

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.02.2021
Pronounced On	09.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.29105 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

M/s.Noyyal Common Effluent Treatment
Company Limited,
Shop No:2, P.R.Complex,
Door No:47, Binny Compound Main Road,
Tirupur - 641 601.
Represented by:
Mr.S.Selvakumar, Director.

... Petitioner

Vs.

The Assistant Commissioner (CT),
Tirupur Central I Assessment Circle,
Tirupur.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in CST No:853373/2006-07 dated 29.10.2010 and quash the same.

For Petitioner : M/s.Hema Muralikrishnan

For Respondent : Mr.R.Swarnavel, G.A.

O R D E R

In this writ petition, the petitioner has challenged the impugned order dated 29.10.2010 passed by the respondent in C.S.T.No.853373/2006-2007, whereby, a sum of Rs.2,52,99,413/- has been imposed as penalty under Section 10-A of the Central Sales Tax Act, 1956 on the petitioner for the alleged offence committed by the petitioner under Section 10(b) and Section 10 (d) of the said Act.

2. The case of the petitioner is that the petitioner treats effluents discharged from dyeing units in and around Noyyal River and had therefore installed a common effluent treatment plant for these dyeing units.

3. The case of the petitioner is that the respondent has wrongly imposed penalty on the petitioner under Section 10-A of the Central Sales Tax Act, 1956.

4. Before dealing with the merits and demerits of the case, I shall briefly refer to the facts of the case. The petitioner had obtained Certificate of Registration on 09.06.2006 under the provisions of the Central Sales Tax Act, 1956 from the respondent Commercial Tax Department.

5. The Registration Certificate granted to the petitioner specifies that the business of the petitioner was to chemically treat and process dyeing effluents, sewage water etc.

6. There is an endorsement in the Registration Certificate, as per which, the petitioner can procure goods for re-sale and for manufacture and processing of goods for sale against Form C.

7. The petitioner had procured goods from a dealer outside the State of Tamil Nadu and gave Form C to the said dealer, thereby, enabling the dealer to pay CST at concessional rate of tax under Section 8(3)(b) of the Central Sales Tax Act, 1956.

8. The petitioner transferred some of the goods procured at concessional rate of CST against Form C to some of its sister units which were also engaged in provision of similar services to dyeing units in and around Noyyal River, where, the directors of the petitioners were the directors.

9. Under these circumstances, a notice was issued to the petitioner to levy penalty and to prosecute the petitioner under Section 10(b) and (d) of the Central Sales Tax Act, 1956 and in lieu of the penalty and prosecution, the petitioner was called upon to show cause why penalty under Section 10-A of the Act should not be levied on the petitioner.

10. It is the case of the petitioner that the petitioner was entitled to procure panel board, pollution - control equipment and accessories thereof, machinery parts and accessories thereof and electrical goods for use in the manufacture or processing of the goods for sale as per the CST registration in Form B.

11. It is further submitted that the transfer of goods procured under concessional rate of tax to its sister concerns

though in violation of the terms of the registration in Form B and declaration in Form C, was not motivated with a view to evade payment of tax or to misuse Form C so as to attract violation and penalty and/or fine under the provisions of the Central Sales Tax Act, 1956.

12. It is further submitted that to impose penalty under Section 10-A of the Act, there should be mens-rea and in absence of mens-rea, the imposition of penalty vide impugned order cannot be justified.

13. The learned counsel for the petitioner heavily relied on the decision of the full bench of this Court rendered in State of Tamil Nadu Vs. New Tread Tyers, 2006 SCC OnLine Mad 665 : (2006) 4 CTC 450 (FB), wherein after referring to several decisions of the Hon'ble Supreme Court and that of the several High Courts and that of this court, it was concluded that for imposing penalty under Section 10(b) of the Central Sales Tax Act, 1956, presence of mens-rea was a must and unless it is established that the conduct of the dealer was contumacious and with a deliberate view to violate the statutory provisions or where there was wilful disregard thereof only penalty can be imposed on a dealer.

14. The learned counsel for the petitioner also placed reliance on the following decisions of the court:-

- i. Assessing Authority-cum-Excise and another, Vs East India Cotton Mfg. Co. Ltd., (1981) 48 SCC 239.
- ii. Prasad Productions (P) Ltd., Vs State of Tamil Nadu, (1998) 111 STC 51.
- iii. State of Tamil Nadu Vs Photo Centre, (1999) 114 STC 55.

