IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.39625 to 39628 of 2002

The State of Tamil Nadu,
rep. by The Deputy Commissioner(CT)
Coimbatore Division, Coimbatore. ... Petitioner

Versus

1. Tvl.Jay Shree Tea and Industries Ltd.,
Sholayar Post, Coimbatore.

2. The Secretary,
The Tamil Nadu Sales Tax
Appellate Tribunal (AB),
Coimbatore. ... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records on the file of the second respondent pertaining to the order dated 25.4.2001 made in C.T.A.Nos.87, 88, 89 and 90 of 1999 and quash the same as illegal.

For Petitioner : Mr.Mohamed Shaffiq
Special Government Pleader

For R1 : No appearance.

COMMON ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The Revenue has filed these Writ Petitions in this court under Article 226/ 227 of the Constitution of India, aggrieved by the order passed by the Sales Tax Appellate Tribunal allowing the Assessee's Appeal and setting aside penalty imposed under section 10A of the CST Act, with the following observation:-

"In 87 STC 359 the Orissa High Court held as follows:

Once it is accepted that there was absence of mens rea, resort to penal provision would not be proper unless it is established that conduct of the dealer was contumacious or that there was deliberate defence of statutory provisions, or wilful disregard thereof mens rea plays a very vital role for determination of the question whether penalty is to be imposed in a particular case.

iv. Bona fide can be gone into only, if the goods purchased was connected with the nature of business. In 21 STC 482, it was held that,

the assessee could possibly have formed the belief, and quite honestly, that the wares 'etc' would cover these articles and therefore it could not be said that the assessee, with the full knowledge of the falsity of the representation, made the declaration in the C-form issued by him and he was not liable to the penalty under section 10A.

v. The guilty mind can be inferred from the issue of C-form declaration, if the goods purchased was unconnected with the nature of business. In 101 STC 354, it was held that, allowing the petition, the groundnut kernel was an essential commodity for the manufacture of the goods in which the petitioner dealt. The petitioner in order to carry on his business purchased groundnut kernel outside the State by using the C-forms. By doing so, the petitioner would have entertained bona fide belief in his mind that the groundnut kernel would come under 'foodgrains' as stated in the registration certificate. Since the groundnut was an essential commodity for the purpose of the petitioner's business it could not be said that the purchase of groundnut control by using C-forms amounted to false representation made to his sellers. There was no guilty mind are mens rea in using the C-forms to purchase the essential commodity for running his business".

Respectfully following the above citations, we find that the purchase of laminated zipper jute bag by the appellants are not different from the gunny bags mentioned in this CST Registration and since there is no mens rea, we hold that the levy of penalty by the authorities below is unjust and improper and hence we allow the appeals."

2. The Assessing Authority as well as the first Appellate Authority had imposed penalty on the Assessee on the ground that the Assessee had purchased the Laminated Zipper Jute Bags which were not covered by the terms 'Gunny Bags' incorporated in the registration Certificate under the CST Act and therefore there was misuse of the Declaration in 'C' Forms made by the Assessee, consequently attracting the penalty under section 10A of the Act.

3. The Tribunal, however, observed the reasons and relying upon certain Case Laws, formed the opinion that the Assessee was under the bona fide belief that the purchase of Laminated Zipper Jute Bags was covered by the term 'Gunny Bags' as mentioned in the Registration Certificate.

4. Mr.Mohamed Shaffiq, learned Special Government Pleader appearing for the Revenue could not controvert the reasons assigned by the learned Tribunal in its impugned order.

5. Though the name of Mr.K.R.Krishnan learned counsel for the Respondent/Assessee is shown in the cause list, nobody appeared for the Respondent/Assessee.

6. Having heard the learned Special Government Pleader appearing for the Revenue, we are of the view that the reasons assigned by the learned Tribunal in the impugned order are cogent and proper and therefore, we are of the opinion that terms employed in the Registration Certificate viz., 'Gunny Bags' could very well include the Laminated Zipper Jute Bags also and they can fall within the term 'Gunny Bags' mentioned in the Registration Certificate. Therefore, the learned Tribunal was justified in setting aside the penalty under Section 10A of the CST Act in question. The Writ Petitions filed by the Revenue are liable to be dismissed and accordingly, they are dismissed. No costs. A copy of this order may be sent to the Respondent/Assessee.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Deputy Commissioner(CT)
   The State of Tamil Nadu,
   Coimbatore Division, Coimbatore.

2. The Secretary,
   The Tamil Nadu Sales Tax
   Appellate Tribunal (AB),
   Coimbatore.

3. Tvl.Jay Shree Tea and Industries Ltd.,
   Sholayar Post, Coimbatore.

+1cc to the Special Government Pleader Sr.101806
+1cc to Mr.K.R.Krishnan, Advocate Sr.101423

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srg 09/01/2020