IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2022

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.34856 of 2007
and
M.P.No.1 of 2007

M/s.Bhavani Distilleries & Chemicals Ltd.,
Represented by its Managing Director Srinivasan,
T.Pudur, Arcot Taluk,
Vellore District

… Petitioner

Vs.

1. Tamil Nadu Sales Tax Appellate Tribunal, (Main Bench), Chennai - 600 104.

2. The Appellate Assistant Commissioner, (Commercial Taxes), Vellore.

3. The Deputy Commercial Tax Officer, Arcot Assessment Circle, Arcot, Vellore District.

... Respondents

Prayer :Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order dated 01.08.2007 passed in STA.No.307/2003 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai and quash the same.

For Appellant : Mr.K.Govi Ganesan

For Respondents: Mr.Richardson Wilson
Addl. Government Pleader (Taxes)

J U D G M E N T

(Judgment of the court was delivered by R.MAHADEVAN, J.)

Challenging the order dated 01.08.2007 passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai/ first respondent in STA.No.307/2003, the petitioner / assessee has come up with this writ petition.

2.The petitioner company is a registered dealer both under the TNGST and CST Acts on the file of the 3rd respondent. During the assessment year 1998-99, they had purchased agri films and cement to the tune of Rs.2,38,005/- on issuance of form 'C' declaration from other State dealers and used the same in the construction of plant and machinery i.e., bio-compost yards and bio-gas reactors. Upon scrutiny of the accounts submitted by the petitioner, it was pointed out by the third respondent that the petitioner company was not eligible for concessional rate of tax as the said materials were not included in the registration certificate issued to them. Stating so, the third respondent issued a notice dated 01.03.2000 calling upon the petitioner to explain as to why penalty @ 150% of the tax due under section 10A of the CST Act, should not be levied on them. Upon receipt of the same, the petitioner filed its objections on 19.06.2000. Being dissatisfied with the same, the third respondent passed the assessment order on 11.07.2000 imposing penalty of Rs.39,597/- under section 10A of the Act.

3.Challenging the order of assessment, the petitioner preferred an appeal in A.P.No.587/2000(CST) before the Appellate Assistant Commissioner (CT), Vellore / second respondent herein, who after hearing both sides, set aside the penalty and allowed the appeal, by order dated 18.09.2001. Aggrieved over the same, the State went on appeal before the first respondent / Tribunal, which by order dated 01.08.2007, set aside the order of the Appellate Assistant Commissioner (CT) and restored the order of the Registering Authority. Therefore, the petitioner is before this court with the present writ petition for the aforesaid relief.

4.The learned counsel for the petitioner submitted that as per the Form B registration certificate issued to them, the petitioner was authorised to purchase plant and machinery, equipments, molasses, industrial alchohol and other allied chemicals for use in the manufacture; the agri film and cement have been purchased for the construction of plant and machinery i.e., bio-compost yards and bio-gas reactor and the same were used in the manufacture of goods; and therefore, they had purchased the disputed goods at the concessional rate on issuance of form 'C' declaration under the bonafide belief that they are entitled for the same. The learned counsel further submitted that there is no element of 'mens rea', which is the necessary component of the offence under section 10(b) of the Act, so as to levy penalty on the petitioner. Though the second respondent / Appellate Authority has rightly pointed out the same and deleted the penalty levied by the third respondent, yet, the first respondent / Tribunal declined to accept such finding and erred in setting aside the order of the second respondent and restoring the order of the Registering Authority. Therefore, the learned counsel prayed for allowing this writ petition by quashing the order of the Tribunal.

5.Per contra, the learned Additional Government Pleader (Taxes) appearing for the respondents submitted that the first respondent considering all the facts and circumstances of the case in proper perspective and correctly passed the order impugned herein, levying penalty @ 150% of the tax due on the petitioner, which does not require any interference at the hands of this court.

6.Heard both sides and also perused the materials placed before it.

