IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.01.2020
CORAM:
THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
W.P. Nos.46181, 46240 of 2002 and 28079 of 2004

THE STATE OF TAMILNADU REP BY
THE DEPUTY COMMISIONER (CT)
COIMBATORE DIVISION
... Petitioner in all Writ Petitions

Vs

1 TVL. CHOLA TEXTILES LTD
TIRUPPUR

2 THE SECRETARY THE TAMIL NADU
SALES TAX APPELLATE TRIBUNAL (ADDITIONAL
BENCH) COIMBATORE
... Respondents in all Writ Petitions

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari or other direction or order in the nature of Writ calling for the reasons on the files of the second respondent pertaining to the order dated 26.3.2002 and 4.4.2002 in C.T.A.Nos.101, 99 of 2000 and CTSA 202 of 2000 and quash the same as illegal and pass such or other order.

For petitioner : Mr.Mohammed Shafiq, Spl.G.P.

For Respondents : Mr.R.Hemalatha

COMMON ORDER
(made by Dr.VINEET KOTHARI, J.)

The State has filed this writ petition aggrieved by the order of the learned Sales Tax Appellate Tribunal dated 26 March 2002 whereby the learned Appellate Tribunal allowed the appeal of the assessee and held that no penalty could be imposed on the assessee under Section 10-A read with Section 10(b) of the Act for purchase of diesel and fuel for generator set against the "C" forms at concessional rates, as the said items were not separately mentioned in the Registration Certificate of the Assessee under the CST (Registration and Turnover) Rules. The relevant portion of the order passed by the learned Tribunal is quoted below for ready reference :-

The generator is already included in the certificate of registration and the fuel, diesel are not included, the assessee was under the bona fide impression that he is entitled to purchase fuel by issue of C forms, since the generator cannot run without the fuel. The purchase of fuel against C forms is found to be integrally part of the manufacturing activity for the goods mentioned in Form B need not be raw materials alone. Rule 13 of CST (Registration and Turnover) Rules, makes it clear, that the processing of materials was included, machinery parts, equipment, tools, stores, spare parts, accessories fuel or lubricants and since the purchases was done only with bona fide intention, the penalty reduced by the Appellate Assistant Commissioner is just and proper and the levy of penalty by the Assessing Officer is not warranted and unjustified. The dealer had included the purchase of diesel in the registration certificate with effect from 26.3.98 issued by the Commercial Tax Officer, Bazaar circle, Tiruppur and a copy of the same is enclosed and perused by this Tribunal. This shows that the Assessee is entitled to purchase the same by issue of C forms. In 109 STC 392 in the case of Ceronation Arts Crafts vs. State of Tamil Nadu, it was held that,

"the bona fide use of the form by the dealer, who had used these items in the goods manufactured by it had been accepted by the assessing officer. That plea could not be said to have been lacking in bona fides as it had uniformly been accepted in all the earlier assessment orders and the certificate was also subsequently amended to include these other items. Having regard to these facts, the dealer cannot be said to have committed an offence under section 10 (b) of the C.S.T.Act.

Relying on the above case law, we hold that the levy of penalty under Section 10-A of the CST Act is not warranted. We set aside the levy of penalty and thereby allowed the appeals in CTA 101/2000, 99/2000 and 102/2000.

The Assessing Officer has levied penalty of Rs.33,30,563/- at 150% on the tax due Rs.22,20,375/- in CST Asst.Order No.323196/96-97 dated 8.11.99. The first appellate authority has arrived at the tax due for the year 1997-98 at Rs.13,56,895.76 and levied the penalty at 50% on the tax due at Rs.6,78,448/- which is disputed in CTA.101/2000 and the appeal stands allowed. For the deletion of Rs.26,52,112/- by the Appellate Assistant Commissioner (CT) CTSA No.213/2000 is filed and since the appeal is allowed in full, the entire penalty of Rs.33,30,563 is set aside and the CTSA stands dismissed.