15. Per contra, the learned counsel for the respondent commercial tax department submits that the impugned order passed by the respondent was well reasoned and requires no interference in this writ petition. He further submits that under Section 10-A of the Central Sales Tax Act, 1956, mens-rea was not an ingredient.

16. It is further submitted that even otherwise diversion of the goods procured at concessional rate of tax against Form C to a sister concern was clearly in violation of the declarations and therefore the submission that the goods were diverted only to a sister concern was of no avail against. He submits that the respondent has correctly imposed the penalty on the petitioner under Section 10-A of the Central Sales Tax Act, 1956.

17. It is further submitted that not only the petitioner but also its sister companies were organised under the

provisions of the Companies Act, 1956 and therefore they cannot feign ignorance of law and therefore, the impugned order passed by the respondent cannot be interfered with.

18. I have heard the learned counsel for the petitioner and the learned counsel for respondent. I have also perused the impugned order passed by the respondent and the notice issued to the petitioner.

19. A notice dated 23.7.2010 was issued to the petitioner, wherein, it was alleged that the dyeing units were dyeing the yarn or fabric supplied by their customers. It was therefore stated that the dyeing units were not engaged in any manufacturing activity. It also stated that the activity undertaken by them were purely "works contract" and the activity undertaken by the petitioner falls under the category of job work/works contract.

20. The notice further stated that copies of Form C issued to the petitioner against which procurements were made at concessional rate of tax from their suppliers from outside the State were intended only for the purpose of use in the manufacture/processing of goods for sale whereas the activity carried out by the petitioner neither amounted to manufacture nor sale.

21. The notice further stated that on verification of the goods purchased by the petitioner, it was noticed that the procurements were contrary to the permission accorded to the petitioner in Form B Registration issued under the Central Sales Tax Act, 1956.

22. It was alleged that the sale against Form C were contrary to the declaration/registration in Form B and that the petitioner had wrongly declared that the interstate purchase of the goods were for the purpose of use in the manufacture or processing of goods for sale.

23. The notice further stated that the petitioner had purchased goods for a sum of Rs.93,25,000/- on 31.12.2006 (Annexure I - Invoice) prior to the introduction of the Tamil Nadu Value Added Tax Act 2006 and as such pollution-control equipment were taxable under Entry 40 as residual item in Part-D of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 liable to tax it 12%.

24. It is further stated that even though Invoice No.0166 dated 31.12.2006 (in Annexure 1) was in the name of the petitioner, the consignees in the invoices were three independent companies.

25. The notice also stated that no CST was charged by the supplier in respect of the bills in Annexure II(A), II(B) and II(C) for a total value of Rs.14,42,58,380/-. For the goods

covered by invoice in Annexure II(D), for a value of Rs.1,72,56,652/-, the supplier charged 4% CST on the petitioner.

26. For all these purchases, the petitioner issued Form C No. T.N. 2006-C-BB-728639 dated 29.08.2007 for a sum of Rs.93,25,000/- and Form-C No. T.N. 2006-C-BB-728640 for a sum of Rs.16,22,05,300/-.

27. The respective Form C were utilised against goods procured from the supplier dealer for direct supply to their sister concerns with different TIN numbers which are as follows:-

C FORM NO. TN - 2006 - C - BB - 728639

Sl . No .	Invoi ce No.	Dat e	Invoice to		Consumed by		Value (Rs.)
			Name	TIN	Name	TIN	
1	As per enclosure		Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Arulpuram CETP Co. Pvt. Ltd.,	33036246 196	20600 00
2			Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Kallikadu CETP Co. Pvt. Ltd.,	33912325 651	20000 00
3			Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Rayapuram CETP Co. Pvt. Ltd.,	33202467 419	20600 00
4			Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Tirupur Murugampala yam CETP Co. Pvt. Ltd.,	33752394 027	32050 00
Total							93250 00

