

integrated Enterprises Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/723357

Court : Kerala

Decided On : Apr-18-1980

Reported in : [1980]46STC103(Ker)

Judge : V. Balakrishna Eradi, C.J. and; G. Balagangadharan Nair, J.

Appeal No. : T.R.C. No. 143 of 1979

Appellant : integrated Enterprises

Respondent : State of Kerala

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : V.M. Kurien and; A.V. Thomas, Advs.

Disposition : Petition dismissed

Judgement :

V. Balagangadharan Nair, J.

1. The petitioner who is an assessee under the Kerala General Sales Tax Act, 1963, and the Central Sales Tax Act, 1956 ('the Central Act' for short), has been registered as a dealer under Section 7 of the Central Act in respect of Coca-Cola, Fanta Orange and Fanta Soda. Exhibit A is a copy of the certificate of registration. This entitled the petitioner to purchase these articles for resale at concessional

rate of sales tax after issuing C forms prescribed by the Rules. The Assistant Commissioner (Assessment), Special Circle, Ernakulam, found that the petitioner had purchased bottle coolers for Rs. 1,61,767.40 by issuing C forms during the years 1970-71 and 1971-72. As the registration certificate did not include bottle coolers, the Assistant Commissioner thought that the issue of C forms declaring that bottle coolers were covered by the registration certificate constituted *prima facie* a violation of Section 10(b) of the Central Act. He, therefore, issued a notice (exhibit E) to the petitioner to show cause why penalty of 11/2 times the tax at 15 per cent due on the purchase of bottle coolers should not be imposed upon them under Section 10A. To this the petitioner filed a lengthy reply contending that they had no *mens rea* in making the purchase by issuing C forms as they bonafide believed that the registration certificate was comprehensive enough to include all categories and classes of goods relating to their business. The Assistant Commissioner thereafter heard the petitioner's representative and rejecting the objections held that the declaration in the C form clearly stated that the goods purchased were covered by the registration certificate, that this was a false representation knowingly and deliberately made so as to earn the benefit of concessional rate of sales tax and that there was clear *mens rea* to make the petitioner liable. He thus found the petitioner guilty and taking a lenient view levied a penalty of Rs. 24,265. On appeal this order was confirmed successively by the Deputy Commissioner of Agricultural Income-tax and Sales Tax (Appeals), Ernakulam, and the Sales Tax Appellate Tribunal, Trivandrum. Aggrieved by these orders, the petitioner has preferred this revision.

2. Section 10 of the Central Act lays down the penalties for infraction of the Act and the Rules. Clause (b) of the section penalises a registered dealer who 'falsely represents when purchasing any class of goods that goods of such class are covered by the certificate of registration'. Section 10A, so far as material, provides that if any person purchasing goods is guilty of an offence under Clause (b) of Section 10, the authority who granted to him or who is competent to grant to him a certificate of registration may instead of prosecuting him impose the prescribed penalty. The competency of the Assistant Commissioner and the extent of the penalty levied by him were not contested before us; nor was it disputed that bottle coolers were not covered by the petitioner's certificate of registration or that the

petitioner purchased them by issuing C forms. The arguments before us were principally devoted to establish that the petitioner had no *metis rea* which is necessary and which is implicit in the expression 'falsely represents' in Section 10 and they could not therefore be penalised. That then is the only question that falls to be decided.

3. Counsel quoted a long line of cases to support his contention that the words 'falsely represents' postulate *mens rea* in that the representation should be of something as true which in fact and to his knowledge is false and that this element would be excluded if the purchaser acted in the bona fide belief that his representation is true. We consider it unnecessary to cite all those cases in view of the recent decision of the Supreme Court, *Cement Marketing Co. of India v. Assistant Commissioner of Sales Tax* A.I.R. 1980 S.C. 346. In that case, the question arose whether the appellant was liable to penalty under Section 43 of the Madhya Pradesh General Sales Tax Act and Section 9(2) of the Central Sales Tax Act, 1956, for filing 'false' return by not including in the taxable turnover the amount of freight which was part of the 'free on rail destination railway station' price at which the goods were sold. The Supreme Court observed:

It was a highly arguable contention which required serious consideration by the court and the belief entertained by the assessee that it was not liable to include the amount of freight in the taxable turnover could not be said to be mala fide or unreasonable. What Section 43 of the Madhya Pradesh General Sales Tax Act, 1958, requires is that the assessee should have filed a 'false'-return and a return cannot be said to be 'false' unless there is an element of deliberateness in it. It is possible that even where the incorrectness of the return is claimed to be due to want of care on the part of the assessee and there is no reasonable explanation forthcoming from the assessee for such want of care, the court may, in a given case, infer deliberateness and the return may be liable to be branded as a false return. But where the assessee does not include a particular item in the taxable turnover under a bona fide belief that he is not liable so to include it, it would not be right to condemn the return as a 'false' return inviting imposition of penalty.

4. After quoting an earlier decision, *Hindustan Steel Limited v. State of Orissa* [1970] 25 S.T.C. 211 (S.C.), in support of the above position, the Supreme Court continued:

It is elementary that Section 43 of the Madhya Pradesh General Sales Tax Act, 1958, providing for imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the section cannot be invoked for imposing penalty.

