SC) are not applicable to the present case. The Assessing Officer has proved in the impugned Assessment order that the appellants have made false representation that the goods purchased are covered by registration certificate and hence it constitutes an offence under Section 10(b) of CST Act, attracts penalty under Section 10A of CST Act. In view of the facts available on records I find that there is no reason exists for my interference with the orders passed by the Assessing Authority. I therefore, uphold the levy of penalty for Rs.6,60,980.00 under Section 10A of CST Act, dismissing the plea of the appellant as not acceptable. Thus this appeal stands dismissed.

In the result the Appeal is dismissed."

5. Aggrieved by the abovesaid order, the dealer has filed an

appeal in T.A.No.80 of 2017, before the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Chennai. Vide order dated 10.05.2018, in T.A.No.80 of 2017, Tribunal ordered as hereunder:-

> *"We have perused the order of the Appellate Deputy Commissioner (CT) and other connected assessment records. The Appellate Deputy Commissioner (has observed in his order dated 21.07.2017 at page no.5 as follows:-*
>
> *"The verification of the registration certificate issued in Form-B revealed that the appellants are eligible to purchase resins and paints coating, color plates, chemicals alone. Further, under column (c) for use in packing of goods sale / resale has been noted as NIL. Therefore, the appellants are not eligible to purchase the packing materials as per Section 8(3)(c) of CST Act. Further, the judgments of the Hon'ble Madras High Court reported in 35 VST 1 (SC) are not applicable to the present case. The Assessing Officer has proved in the impugned Assessment order that the appellants have made false representation that the goods purchased are covered by registration certificate and hence it constitutes an offence under Section 10(b) of CST Act, attracts penalty under Section 10A of CST Act. In view of the facts available on records I find that there is no reason exists for my interference with the orders passed by the Assessing Authority. I therefore, uphold the levy of penalty for Rs.6,60,980.00 under Section 10A of CST*

Act, dismissing the plea of the appellant as not acceptable."

The Appellate Deputy Commissioner (CT) has rightly dismissed the appeal. We do not see any infirmities in the impugned order of the Appellate Deputy Commissioner (CT). Accordingly, the point is answered.

In fine TA.80/2017 filed by the appellant/dealer stands Dismissed."

6. Being aggrieved by the order of the Tribunal, the dealer has filed the present tax case revision, on the following substantial questions of law:-

"a) Whether in the facts and circumstances of the case the Tribunal is right in confirming the levy of penalty under Section 10-A of the CST Act, 1956 without considering the bona fide of the petitioner.

b) Whether the Tribunal erred in not considering the expression "falsely represents" and erred in not giving a finding on the element of mens rea which is the necessary component of the offense.

c) Whether the Tribunal is justified in ignoring the principles rendered in 148 STC 256 (Mad)9FB) and 35 VST Page 1 (SC).

d) Whether the Tribunal was justified in passing order without considering GO Ms.No.61 CT & RE dated

24.1.1984 in which it has been clarified that the assessing authorities are to take a lenient view wherever a dealer purchased goods on the basis of C Form either inadvertently or ignorantly.

e) Whether the Tribunal is justified in not giving a finding with regard to the eligibility of the packing materials/Tin containers to be included in the Certificate of Registration as provided under Section 8(3)(d) of the Act read with Rule 13 of the CST (R&T) Rules, 1957.

f) Whether in the facts and circumstances of the case the Tribunal erred in not considering that packing materials used for the purpose of packing of the manufactured goods which are specified in the Certificate of Registration are eligible to be purchased as provided under Section 8(3)(d) of the Act.

g) Whether in the facts and circumstances of the case the Tribunal erred in confirming the levy of penalty without giving an finding that the petitioner acted deliberately and not bona fide."

7. Supporting the above substantial questions of law, Mr.N.Inbarajan, learned counsel for the petitioner/dealer, submitted that the Tribunal is not right, in stating that the petitioner has accepted the defect in the sworn statement at the time of inspection. He further submitted that the Tribunal has failed to consider the contention raised, with regard to the construction of Section 8(3)(d) of

the Act, by which, the containers used for packing of any goods specified in the Certificate of Registration, are not necessary for inclusion in the Certificate of Registration.

8. Learned counsel for the petitioner/dealer further submitted that the Tribunal has failed to give any finding, with regard to the permitted goods of packing materials, as provided under Rule 13 of the CST (R&T) Rules, 1957 and that the Tribunal has failed to apply G.O.Ms.No.61 CT & RE dated 24.01.1984, and take a lenient view, wherever a dealer purchased goods on the basis of C Form either inadvertently or ignorantly.

Heard both sides and perused all the materials available on record.

9. Before adverting to the merits of the case, let us consider the provision of the Central Sales Tax Act, 1956, dealing with penalty,

"10. Penalties:- If any person,-

(a) ....

(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; or

(c) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer"

Section 10A of the said Act provides for the imposition of penalty in lieu of prosecution. Sub-section (1) of the said Section, reads as follows:

"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."

10. In **Commissioner of Sales Tax U.P. vs. M/s Sanjiv Fabrics** reported in **(2010) 9 SCC 630,** the Hon'ble Supreme Court, while examining the import of the words "falsely represents" to include only

such false representations, which have been made knowingly, willfully and intentionally and after considering the question therein, in the context of language employed by the statute, at Paragraph 22, observed as hereunder:

> *"22. 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. 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."

11. Though the learned counsel for the petitioner submitted that there is no finding in the order of the authorities that there was any intention on part of the assessee to evade tax and that there was an element of mens rea, this Court is not inclined to accept the same and interfere with the same, as there is a clear finding of the appellate authority, regarding false representation, in the order, 21.07.2017, confirming the findings of the assessing authority. At the risk of repetition, finding of the appellate authority is extracted hereunder:

"The verification of the registration certificate issued in Form-B revealed that the appellants are eligible to purchase resins and paints coating, color plates, chemicals alone. Further, under column (c) for use in packing of goods sale / resale has been noted as NIL. Therefore, the appellants are not eligible to purchase the packing materials as per Section 8(3)(c) of CST Act. Further, the judgments of the Hon'ble Madras High Court reported in 35 VST 1 (SC) are not applicable to the present case. The Assessing Officer has proved in the impugned Assessment order that the appellants have made false representation that the goods purchased are covered by registration certificate and hence it

constitutes an offence under Section 10(b) of CST Act, attracts penalty under Section 10A of CST Act. In view of the facts available on records I find that there is no reason exists for my interference with the orders passed by the Assessing Authority. I therefore, uphold the levy of penalty for Rs.6,60,980.00 under Section 10A of CST Act, dismissing the plea of the appellant as not acceptable."

12. Both the appellate authority and the Tribunal, upon considering the material available on record, have found that the dealer had falsely represented, when purchasing any class of goods of such class are covered by Certificate of Registration, issued under the Central Sales Tax Act, 1956, which is an offence constituted under Section 10(b) of the said Act, warranting levy of penalty under Section 10A of the Act. Analysing the evidence, there is a concurrent finding of fact, against the dealer, which does not warrant reversal on the grounds raised.

13. For the foregoing reasons, we do not find any question of law, much less substantial questions of law, arising for consideration in this revision and accordingly, the same is dismissed. No costs.

(S.M.K.,J) (S.P.,J)

25.07.2018

Index : Yes

Internet : Yes

S.MANIKUMAR,J

AND

SUBRAMONIUM PRASAD ,J

skm

To

The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench), Chennai.

T.C.R.No.125 of 2018

25.07.2018