C FORM NO. TN - 2006 - C - BB - 728640

Sl . No .	Invoi ce No.	Dat e	Invoice to		Consumed by		Value (Rs.)
			Name	TIN	Name	TIN	
1	As per enclosure		Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Arulpuram CETP Co. Pvt. Ltd.,	33036246 196	3540726 5
2							
3			Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Kallikadu CETP Co. Pvt. Ltd.,	33912325 651	2997643 1
4			Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Rayapuram CETP Co. Pvt. Ltd.,	33202467 419	3589658 4
			Tvl. Noyyal CFT Co. Ltd.,	33092403 702	Tirupur Murugampala yam CETP Co. Pvt. Ltd.,	33752394 027	6092502 0
Total							1622053 00

28. From a reading of the documents and the submissions of the learned counsel for the petitioner and respondent, it emerges that Annexure I invoice though were raised in the name of the petitioner and the goods were directly consigned to petitioner's above 3 sister companies which were also engaged in similar activity as that of the petitioner.

29. The petitioner's TNGST No. 2403702 under the Tamil Nadu General Sales Tax was used at the time of purchase of the goods covered by Annexure-I. Later, the petitioner procured C FORM No. TN-2006-C-BB-728639 with the Petitioner's TIN No.330924033702 under Tamil Nadu Value Added Tax, 2006 and gave it to the supplier to facilitate the supplier to regularise payment at lesser rate of tax under Section 8(3)(b) of the Central Sales Tax Act, 1956

30. As far as goods covered by Invoice in Annexure II (A), (B) and (C) for a value of Rs.14,42,58,330/-, the supplier has not charged any tax presumably claiming exemption

on sale of pollution equipment as per the local laws in force in Gujarat. For goods covered by Annexure II (D), the supplier charged 4% CST. The petitioner later procured C FORM No. TN-2006-C-BB-7286340 and gave it to the supplier to facilitate the supplier to pay a lesser tax.

31. In the impugned order, the respondent has concluded that the petitioner was not engaged in any manufacturing activity and that the activity undertaken by the petitioner was purely under works contract and therefore, the petitioner was not entitled to procure goods at concessional rate of tax against Form C from a dealer outside the state.

32. It is further stated that the petitioner diverted the goods purchased and procured against Form C to its sister concerns and therefore, even otherwise the petitioner had misused the facility of Form C.

33. Therefore, the issue that arises for consideration in the facts of the present case is whether petitioner was entitled to procure goods at concessional rate of tax against Form C under Section 8(3)(b) of the Central Sales Tax Act, 1956?

34. As per Section 8(1) of the Central Sales Tax Act, 1956, every dealer who in the course of interstate trade or commerce, sells to a registered dealer, goods of the description referred to in Sub-Section (3), shall be liable to pay tax under the Act, which shall be 4% of turnover or at the rate applicable to the sale or purchase of the goods inside the appropriate State under the sales tax law of that State, whichever is lower.

35. Under Section 8(3)(b) of the Central Sales Tax Act, 1956, procurement at concessional rate of tax is available to a class or classes of goods specified in the certificate of registration of the registered dealer purchasing the goods as being:-

- i. intended for resale by him; or
- ii. subject to any rules made by the Central Government in this behalf ,
 - (a) for use by him in the manufacture; or processing of goods for sale; or
 - (b) in the telecommunication network; or
 - (c) in mining; or
 - (d) in the generation; or
 - (e) distribution of electricity or any other form of power.

(b) of the Central Sales Act, 1956, Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957 has been provided. It reads as under:-

Rule 13:

Prescription of goods for certain purposes .-The goods referred to in clause (b) of sub-section (3) of section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, [machinery, plant,] equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale, or in mining, or in the generation or distribution of electricity or any other form of power.]

37. Therefore, procurement against Form C at concessional rate of tax could be for:

- i. re-sale; or
- ii. use in the manufacture or processing of goods for sale; or
- iii. use in mining, or in the generation or distribution of electricity or any other form of power.

38. In the present case, the endorsement in certificate of registration given to the petitioner in Form B under Central Sales Tax Act, 1956 is confined for re-sale and/or for manufacture or processing of goods sale.

39. Admittedly, there was no re-sale of the goods purchased by the petitioner. The petitioner was also not engaged in mining or in the generation or distribution of electricity or any other form of power. Therefore, to justify the use of Form C, the activity of the petitioner should come within the purview of the expression "manufacture or processing of goods for sale" in Section 8(3)(b) of the Central Sales Tax Act, 1956.

