In the High Court of Judicature at Madras

Dated : 03.01.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case No.70 of 2015

Joy Alukkas Traders (India) Private Limited
911, Cross Cut Road
Gandhipuram
Coimbatore - 641 012. ... Petitioner/Respondent

--Vs--

The State of Tamil Nadu
Represented by the Joint Commissioner
(Commercial Tax) Officer
Gandhipuram Circle, Coimbatore. ...Respondent/Appellant

Prayer:Revision under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order dated 04.03.2015 in C.T.S.A. No. 79/09 in the common order in C.T.A. No. 31/2008 and C.T.S.A. No. 79 /2009 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore - 18, for the assessment year 2004-05, against the order dated 18.6.2008, made in A.P.No and Year CST 6/2008, by the Appellant Assistant Commissioner (CT), Main Coimbatore, against the order dated 6.9.2007, made in CST No.855211/2004-2005, by the Commercial Tax Officer, Gandhipuram Circle, Coimbatore.

For Petitioner :Mr.N.Inbarajan

For Respondent :Mr.V.Haribabu
Additional Government Pleader [Taxes]

J U D G M E N T

Judgment was delivered by T.S.SIVAGNANAM,J

This tax case revision has been filed by the assessee under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal, [Additional Bench], Coimbatore - 18 in C.T.S.A.79 of 2009 dated 04.03.2015.

2. The Tax Case (Revision) was admitted on 02.09.2015 on the following substantial questions of law:-

> "The Tax Case (Revision Petition) is admitted on the following substantial questions of law:
>
> (i) Whether, in the facts and circumstances of the case, in the absence of finding of "falsely represented", a penalty under Section 10-A of the Central Sales Tax Act, can be levied?
>
> (ii) Whether, in the facts and circumstances of the case, when packing material itself is eligible to be purchased as provided under Section 8(3)(b) of the Central Sales Tax Act, can the levy of penalty be sustained? and
>
> (iii) Whether, in the facts and circumstances of the case, finding of mens-rea is a necessary ingredient before imposing penalty under Section 10-A of the Central Sales Tax Act?"

3. Heard Mr.N.Inbarajan, learned counsel for the Petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the Respondent.

4. The matter arises under the Provisions of the Central Sales Tax Act, 1956 (CST Act) for the Assessment Year 2004 - 2005. The Assessing Officer by proceedings dated 06.09.2007 held that in the Form - B Certificate of Registration issued under the CST Act, the items namely, 1.Jewel box, 2.Complement items and 3.Packing materials were not mentioned. The same were included in the Registration Certificate only with effect from 05.02.2005. Prior to such inclusion the assessee purchased these materials with Form - C declaration availing concessional rate of tax. The Assessing Officer found the same to be not in order and imposed penalty at 150% of the tax payable. The assessee preferred an appeal before the Appellate Assistant Commissioner (CT) (Main), Coimbatore.

5. The First Appellate Authority after taking note of the facts in question found that the assessee has included those items in the Form - B Registration Certificate with effect from 02.05.2005 and by applying the circular issued by the Special Commissioner and Commissioner of Commercial Taxes, dated 15.05.2001, which reiterated the instructions given by the Government in G.O.Ms. No.61, dated 24.01.1984, took a lenient view and reduced the penalty to 10% of the difference in tax. Thus, the penalty levied by the Assessing Officer at Rs.3,33,457/- under Section 10-A of the CST Act, 1956 was modified and reduced to Rs.15,173/-.

6. The assessee not being satisfied with the said order had preferred an appeal before the Tribunal and the department also preferred an appeal to the Tribunal. The assessee's contention is that to levy penalty under Section 10-A of the CST Act, the assessing authority should have recorded that the registered assessee has falsely represented when purchasing any class of goods that goods of such class are covered by the Certificate of Registration and in the absence of any such finding with regard to the false representation, the penalty could not have been levied. The assessee placed reliance on the decision of the Full Bench of this Hon'ble Court reported in 148 STC 296.

