

Neutral Citation No. - 2024:AHC-LKO:7366**Court No. - 20**

Case :- SALES/TRADE TAX REVISION No. - 137 of 2013

Revisionist :- M/S Hindustan Petroleum Corp. Lko. Gomti Nagar
Lucknow

Opposite Party :- Commissioner Of Commercial Tax U.P.Lucknow

Counsel for Revisionist :- Pradeep Agrawal

Counsel for Opposite Party :- C.S.C.

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HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Pradeep Agarwal, learned counsel for the revisionist and Shri Sanjay Sareen, learned Additional Chief Standing Counsel for the State - respondents.
2. Sales/Trade Tax Revision No. 138 of 2013 relates to the Assessment Year 2007-08 and Sales/Trade Tax Revision No. 137 of 2013 relates to the Assessment Year 2004-05. Since the issues involved in these revisions are similar, therefore, the same are being decided by the common order.
3. The present revisions have been filed against a common order passed by the Commercial Tax Tribunal, Lucknow in Second Appeal Nos. 308 of 2012 and 307 of 2012 under section 10-A of the Central Tax Act.
4. The above-noted revisions were admitted by the order of this Court dated 16.07.2013. At the time of hearing, learned counsel

for the revisionist pressed common question of law nos. a, b, c & d, which read as under:-

"(a) Whether on the facts and in the circumstances of the case, the Learned Tribunal has committed manifest error of law by omitting to consider and appreciate the concept of mens rea as a condition precedent for imposition of penalty under section 10(b) read with Section 10-A of the Central Sales Tax Act, 1956 and the aspect of burden falling upon the revenue to prove the existence of the circumstances constituting the said offence?"

(b) Whether the Learned Tribunal has misconstrued the ratio of the judgement dated 20.10.2011 passed by this Hon'ble Court in TTR No. 254 of 2011 and further, failed to apply the law laid down by the Hon'ble Apex Court in the case of Commissioner of Sales Tax Vs. Sanjiv Fabrics reported in 2010 (9) SCC 630?

(c) Whether on the facts and in the circumstances of the case, the Learned Tribunal has committed manifest error of law in completely overlooking the plea of Applicant that it had not falsely represented when importing the said goods, of being covered by the certificate of registration, hence, no penalty could be imposed upon the Applicant?

(d) Whether the learned Tribunal failed to consider and appreciate that the Applicant had raised a bonafide contention that the said goods were authorized by the revenue to purchase against Form C as no objection was raised by the revenue in the previous years and Form - C was issued in respect of the said goods in the previous years regularly?"

5. Brief facts of the case are that the revisionist is a Central Government Corporation and engaged in the business of refinery of crude oil and marketing of petroleum product throughout India. The revisionist do not have any refinery in the State of U.P. The petroleum products are either purchased from other oil marketing companies or imported from outside the State of U.P. for the purpose of trading in the State of U.P. The revisionist sold LPG Gas in cylinder as well as kerosene oil through public distribution system. The revisionist is registered both under the UP VAT Act as well as the Central Sales Tax Act. As required under the Act, the revisionist obtained a registration certificate under the Central Sales Tax Act (hereinafter referred to as '**the Act**') where the goods are being mentioned to be purchased on concession rate. The word "container" is being mentioned in the certificate. In the normal course of business, the revisionist purchased valves, regulator, PP caps, Aluminum Seal, blue dye, etc. While passing the penalty order under section 10-A of the Act for the

assessment year 2004-05, it has been observed that the above goods to the tune of Rs. 3,88,42,792/- and while passing the order under section 10-A of the Act for the assessment year 2007-08, total purchase of above goods was shown to the tune of Rs. 1,84,38,591/- and accordingly, penalty was imposed @ 15%, which comes to Rs. 58,26,419/- for the assessment year 2004-05 and Rs. 27,65,789/- for the assessment year 2007-08, respectively, against which first appeals were preferred, which were dismissed vide order dated 26.05.2012, against which second appeals were preferred, which were dismissed by the impugned order dated 26.04.2013. Hence, the present revisions.

6. Learned counsel for the revisionist submits that since in the registration certificate, container was specifically mentioned and the item purchased, such as regulator, valves, PP caps, aluminum seal, SC wires are covered under the word “container”, therefore, the revisionist had bonafidely issued the same. To elaborate his submission, he submits that since the revisionist is selling LPG gas filled in container/cylinder, therefore, the items were required for the purpose of delivery of goods and therefore, was essentially required. He further submits that valves are integral part of the container/cylinder, which prevent LPG gas from leakage. Without regulator, the LPG gas would not be released from the cylinder. PP caps are safety features, which are used the cap valve to prevent any leakage from LPG. Similarly, aluminum seal protects and prevents valves from being damaged. He further submits that these essential items are required for storage, transport and use of LPG gas filled in cylinder and therefore, the word “container”, which is specifically mentioned was under a bonafide belief and trust that the same is covered under the word “container” mentioned in the registration certificate granted under the Act. In support of his submissions, he has relied upon the judgement of the Apex Court in ***Commissioner of Sales Tax, U.P. Vs. M/s Sanjeev Fabrics*** [2010 NTN (44) 69]. He further

submits that in the first round of litigation upto the High Court, Revision Nos. 253 & 254 of 2011 was allowed by this Court and the matter was remanded by order dated 20.10.2011, where a specific direction was given to the authorities to decide the issue in terms of the order passed by the Apex Court in the case of *M/s Sanjeev Fabrics* (supra), but the authorities have failed to follow the specific direction of this Court in the above-mentioned revisions. He has also relied upon the judgement of this Court in *Jalavid Udyog Kanpur Vs. CCT, Lucknow* [Sales/Trade Tax Revision No. 104 of 2010, decided on 07.07.2022) and prays for allowing the revisions.

