

Bapu and Company Vs. the State of Madras

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Court : Chennai

Decided On : Jul-10-1967

Reported in : [1968]22STC17(Mad)

Judge : Veeraswami and ;Ramaprasada Rao, JJ.

Appeal No. : Tax Case No. 324 of 1964 and Revision No. 228

Appellant : Bapu and Company

Respondent : The State of Madras

Advocate for Def. : The Special Government Pleader

Advocate for Pet/Ap. : C.S. Chandrasekhara Sastry, Adv.

Disposition : Petition allowed

Judgement :

Veeraswami, J.

1. This petition is directed against the levy of a penalty of Rs. 8,978 under Section 10(d) of the Central Sales Tax Act, 1956. The petitioner purchased electrical goods between 1st October, 1958, and 31st March, 1961, but under the C Forms in vogue prior to 1st October, 1958. As the law then stood, Section 8(3)(b) included in the C Form goods intended not only for resale but also for use in the

manufacture of goods for sale or for use in the execution of any contract. This provision was amended with effect from 1st October, 1958, and under the amended provision, use of goods by the assessee in execution of any contract is not permitted. There is no dispute that the forms actually issued to the assessee were those in vogue, as we said, prior to the amendment. After the purchase of goods the assessee used them in execution of certain works contracts which he had entered into. On the ground that in doing so he contravened Section 10(d), the penalty was levied. The majority members of the Tribunal upheld the penalty. It seems to us that the liability to penalty under Section 10(d) is not an absolute one. It is only where after purchase of any goods statedly for any of the purposes specified in Clause (b) of Sub-section (3) of Section 8, the purchaser fails, without any reasonable excuse, to make use of goods for any such purpose that he will be liable to penalty. Possibly, because of the old forms issued to him, the assessee was under a misapprehension that even after the amendment with effect from 1st October, 1958, he could use the electrical goods in execution of contracts. If it were a case of assessment, he would certainly be governed by the amended Section 8(3)(b). That was what was held by the Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd. v. Commissioner of Sales Tax* [1965] 16 S.T.C. 310. He could not in that case take cover under the C Forms which were current prior to 1st October, 1958. But a case of penalty stands on a different footing as the relevant provision itself provides. It is only where the use for another purpose is without reasonable excuse, the penalty will be justified. Where reasonable excuse is shown, no penalty could be levied. In a similar case that was the view taken by a Division Bench of this Court in *Viswanathan & Co. v. State of Madras* [1965] 16 S.T.C. 125. With respect, we share that view.

2. This petition is allowed. No costs.

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