40. In Union of India Vs. J.G. Glass Industries Ltd., (1998) 2 SCC 32, the Hon'ble Supreme Court laid down the test as to when an activity amounts to manufacture and when an activity amounts to processing of goods. If the test laid therein is applied, the activity undertaken by the petitioner would amount to processing of goods. The Court held as follows:-

16. On an analysis of the aforesaid rulings, a twofold test emerges for deciding whether the process is that of "manufacture". First,

whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process. In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use.

41. However, the treated effluent was not sold by the petitioner. Therefore, the petitioner was not entitled to issue Form C to the selling dealer from Ahmedabad.

42. The petitioner has provided a taxable service within the meaning of Finance Act, 1994. The service provided as a Common Effluent Treatment Plant Operator for treatment of effluent was exempted from Service Tax w.e.f. 01.04.2015 vide Notification No.6/2015-ST dated 01.03.2015. The exemption was added to entry mega exemption Notification No. 25/2012-ST dated 20.06.2012.

43. Prior to this exemption, services provided by an association of dyeing units in relation to common effluent treatment plants was exempted from payment of Service Tax vide Notification No. 42/2011-ST dated 25.07.2011.

44. The scope of the exemption was expanded with retrospective effect from 16.06.2005 vide Section 145 of the Finance Act, 2012. It validated exemption given to clubs or association including co-operative societies engaged in provision of service in relation to projects, i.e., common facility set up for treatment and recycling of effluents and solid wastes, with financial assistance from the Central Government or State Government.

45. For exemption, following three conditions were to be satisfied -

- (a) Services should be provided by operator of plant,
- (b) Plant should be common effluent treatment plant, and
- (c) Services should be of/in relation to/by way of effluent treatment.

46. Similar exemption has not issued in the context of Central Sales Tax Act, 1956. As the petitioner was neither engaged in the sale of the goods procured against Form-C nor such goods were used by it for manufacture or processing of goods for sale, procurement against Form-C was clearly in violation of Section 8(3)(b) of the Central Sales Tax Act, 1956.

47. On a plain reading of the provisions of the Central Sales Tax Act, 1956, the petitioner was not entitled to issue Form C to the vendor or procure goods at concessional rate of tax.

48. Though, not argued by the learned counsel on behalf petitioner, the facts of the present case was tested with the ratio of the Hon'ble Supreme Court in Paryavaran Suraksha Samiti Vs. Union of India, (2017) 5 SCC 326 : 2017 SCC OnLine SC 182 and Indian Farmers Fertiliser Coop. Ltd. Vs. CCE, (1996) 5 SCC 488 and few other decisions to see if the impugned order can be quashed and relief given to the petitioner.

49. Today, the presence of Common Effluent Treatment Plant is a must in areas where there are clusters of industries which have the propensity to discharge effluents and pollute environments and water bodies and land.

50. It is not only propagated and encouraged under various laws to protect the environment but also assiduously encouraged by the Government and the Courts to deal with the menace of water pollution due to rampant discharge of effluent into water bodies by polluting industries and local bodies.

51. In Paryavaran Suraksha Samiti Vs. Union of India, (2017) 5 SCC 326 : 2017 SCC OnLine SC 182, the Hon'ble Supreme Court recognised the importance of Common effluent Treatment Plant and the duty cast on the local bodies to preserve the environment. It observed as under:-

7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two

years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants", according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

8. In view of the fact that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect that they would be completed within the timelines already postulated. With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct the State Governments concerned (including the Union Territories concerned) to complete the same within a period of three years, from today. We are also of the view that while acquiring land for the "common effluent treatment plants", the State Governments concerned (including the Union Territories concerned) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future.

9. During the course of hearing, we were informed by the learned counsel that the running of "common effluent treatment plants", which are in place, is also a matter of serious concern. In this behalf, it was submitted that some of the common effluent treatment plants are dysfunctional, because of lack of finances, whilst some others are dysfunctional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to "public health, sanitation conservancy and solid waste management", we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid

responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the "common effluent treatment plants", within the purview of the provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively (depending on the location of the respective common effluent treatment plant). The norms for generating funds for setting up and/or operating the "common effluent treatment plant" shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dysfunctional, from their own financial resources.