5. On the facts and circumstances of that case, their Lordships negated guilty mind in the assessee pointing out that the assessee's failure to include the amount of freight in the taxable turnover arose from a bona fide belief that the amount of freight did not form part of the sale price and was not includible in the taxable turnover. It was further pointed out that the assessee's contention throughout was that on a proper construction of the definition of 'sale price' in the Act, the freight did not fall within the definition and was not liable to be included in the taxable turnover, that the contention far from being a frivolous contention was a highly arguable one which, required serious consideration by the court and that the belief entertained by the assessee that it was not liable to include the amount of freight in the taxable turnover could not be said to be mala fide or unreasonable. On this the Supreme Court held that the assessee could not be said to have filed 'false' returns, when it did not include the amount of freight in the taxable turnover shown in the returns.

6. Can the same be said of the petitioner In our view it cannot be. The certificate of registration of the petitioner did not include bottle coolers and despite this, the petitioner certified in the relative C forms that the bottle coolers which it was purchasing under them were covered by the certificate of registration. This representation was patently a false representation. The petitioner's explanation that they bona fide believed that the registration certificate was comprehensive enough to include all categories and classes of goods relating to their business and that the sale and purchase of bottle coolers was part of their business can afford no valid defence; Whether sale and purchase of bottle coolers was part of the petitioner's business or not -it is irrelevant to the question-there is no basis in

the plea of bona fide belief that the certificate of registration which contained only three brands of cool drinks was comprehensive enough to include everything in which the petitioner dealt. The plea is too far-fetched, unreasonable and baseless, to justify an inference of bona fides in the petitioner's favour. The only possible inference in the circumstances is that the petitioner acted mala fide in making what was clearly a false representation. The authorities and the Tribunal were right in their conclusion that the petitioner had the necessary mens rea to attract the penalty.

7. We might make a brief reference to some of the cases cited by the counsel for the petitioner as no lengthy discussion is required because the orders exonerating the assesseees from penalty in those cases rested on their own special facts. In *Varghese v. Sales Tax Officer* [1965] 16 S.T.C. 323, a learned Judge of this Court (K. K. Mathew, J.) quashed an order imposing penalty as there was no finding by the Sales Tax Officer 'that the representations made by the petitioner (assessee) were false, namely, that the C form declarations were issued without the belief that the goods purchased were covered' by the certificate of registration. The order in the present case is not so vitiated. In *Ben Gorm Nilgiri Plantations Company v. Government of Madras* [1968] 21 S.T.C. 480, the dealer applied for a certificate in respect of the goods 'for use in the manufacture, tea-chests for packing purposes, machinery, drugs, etc., for running the estate and manufacturing tea'. In the certificate of registration issued on this application against the column 'for use in manufacture', 'tea-chests, machinery, drugs, etc.' were mentioned. The C form issued by the assessee included blankets, paints, tiles, clocks and brushes. A Bench of the Madras High Court set aside the order of penalty in the view that reading the language of the certificate in the light of that employed in the application for certificate, the word 'etc.' in the certificate could possibly have raised the belief in the assessee that the word covered the items mentioned in the C form and that the assessee could have formed the belief and quite honestly that 'etc.' would cover those articles. It was also held that the assessee was in this situation entitled to the benefit of doubt. In *Sri Lakshmi Machine Works v. State of Madras* [1973] 32 S.T.C. 407, the assessee's certificate of registration covered the item 'sheets'. The assessee purchased asbestos sheets from outside the State issuing C forms. The Appellate Assistant Commissioner set aside the order of

penalty imposed by the assessing authority, accepting the assessee's plea that it bona fide thought that the word 'sheets' in the certificate of registration would cover asbestos also. This order was set aside by the Board of Revenue suo motu in revision. A Bench of the Madras High Court reversed the order of the Board of Revenue holding that it was not right in interfering with the order of the Appellate Assistant Commissioner. This case is far different from the case before us. The last of the decisions to be noticed, *State of Tamil Nadu v. Gemini Studios* [1975] 36 S.T.C. 357, is again a decision of the Madras High Court. The certificate of registration contained, inter alia, two categories of goods : Category (b) chemicals, raw films, laboratory accessories, sound equipments, camera equipments, editing equipments and accessories and category (c) accessories for plant and machinery necessary to execute contracts for studio hire. The assessee purchased an Otis lift by issuing C forms. The assessing officer levied penalty under Section 10(b) holding Otis lift was not covered by category (b) or (c), as contended by the assessee. The order was confirmed by the Appellate Assistant Commissioner but was set aside by the Tribunal in the view that the Otis lift could be deemed to have been included in the certificate of registration as it was intimately and essentially connected with the manufacturing process carried on in the laboratory of the assessee. The Tribunal did not however enter any finding on the assessee's contention that they acted bonafide in the belief that the Otis lift was covered by the registration certificate. The High Court held that as the assessee bona fide thought that the Otis lift was included within category (b) or category (c) and as neither the assessing officer nor the Appellate Assistant Commissioner had given any finding that the assessee did not or could not have entertained any bona fide doubt and, therefore, the offence under Section 10(b) had been committed, the imposition of penalty was illegal. This case again has no parallel to the present case. None of these decisions will assist the petitioner, for, the facts involved in them are totally different from the facts in the case before us.

We dismiss the revision but, in the circumstances, without costs.