2. Aggrieved over the same, the Revenue has preferred this writ petition before this court.

3. Both the learned counsel fairly submitted that the Full bench of this Court in the case of State of Tamil Nadu vs. Nu-Thread Tyres, 2006(148) STC 256 (Mad) has decided that for imposition of penalty under section 10(b) Read with Section 10-A and the use of words “falsely” under Section 10C of the CST Act would imply a mens rea on the part of the Assessee for misuse of such Declaration in “C” forms and therefore, in the absence of any mens rea being established on the part of the Assessee, no such penalty can be imposed. The relevant portion of the said judgment of Full Bench of this Court is quoted below for ready reference.

> 21. Section 10(b) of the Act provides for an offence if any person being registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration. The expression falsely represents clearly shows that the element of mens rea is the necessary component of the offence. In the absence of mens rea, resort to penal provision would not be proper unless it is established that the conduct of the dealer was contumacious or that there was deliberate violation of the statutory provision or willful disregard thereof. If the registered dealer honestly believes that any particular goods are embraced by the certificate of registration and on that belief makes a representation, he cannot be held guilty of the offence under Section 10 (b) of the Act and no penalty can be imposed

> under Section 10A of the Act. The question whether the assessee acted under the honest belief is a question of fact. Therefore, in our view, mens rea is an essential ingredient for the levy of penalty under Section 10(b) of the Central Sales Tax Act, 1956. The reference is answered accordingly.

4. In CTO v. Rajasthan Taxchem Ltd., (2007) 3 SCC 124, the Hon'ble Supreme Court had also considered a similar case and held that the diesel used for running the generator set for carrying on manufacturing process of the yarn was 'raw material' within the meaning of definition clause and therefore, even though it did not form part of the ingredients of finished products, it could be purchased at concessional rates against "C" forms, and that distinguishing feature of that Judgment is that diesel was included separately as a raw material in the registration certificate of the Assessee. The relevant portion of the Supreme Court judgment is quoted below for ready reference :-

> "Since the diesel was being used for the purpose of running the generator set for the production of the ultimate product which was also required for the purpose of manufacturing the end product, the diesel can only be termed as raw material and not otherwise.
>
> To avail the concessional rate of tax under Section 10, the assessee has to satisfy three conditions:
>
> (a) he must be a registered dealer of any raw material;
>
> (b) raw material must be used for the manufacture of goods; and
>
> (c) the said manufacture in the State should be for the purpose of sale by him within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India.
>
> The respondent herein satisfied all the above tests and, therefore, the respondent assessee was entitled to such concessional rate as may be notified by the State Government. The respondent assessee used diesel as raw material for the manufacture of the end product, namely, yarn and fabric. The diesel used by the assessee was a fuel and lubricant as defined under Section 2(34) of the Sales Tax Act."

5. Thus, we find that the learned Appellate Tribunal was justified in holding that the Assessee was entitled to purchase the said fuel viz., diesel, for its generator set and even though the same was not separately included in the Registration Certificate of the Assessee, no mens rea can be attributed to the Assessee for purchase of the same at concessional rate against "C" Form and therefore, the question of imposition of penalty under Section 10(b) of the Act read with Section 10-A of the Act does not arise.

6. There is no merit in the Writ Petitions filed by the Revenue and the same are liable to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, WPMP Nos.34107 of 2004 is also dismissed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. THE SECRETARY
THE TAMIL NADU SALES TAX APPELLATE TRIBUNAL
(ADDITIONAL BENCH), COIMBATORE.

2. THE DEPUTY COMMISIONER (CT),
THE STATE OF TAMILNADU,
COIMBATORE DIVISION.

+1cc to Ms.R.Hemalatha, Advocate, SR.No.5926.
+1cc to Government Pleader(Taxes), SR.No.6854.

W.P. Nos.46181, 46240/2002
and 28079 of 2004

NR(CO)
CSR: 28.02.2020