11. Just in the manner suggested hereinabove, for the purpose of setting up of "common effluent treatment plants", the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

52. These passages indicate the primary responsibility is on the State Government and local bodies to run and operate Common Effluent Treatment Plants. The polluters are required to pay on the principle "Polluter Pays" [see M.C.Mehta (Calcutta Tanneries' Matter) Vs. Union of India and Others, (1997) 2 SCC 411].

reluctance on the part of the Government and local bodies to invest in Common Effluent Treatment Plant which highly capital intensive, private operators like petitioner have mushroomed and have started providing such service to industrial units discharging effluents.

54. Since these service contribute to the GDP, the service tax was also being levied under the Finance Act, 1994 as has been mentioned above.

55. In Indian Farmers Fertiliser Coop. Ltd. Vs. CCE, (1996) 5 SCC 488, the Hon'ble Supreme Court observed as follows:-

It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

56. There, the appellant was engaged in the manufacture urea (fertiliser), at its plant at Kalol in the State of Gujarat and utilised the same for the purpose of manufacture of ammonia. The raw naphtha was obtained at the concessional rate of duty and was used for producing ammonia which, in turn, was used, partly, directly in the urea plant and, partly, indirectly, in the production of urea in off-site plants, namely, the water treatment plant, steam generation plant, inert gas generation plant and effluent treatment plant. Use of Effluent Treatment Plant was considered as a part of the integral process of the manufacture of urea.

57. Exemption Notification No.187/1961 issued under the provisions of Rule 8 of the Central Excise Rules, the Central Government exempted raw naphtha falling under Item 6 of the First Schedule to the Central Excises and Salt Act, 1944, from the payment of excise duty in excess of Rs.4.36 per kilolitre at 15 degrees centigrade if used in the manufacture of ammonia provided such ammonia was used elsewhere in the manufacture of fertilisers and the procedure set out in Chapter X of the

said rules was followed.

58. A question arose as to whether the ammonia used in the off-site plants was also ammonia "used" in the manufacture of fertilisers". Therefore, the offsite plants belonged to the manufacturers. The Court held as follows:-

"These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The exemption notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The exemption notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption.

59. Coming to the facts of the case, the activity undertaken by dyeing unit is a part of the manufacturing activity for textile units. It is one of the intermediate stage process, whereby, grey yarn or grey fabrics as the case may be are sent for dyeing to such units before they are sent back for being used in the further manufacturing process of textile products.

60. The business model followed by textile units appears to be outsource the dyeing process to dyeing units. However, dyeing units are mostly small units and are rarely endowed with the capital to install Common Effluent Treatment Plants. This is where the demand for persons like petitioner had arisen in absence of Common Effluent Treatment Plants. Independent Common Effluent Treatment Plants are neither manufacturer nor processors of goods for sale. They are merely service provider. If a liberalized interpretation is given in the light of the above decisions, they will be entitled to the benefit of Section 8(3)(b) of the Central Sales Tax Act, 1956 as was claimed by the petitioner.

61. However, the scheme of the concession is specific under Section 8(3)(b) of the Central Sales Tax Act, 1956. Therefore, the Courts cannot aid evasion of tax by reading down the express language of Section 8(3)(b) of the Central Sales Tax Act, 1956.

62. In my view, the petitioner obtained registration under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and later under Tamil Nadu Value Added Tax Act, 2006 and under the provisions of the Central Sales Tax Act, 1956 only for the purpose of taking unfair advantage of concession available under these enactments by making it seem as if the petitioner was engaged in processing of goods for sale when indeed it was not engaged in such activity of sale.

63. Even otherwise, it was also not open for the petitioner to transfer the goods procured at concessional rate of tax against Form C to its sister concerns contrary to the requirements of Certificate.

64. It is also not clear on what basis the supplier supplied the goods covered by invoices in Annexure II(A), (B) and (C) without charging any tax under the local law or under the Central Sales Tax Act, 1956.

65. Perhaps, there was a local exemption under Section 8 (2)(c) of the Act and therefore, no tax was charged by the supplier. It is also not clear why the petitioner has issued Form-C No.TN-2006-C-BB-728640 (Annexure II Invoices) for the proportionate of value of goods covered by Invoices in Annexure II(A), (B) and (C) if no tax was charged in the invoice by the supplier.

