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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10401, 10406 & 10408 of 2020
and
W.M.P.Nos.12651, 12655 & 12658 of 2020

(Through Video Conferencing)

Lancor Holdings Limited,
By its Managing Director,
Mrs.Malliga Ravi,
VTN Square, 2nd Floor,
No.58, G N Chetty Road,
T.Nagar, Chennai - 600 017.

... Petitioner in all W.Ps.

Vs

The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Chennai - 28.

... Respondent in all W.Ps.

Prayer in W.P.No.10401 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on file of the respondent in its proceedings in CST690405/2012-13 dated 18.02.2020 and quash the same as ex-facie unconstitutional and violative of principles of natural justice having been passed without application of mind.

Prayer in W.P.No.10406 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on file of the respondent in its proceedings in CST690405/2013-14 dated 18.02.2020 and quash the same as ex-facie unconstitutional and violative of principles of natural justice having been passed without application of mind.

Prayer in W.P.No.10408 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on file of the respondent in its proceedings in CST690405/2014-15 dated 18.02.2020 and quash the same as ex-facie unconstitutional and violative of principles of natural justice having been passed without application of mind.

For Petitioner : Mr.T.V.Lakshmanan
(in all W.Ps)



For Respondents : Mr.D.Ravichander
(in all W.Ps) Special Government Pleader

COMMON ORDER

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The petitioner has challenged the impugned order dated 18.02.2020 passed by the respondent pursuant to a show cause notice dated 28.04.2017 issued to the petitioner under Section 10A of the Central Sales Tax Act, 1956. By the notice dated 28.04.2017 a proposal was made to show cause as to why penalty equivalent to 150% of tax due should not be demanded by the petitioner under Section 10A of the Central Sales Tax Act, 1956.

2.The said show cause notice proceeds an inspection by the Enforcement Department of the respondent on 18.11.2016 when it was noticed that the petitioner had purchased doors from a dealer in Karnataka and issued C form against the purchase, even though the petitioner's Central Sales Tax Registration in Form - B did not include purchase of door for resale. The petitioner appears to have given a detailed reply to the Enforcement Department and placed the reliance on the decision of the Hon'ble Full Bench of this Court in the case of State of Tamil Nadu Vs. Nu-Thread Tyres 2006 (148) STC 256.

3.It is the contention of the learned counsel for the petitioner, that the notice dated 28.04.2017, a detailed reply was filed by the petitioner on 24.05.2017 which has not been considered in impugned order and therefore the impugned passed by the respondent was liable to be quashed.

4.It is further submitted that the impugned order is a non speaking order in as much as the mandatory requirement of Section 10A of the Central Sales Tax, 1956 has not been followed. He further submits that though the proposal was under Section 10A of the Central Sales Tax, Act, 1956, in the impugned order a tax of Rs.8,13,314/- has been demanded contrary to Section 9 of the Central Sales Tax Act. It is therefore submitted that even if tax was due, it is to be collected only from the selling dealer by the jurisdictional Assessing Officer in Karnataka. It is therefore submitted that even on this ground the impugned order has to go.

5.The learned counsel for the petitioner further submits the impugned order has simply proceeded to impose penalty equivalent to 150% alleged tax due on the purchase made by the petitioner for inter-state dealer in Karnataka based on the Government Order in G.O.Ms.No.61 Commercial Taxes and Religious Endowments Department, dated 24.01.1984.

6.The learned counsel for the petitioner further submitted



that post facto the petitioner has also got Central Sales Tax registration amended in Form D with effect from 11.06.2016 and therefore the question of imposing penalty on the petitioner cannot be countenanced. The learned counsel for the petitioner further submits that the impugned order cannot be explained by way of counter in this proceeding by either explaining the reasons for imposing penalty or to justify the levy of tax confirmed in the impugned order.

7. Appearing on behalf of the respondent, the learned Special Government Pleader for the respondent submits that the impugned orders are well-reasoned and requires no interference. The learned counsel for the respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Tamilnadu Vs. Kodaianal Motor Union (P) Ltd 1986 AIR 1973, 1986 SCR (2) 927 wherein it was held as follows:

'We must remember that the provision is a penal provision. It has further to be 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 has to be borne in mind. Having regard to the same, we are in agreement with the view expressed by the Orissa High Court in Bisra Limestone Company Ltd Vs. Sales Tax Officer, Rourkela Circle, Uditnagar, and Others, (supra), Jammu & Kashmir High Court in the Assessing Authority and another Vs. Jammu Metal Rolling Mills, (supra), the High Court of Kerala in Kottayam Electricals Private Limited Vs. The State of Kerala (supra). The High Court of Mysore in M. Paid & Sons Vs. The State of Mysore (supra), the High Court of Gujarat in The Gaekwar Mills Limited Vs. The State of Gujarat (supra) and with respect we are unable to accept the views of Veeraswami, C.J. In State of Madras Vs. Prem Industrial Corporation (supra), and the other decision of the Madras High Court in Deputy Commissioner of Commercial Taxes (supra).
'

8. The learned counsel for the respondent further submits that the petitioner having violated the mandatory requirements of The Central Sales Tax (Registration and Turn Over) Rules, 1957 particularly Rule 12 cannot ask for any interference as the records speak for themselves and no further reasonings are



required for imposing penalty under Section 10A of the Central Sales Tax Act, 1956. It is further submitted that the respondent had the option of prosecuting the petitioner for violations of Section 10B of the Central Sales Tax Act under Section 11 of the Central Sales Tax Act. Instead of the respondent has given an easy option to petitioner for imposing penalty in lieu of prosecution and since the petitioner had violated Section 8(4) of the Central Sales Tax Act for violating Rule 10(4B) of the Central Sales Tax Act and therefore it was liable to penalty under Section 10A of the Central Sales Tax Act, 1956.