7.There is no dispute that the petitioner was issued with Form B registration certificate to purchase plant and machinery, equipments, molasses and other allied chemicals and industrial alcohol for use in manufacture of the commodity. However, they purchased the agri film and cement for the construction of plant and machinery viz., bio-compost yards and bio-gas reactors, which goods have not been included in the registration certificate issued by the third respondent and therefore, they violated the provisions of the CST Act, 1956 and misused the form 'C' declaration issued to them. Though the petitioner pointed out that the agri film and cement have been used in the construction of plant and machinery, which is for use in manufacture of goods and hence, the same are eligible for concessional rate of tax against issuance of form 'C' declaration, the third respondent rejected the said contention and levied penalty at 150% of the tax due i.e., to the tune of Rs.39,597/- under section 10A of the CST Act. The findings of the third respondent are quoted below for ready reference:

> ...they have purchased Agri-film and cement for their building i.e. plant construction purpose only and there is no product of manufacturing and selling on the goods purchased, for which, they are not eligible to purchase the goods by issue of 'C' forms as the above goods have not been included in class 'b' of the certificate “for use in manufacture”.

8.On the other hand, the second respondent / Appellate Authority in the appeal filed by the petitioner, set aside the penalty, by observing that the petitioner had not violated the provisions of section 10(d) of the CST Act with reference to which penalty could be imposed under section 10A of the Act. The said order was put to challenge by the State before the first respondent / Tribunal.

9.The first respondent upon considering the arguments made on both sides and having perused the connected records, was of the firm view that the petitioner had violated the provisions of the CST Act and the levy of penalty by the third respondent is correct. Accordingly, it set aside the order of the second respondent / Appellate Authority and restored the order of the third respondent / Registering Authority. For better appreciation, the findings recorded by the first respondent are extracted below:

> "7.It is seen from the records that the respondents had purchased "agri film" and "cement" on issue of C forms form outside the State. These goods are not included in the Certificate of Registration issued to them under the Central Sales Tax Act. These goods are also not used as raw materials in the manufacture of other goods in which the respondent deal. In such circumstances, we find that the Registering Authority is justified in imposing the penalty. Simply because, the appellants have constructed buildings out of the cement and agri film purchased by them and such buildings are being used for manufacture of other goods, the purchases without authorization could not be permitted without the penal consequences. When these goods could not be put to use as raw materials in the manufacture of other goods, the conclusion of the first appellate authority that the buildings constructed out of these materials are used for the purpose of manufacturing is far fetch and cannot be accepted. The respondent had violated the provisions of Central Sales Tax Act and the Registering Authority is correct in the levy of penalty. We therefore set aside the order of the Appellate Assistant Commissioner (CT) and restore the order of the Registering Authority."

10.In the light of the admitted fact that the petitioner had purchased the goods that are not covered under the Form B registration certificate issued to them, at the concessional rate against issuance of form 'C' declaration, this court has no hesitation to hold that they had violated the provisions of the CST Act, thereby attracting penalty under section 10A of the CST Act. The first respondent has rightly rendered such a clear cut finding for levying penalty on the petitioner, which warrants no interference by this court.

11.As regards the quantum of penalty @ 150% of the tax due, having regard to the facts and circumstances of the case, it will be fair and just, if the penalty is levied at 100%, instead of 150%. Accordingly, this court reduces the penalty imposed on the petitioner to 100% from 150% of the tax due. The order of the Tribunal is modified to that extent.

12.With the above modification, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gba/msr

To

1. The Tamil Nadu Sales Tax Appellate Tribunal,
   (Main Bench), Chennai - 600 104.

2. The Appellate Assistant Commissioner,
   (Commercial Taxes), Vellore.

3. The Deputy Commercial Tax Officer,
   Arcot Assessment Circle,
   Arcot, Vellore District.

+1cc to Mr.Govi Ganesan, Advocate, S.R.No.12896

+1cc to the Special Government Pleader, S.R.No.13461

W.P.No.34856 of 2007

MG(CO)
SU(30/03/2022)