7. The Tribunal examined the facts of the case and the findings of the report held by the First Appellate Authority and held that the First Appellate Authority rightly considered the facts, more particularly, that those items were included in the Form - B Registration Certificate only with effect from 02.05.2005 and therefore, held that it is a case where penalty is to be levied. However, by doing so, the Tribunal increased the penalty from 10% to 50%. This is being questioned by the assessee before us by way of this tax case revision.

8. The learned counsel for the assessee vehemently contended that in the absence of any findings by the Assessing Officer the assessee had falsely represented in order to attract the offence under Section 10 (b) of the CST Act, penalty could not be levied. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court of India in the case of Commissioner of Sales Tax, U.P. vs. Sanjiv Fabrics reported in [2010] 35 VST 1 (SC).

9. The learned Additional Government Pleader sought to sustain the order passed by the Tribunal by contending that the assessee very well knew that the items mentioned above were not included in the certificate of Registration and therefore, mens rea is clear and the levy of penalty is warranted. In Sanjiv Fabrics, the question, which fell for consideration, was whether the requirement of mens rea is an essential ingredient for the levy of penalty under Section 10(b) read with Section 10(A) of the CST Act. The Hon'ble Supreme Court referred to the meaning of the word, which defines the word 'false' on the following terms:

> "According to Black's Law Dictionary (sixty edition), the word "false" has two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident, or honestly after the exercise of reasonable care. A thing is called "false" when it is done, or made, with knowledge, actual or constructive, that it is untrue

> or illegal, or is said to be done falsely when the meaning is that the party is in fault for its error.”

From the above definition, it is clear that the word 'false' includes intentionally or knowingly or negligently untrue and a thing is called “false” when it is done, or made, with knowledge, actual or constructive, that it is untrue or illegal. In the instant case, the assessee was initially registered with Triplicane Assessment circle and it is stated that at the relevant point of time, these items were mentioned in the Registration Certificate. Subsequently, the assessee shifted his business operations to Coimbatore and obtained a Certificate of Registration from the Commercial Tax Officer, Coimbatore, which was issued on 02.05.2005, wherein, these items were included. Thus, the assessee, which is a Private Limited Company, was fully aware of the fact that the items mentioned in the above were not included in the certificate issued by the Commercial Tax Officer and were included only on 02.05.2005 when the certificate stood amended. Thus, false representation is writ large from the conduct of the assessee and with full knowledge they had purchased these items, which were not included in the Form - B Registration Certificate by using Form - C declarations. Therefore, the levy of penalty in the instant case is warranted and the mens rea or false representation is clearly made out by the conduct of the assessee.

10. Furthermore, the subsequent conduct of the assessee in including the three items in the Registration Certificate also fortified the stand of the Petitioner. Therefore, we are of the considered view that the case on hand warrants regular penalty.

11.Next we move to decide as to whether the Tribunal was justified in increasing the penalty to 50% from that of 10% as imposed by the First Appellate Authority. We find from the impugned order the Tribunal has not given any reason to levy penalty as 50% or in other words the Tribunal has not given any reason as to why the penalty imposed by the First Appellate Authority requires to be increased, in the absence of any finding to the said effect. The order passed by the Tribunal to that extent calls for interference. Accordingly, while upholding the order passed by the Tribunal and deciding the substantial questions of law against the assessee, we modify the order of the Tribunal by deleting the levy of penalty as 50% and restoring the levy of penalty as 10% as ordered by the First Appellate Authority in his order dated 18.06.2008 in A.P. No. CST 6 of 2008.

12. With the above, the Tax Case Revision stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner (Commercial Tax) Officer
Gandhipuram Circle, Coimbatore.

2.The Appellate Assistant Commissioner)CT) Main,
Coimbatore.

3.The Commercial Tax Officer,
Gandhipuram Circle,
Coimbatore.

Tax Case No.70 of 2015

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