IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NOS.36502 AND 36503 OF 2006
AND
M.P.NOS.1 AND 1 OF 2006

M/s. Pravin Engineering,
Rep. by its Proprietor,
N.Prabhu,
No.16-A, Court Road,
Salem-636 007.

...Petitioner in both the WPs

Vs.

1. The Tamil Nadu Sales Tax,
   Appellate Tribunal (Additional Bench),
   Coimbatore-641 108.

2. The Additional Appellate Assistant
   Commissioner (CT),
   Coimbatore.

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

... Respondents in both the WPs

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of the 1st respondent pertaining to order dated 04.05.2006 in Coimbatore Tribunal Appeal Nos.13/2004 and 59/2003 and quash the same.

For Petitioner : Mrs.R.Hemalatha in both the WPs

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Tax)
in both the WPs

COMMON ORDER

MOHAMMED SHAFFIQ, J.

Both the writ petitions arise from the order dated 04.05.2006 passed by the Tamil Nadu Sales Tax Appellate Tribunal, (Additional Bench), Coimbatore, relating to the respective assessment years 2000-01 and 2001-02.

2.The short question that arises for consideration in these writ petitions is as to whether the levy of penalty under Section 10A of the Central Sales Tax Act, 1956 for the offence committed by the petitioner under section 10(b) of the CST Act, is justified in the absence of a finding that the petitioner had "falsely represented" at the time of purchase of goods that the same were covered by the registration certificate issued to them.

3.Brief facts that are relevant, may be set out hereunder:

i) The petitioner is engaged in the business of manufacture of Engineering Product, Coimbatore and an assessee on the files of the third respondent, Commercial Tax Officer, Singanallur Circle, Coimbatore. For the assessment years in question, they filed the returns. Upon scrutiny of the same, the 3rd respondent passed the assessment orders, levying penalty of Rs.1,20,287/- and Rs.1,78,841/- respectively under Section 10A of the Central Sales Tax Act, 1956 (for brevity, 'the CST Act') on the ground that the petitioner made inter-state purchase of goods against Form 'C' which were not included in the Form 'B' registration certificate issued to them.

ii) Aggrieved by the assessment orders passed by the 3rd respondent, the petitioner preferred appeals before the Additional Appellate Assistant Commissioner (CT), Coimbatore / 2nd respondent herein. The 2nd respondent modified the assessment orders passed by the third respondent by reducing the penalty to 150% of the tax due, after deducting/setting off the taxes already paid on such purchases under the CST Act inasmuch as the same would meet the ends of justice.

iii) Aggrieved by the orders passed by the 2nd respondent, the petitioner preferred second appeals before the Tamil Nadu Sales Tax Appellate Tribunal / first respondent. By common order dated 04.05.2006, the 1st respondent dismissed the appeals by confirming the orders of the First appellate authority modifying the penalty. Hence, the said order of the Tribunal is under challenge in these writ petitions.

4. Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Tax) appearing for the respondents and also perused the materials placed before this court.

5. We find that the penalty under Section 10A of the CST Act, was mulcted on the petitioner / assessee for the offence committed under section 10(b) of the Act, on the ground that they had purchased the goods mentioned in the assessment orders, that were not covered by the CST registration certificate issued to them. The penalty so levied by the assessing officer was modified by the First Appellate Authority, as also affirmed by the Tribunal.

6. At the outset, it may be relevant to refer to Section 10 (b) of the CST Act, for commission of which, the petitioner was levied with penalty under section 10A and the same reads as under:

> "S.10. Penalties.
> (a)...
> (aa)...
> (b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration.
> (c)....."

A reading of the above provision would make it clear that the following two conditions must be cumulatively satisfied to attract penalty under Section Section 10A of the CST Act:

(i) That the goods purchased against Form 'C' are not covered by the certificate of registration.

(ii)The registered dealer must "falsely represent" when purchasing any class of goods that the same are covered by the certificate of registration issued to them.

7.In the light of the aforesaid provision of law, we have to examine, whether the levy of penalty under Section 10A of the CST Act, is warranted in the absence of a finding that the petitioner had “falsely represented” at the time of purchase of the goods that the same were covered by their registration certificate.

8.At this juncture, it is pertinent to point out that in a decision of the Full Bench of this Court in the case of State of Tamil Nadu vs. Nu-Tread Tyres (Madras) reported in (2006) 148 STC 256, it was held as under:

> "Section 10(b) of the CST Act, 1956 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. The expression "falsely represents" clearly shows that the element of mens rea is a 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 wilful 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 CST Act, 1956 and no penalty can be imposed under Section 10A of the CST Act, 1956."

As per the observation made in the afore referred decision, one of the essential ingredients of the offence under Section 10(b) for levying penalty under section 10A of the CST Act, is “false representation” by the dealer issuing with Form 'C', when purchasing any class of goods that the goods of such class are covered by the certificate of registration issued to them and mens rea is a necessary component.

9.Admittedly, in the present case, there was no finding either in the assessment order or in the orders passed by the Appellate Authorities that the petitioner had made “false representation” that the goods purchased against 'C' Form from the inter state dealers, were covered under the Form 'B' issued to them, thereby constituting the offence under section 10(b) warranting levy of penalty under section 10A of the CST Act. In fact, all the authorities confined their enquiry to merely find, as to whether the goods purchased were mentioned in the registration certificate issued to the petitioner and they failed to make any enquiry, as to whether the petitioner had "falsely represented" when purchasing the goods that the same were covered by the certificate of registration issued to them, though not covered. Therefore, the essential ingredient of mens rea for levy of penalty on the petitioner, was not established. In such circumstances, the findings of the Assessing Officer as confirmed by the First Appellate Authority as well as the Tribunal that the petitioner committed the offence under section 10(b) warranting levy of penalty under section 10A of the Act, cannot be allowed to be sustained.

10.In such view of the matter, both the writ petitions stand allowed by setting aside the orders passed by the authorities below, with respect to levy of penalty. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Sales Tax,
   Appellate Tribunal (Additional Bench),
   Coimbatore-641 108.

2. The Additional Appellate Assistant
   Commissioner (CT),
   Coimbatore.

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

+3ccs to Mrs.R.Hemalatha, Advocate, S.R.Nos.66046, 3184

+1cc to the Special Government Pleader(Taxes), S.R.No.3844

W.P.Nos.36502 and 36503 of 2006

PVS(CO)
RLP(15/03/2022)