66. If the goods cleared against invoices in Annexure II (A), (B) and (C) were exempted, the petitioner was not required to issue Form-C. There is no proper explanation forthcoming either in the reply or in the affidavit filed in support of the present writ petition as to why the petitioner issued Form-C No.TN-2006-C-BB-728640 (Annexure I) to the supplier. It shows complicity on the part of the petitioner to facilitate evasion of Central Sales Tax.

67. As the petitioner was not entitled to issue Form C to the supplier, in my view, there is no error in the impugned order seeking to impose penalty under Section 10-A of the Central Sales Tax Act, 1956.

68. Under Section 10 of the Central Sales Tax Act, 1956, for such offences, the petitioner is punishable with imprisonment which may extend to 6 months, or fine or both and since the offence is a continuing offence, with a daily fine, which may extend to Rs.50/- for every day during which the offence continues.

69. In State of Tamil Nadu Vs. Kodaikanal Motor Union (P) Ltd., (1986) 3 SCC 91 : 1986 SCC (Tax) 461, the Hon'ble Supreme Court held that "The Section 10-A as it reads after amendment in 1973 permits imposition by way of penalty for a

sum not exceeding one-and-a-half times the tax which would have been levied under Sub-Section (2) of Section 8. The Hon'ble Supreme Court held as follows:-

In our opinion sub-section (1) of Section 10-A makes it clear that penalty should be worked out at the rate of tax which would have been levied if the offence had not been committed. In other words the question is what tax would have been levied under the Act if the offence had not been committed. The assessee would not have committed any offence only if he had carried out the undertaking given by it in its declaration in Form 'C' or if he purchased the goods without giving any declaration thereby incurring liability to pay normal rate of tax as contemplated by sub-section (2) of Section 8. One who commits default cannot be said to have carried out the undertaking given by him. The presumption canvassed to be raised that the true effect of the words "if the offence had not been committed" was to presume a situation in which the undertaking given by the assessee had been carried out even though in fact the same had not been carried out. That would be an absurd result. In our opinion the use of the expression "if" simpliciter, was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell under sub-section (2) of Section 8 of the Act. The scheme of Section 8 indicated that concessional rates contemplated by sub-section (1) thereof would be available only with reference to those goods which are covered by the declarations in Form 'C'. The moment it is found that in respect of particular quantity of goods the undertaking given by the assessee in Form 'C' declaration has not been carried out, the goods were presumed to be such in respect of which no undertaking was existing. Therefore such goods would be liable to normal tax contemplated under sub-section (2) of Section 8. Therefore, the penalty should be worked out only on the basis of the normal rates prescribed under sub-section (2) of Section 8. That would make sense. That is a reasonably possible construction. That would avoid absurd result.

70. The Court there considered the various conflicting view and ultimately held that it must remember that the provision is a penal provision. It has to be further borne in mind that the expression "if" is not same as "as if" nor does

it contemplate a deeming provision. It has also to be borne in mind that the provision was introduced for the imposition of penalty in lieu of prosecution. The purpose of the Act and the object of a particular section have to be borne in mind.

71. The Hon'ble Court agreed with the views expressed by the Orissa High Court in Bisra Limestone Co. Ltd. Vs. STO, (1971) 27 STC 531 (Ori), Jammu and Kashmir High Court in Assessing Authority Vs. Jammu Metal Rolling Mills, (1976) 37 STC 129 (Guj), the High Court of Kerala in Kottayam Electricals (P) Ltd. Vs. State of Kerala, (1976) 37 STC 129 (Guj), the High Court of Mysore in M. Pais & Sons Vs. State of Mysore, (1966) 17 STC 161 (Mys), the High Court of Gujarat in Gaekwar Mills Ltd. Vs. State of Gujarat, (1976) 37 STC 129 (Guj) and disagreed with the view of this Court in State of Madras Vs. Prem Industrial Corpn., (1969) 24 STC 507 (Mad) and the other decisions of the Madras High Court in Dy. Commr. of Commercial Taxes, Madurai Division Vs. Kodaikanal Motor Union Private Limited, (1973) 31 STC 1 (Mad) : 1972 SCC OnLine Mad 334.