9. Heard the learned counsel for the petitioner and the learned Special Government Government for the respondent.

10. The facts are not in dispute. The petitioner company was started in the year 2003 under the name of Tvl.DBS Properties Ltd with effect from 16.01.2003. At the time of issue of Central Sales Tax Registration in Form B, the items mentioned are re-sale of doors. However, it is include Timber.

11. Before the inspection was carried out by the Enforcement Wing, the petitioner had taken steps for making suitable amendment to its Registration in Form B by including timber. The law on the subject was considered by Hon'ble Full Bench of this Court in The State of Tamil Nadu Vs. Tvl.Nu-Tread Tyres and Ors cited above. The Hon'ble Full Bench of this Court after examining all the decided case laws at that point of time and concluded as follows:

''12. Section 10(b) provides for an offence if any person being a registered dealer falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration. Now the expression 'falsely represents' clearly shows that the element of mens rea is a necessary component of the offence. If the registered dealer honestly believed that any particular goods are embraced by the certificate of registration and under this belief makes a representation, he cannot be held guilty of the offence under Section 10(b) and no penalty can be imposed under Section 10-A. In Cement Marketing Co. of India Vs. Assistant Commissioner of Sales Tax MANU/SC/0436/1979: [1980]124ITR15(SC) similar question fell for consideration under the Madhya Pradesh General Sales Tax Act, 1958. The question was whether the Assistant Commissioner of Sales Tax was right in imposing penalty on the assessee for not showing the amount of freight in the taxable turnover or in the returns. The penalty was imposed under Section 43 of the Madhya Pradesh General Sales Tax Act, 1958 and Section 9(2) of the Central Sales Tax Act, 1956 on the ground that the assessee had furnished false returns by not including



the amount of freight in the taxable turnover disclosed in the returns.

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.'

12. Thus, penalty under Section 10A of the Central Sales Tax Act is for making a false representation while purchasing any class of goods. The State of Tamil Nadu Vs. Tvl. Chola Textiles Ltd and Ors 109 STC 392 it was held as under:-

'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 08.11.1999. The first appellate authority has arrived at the tax due for the year 1997-98 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 CTA stands dismissed.



13. Similarly, the Hon'ble Supreme Court in the case of Commissioner of Sales Tax, U.P. Vs. Sanjiv Fabrics and Ors 2010 (258) ELT 465 and 210(10)SC192 while dealing with Section 10B of the Central Sales Tax Act, 1956 observed as under:-

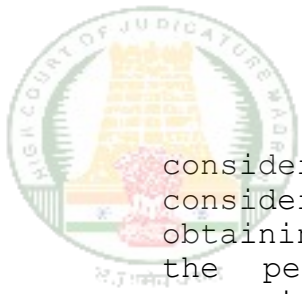
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10. Section 10 of the Act not only enumerates seven types of violations of the provisions of the Act which constitute an 'offence', it also makes them punishable by prosecution and punishment, which ranges from simple imprisonment for a period, which may be extended to six months, or fine or both and in a case of continuous offence, the Section provides for a daily fine. Section 10A of the Act provides for the imposition of penalty in lieu of prosecution. It provides that if any person purchasing goods is guilty of an offence under Clause (b) or Clause (c) or Clause (d) of Section 10 of the Act, a penalty of fine may be imposed. Thus, the violations enumerated in Clause (b), Clause (c) and Clause (d) of Section 10 may not necessarily result in prosecution with the possible imposition of sentence of imprisonment as an alternative is provided in respect of these violations.

11. Therefore, what we are required to construe is whether the words 'falsely represents' would cover a mere incorrect representation or would embrace only such representations which have been made knowingly, wilfully and intentionally.' Ultimately the Hon'ble Supreme Court in the aforesaid case held as under:-

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.'

14. While passing the impugned order, the respondent had not



considered these decisions. The respondents ought to have been considered the bonafide of the petitioner and whether by not obtaining/amending the Certificate of Registration in Form B, the petitioner would have got any undue advantage while procuring goods from a dealer the state of Karnataka. Merely because the petitioner had not amended the C form during the period in dispute ipso facto does not justify a conclusion that penalty under Section 10A of the Act can be imposed or the petitioner can prosecuted under Section 11 of the Central Sales Tax Act.

15.Since the order is non speaking in nature, it is liable to be set aside and for fresh consideration for passing appropriate orders as to whether the petitioner was indeed liable to pay penalty under Section 10A of the Central Sales Tax Act. It is made clear that the respondent can not venture to demand any tax from the petitioner contrary to the provisions of the Central Sales Tax Act on the tax liability of the selling dealer from Karnataka. Since the dispute pertains to the Assessment Years 2012-13 to 2014-15, the respondent is directed to pass appropriate orders on merits and in accordance with law keeping the above decisions of the Court in mind within a period of three months from the date of receipt of a copy of this order.

16.According, these writ petitions stand allowed by way of remand with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
Chennai - 28.

W.P.Nos.10401, 10406 & 10408 of 2020 and
W.M.P.Nos.12651, 12655 & 12658 of 2020

CP(CO)
CT 29/12/2021