72. In State of Madras Vs. Prem Industrial Corpn., (1969) 24 STC 507 (Mad), it was held that for an offence committed within the scope of Section 10(b) of the Act by the misuse of C Forms, the penalty at one-and-a-half times should be calculated on the concessional rate of tax that would have been applicable if the offence had not been committed, that is, if the C forms had been properly used, and not on the basis of the rate for sales not covered by the C forms has been set aside.

73. As mentioned above, the petitioner was not entitled to procure goods at concessional rate of tax under Section 8 (3)(b) of the Central Sales Tax Act, 1956. The respondent has however not proposed to impose penalty on the petitioner for facilitating evasion of tax on the entire value of goods procured against Form C. The imposition of penalty is confined to diversion of the goods to the petitioner's sister concerns alone in the impugned order.

74. Therefore, I am not inclined to order an increase in the penalty for the balance amount of tax in absence of a proposal in the Notice issued to the petitioner. In so far as the imposition of penalty under Section 10-A of the Central Sales Tax Act, 1956 on the proportionate tax on the goods cleared to its sister companies is concerned, I do not find any infirmity in the impugned order imposing penalty on the petitioner on proportionate value of goods diverted to the above concerns.

75. In the result, the penalty imposed in the impugned order is upheld. Accordingly, the present Writ Petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

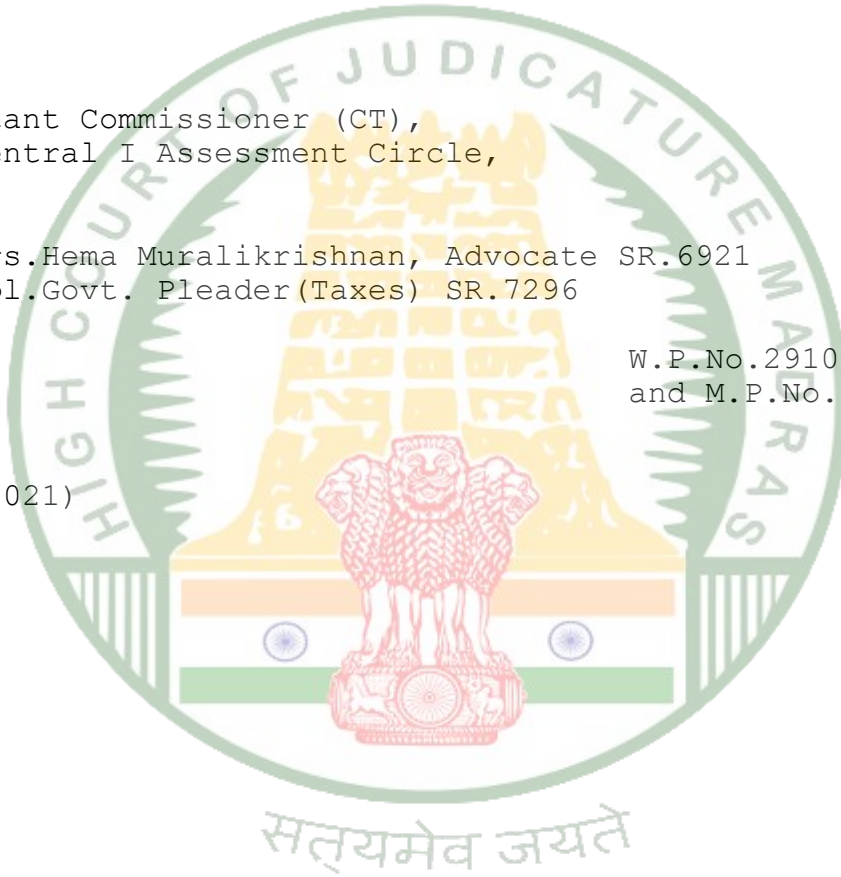
To

The Assistant Commissioner (CT),
Tirupur Central I Assessment Circle,
Tirupur.

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.6921
+1cc to Spl.Govt. Pleader(Taxes) SR.7296

W.P.No.29105 of 2010
and M.P.No.1 of 2010

AK II(CO)
CB(25/02/2021)



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