7. Per contra, learned Additional Chief Standing Counsel supports the impugned order and submits that the revisionist has failed to respond to the show cause notice issued to it and therefore, while framing the penalty order, a specific finding of fact has been recorded against the revisionist that the revisionist has failed to bring on record any material in support of its contention to justify the mens rea. He further submits that the said finding of fact has not been assailed by the revisionist in appeals and therefore, no relief can be granted even in pursuance of the judgement of the Apex Court in *M/s Sanjeev Fabrics* (supra). He further submits that the case of *M/s Sanjeev Fabrics* (supra) is not applicable to the revisionist herein as the revisionist has issued Form – C wrongly and made false representation while purchasing the items in question, which were not covered by the certificate of registration. He prays for dismissal of the revision.
8. After hearing learned counsel for the parties, the Court has perused the records. The Sales/Trade Tax Revision No. 137/2013 is taken as leading case for deciding the issue in hand.
9. It is admitted between the parties that the revisionist is being granted registration under sections 7(1)/7(2) of the Central Sales Tax Act, copy of which has been annexed as Annexure No. 1 to

the revision. The items required for resale have been mentioned in column – Ka where the word “container” has been mentioned. It is also admitted between the parties that the revisionist is engaged in selling of LPG gas. LPG gas is filled in cylinder or containers and thereafter, the same are being sent to the final consumers.

10. The record further reveals that the revisionist has purchased blue dye for the assessment year 2004-05 to the tune of Rs. 2530506/- and for the assessment year 2007-08 to the tune of Rs. 262080/-, but no argument was raised by either of the side with regard to blue dye. In turn, the levy of penalty of blue dye is confirmed as no argument has been raised by the counsel for the revisionist. Otherwise also, blue dye cannot be said to be anyway connected or found place in the registration certificate. Therefore, 15% penalty levied upon the purchase of blue dye to be used in the mixing of kerosene is justified.
11. Now, comes to the issue which was argued by the counsel for the parties, i.e., purchase of items such as regulator, valves, PP Caps, aluminum seal, etc. The said items are being manufactured and sold separately as independent items other than the container. This Court, vide order dated 20.10.2011, had remanded the matter and while remanding the matter, the Court has observed as under:-

“I have considered the rival arguments. The judgments of the Hon'ble Supreme Court and the arguments of the petitioners leads matter to the conclusion that the order impugned has not taken the element of mens-rea in consideration and in view of Hon'ble Supreme Court the order is bad, it is accordingly set aside.

The matter is remitted back to the First Assessing Authority for fresh consideration in accordance with law. Any observation in this order will not affect fresh assessment of the case. The authority shall be at liberty to apply his mind independently.

Since the matter is send back on remand it may be heard expeditiously.”

12. This Court has very categorically ordered that the matter should be decided afresh without being influenced by any of the

observations made therein. Therefore, the assessing authority was required to decide the matter afresh; meaning thereby, the assessing authority was required to decide the matter afresh independently. In pursuance of the remand order, notice was issued on 12.12.2011, which was duly served upon the revisionist, to which reply dated 26.12.2011 was submitted, copy of which has been annexed as Annexure No. 9 to the revision. After considering the said submissions, the penalty order was passed on 28.12.2011; wherein, a categorical finding of fact has been recorded that the revisionist has failed to bring on record any material to justify the items in question as covered under the word “container”. The relevant part of the penalty order is quoted herein-below:-

“व्यापारी को केंद्रीय पंजीयन प्रमाणपत्र में अंकित वस्तुओं से भिन्न वस्तुओं के आयात किये जाने के सम्बन्ध में करापवंचना का उद्देश्य न होने का साक्ष्य माँगा गया लेकिन व्यापारी कोई साक्ष्य प्रस्तुत करने में असमर्थ रहे हैं. जिससे उक्त आयात में व्यापारी की मनसा स्पष्ट नहीं है।”

13. The record further reveals that the said finding of fact in the penalty order has not been assailed in the grounds of appeal taken by the revisionist, copy of which has been annexed as Annexure No. 11 to the revision, which runs from pages 51 to 66. Once the said finding of fact which was recorded against the revisionist that he has failed to prove otherwise, the first appellate authority by the order dated 26.05.2012 dismissed the first appeal, against which second appeal was preferred before the Tribunal and the Tribunal by the impugned order has also dismissed the second appeal.
14. The judgement of this Court in *Jalavid Udyog Kanpur* (supra) relief upon by the learned counsel for the revisionist will be of no help to him as the matter was remanded and the opportunity was

given to the revisionist therein, but could not establish the same as recorded in the penalty order as mentioned herein-above.

15. During the course of argument, learned counsel for the revisionist has argued that that the revisionist was purchasing the goods in the previous years as well as while obtaining Form – C, no objection was raised about its utilization and hence, the bona fide of the revisionist that the goods in question were covered under the word “container” as mentioned in the certificate. The said argument, at the first instance, was very attractive, but on perusal of the record and the penalty order, it clearly shows that the penalty was imposed for the previous years also for use of Form – C on those items, which was not covered by the registration certificate.
16. It is admitted that the items, which were referred above, have been purchased utilizing Form – C to enable the revisionist to purchase the said goods at the concession rate, which were not listed as goods in the certificate, further for which the revisionist has neither applied nor was permitted to purchase the same utilizing the Form – C, for which he was subjected to penalty proceedings under section 10-A of the Act.
17. This Court, while deciding Sales/Trade Tax Revision No. 7 of 2011 (*M/s Indian Farmers Fertilizer Cooperative Limited Aonla Vs. The CCT, Lucknow*) on the levy of penalty under section 10-A of the Act, vide order dated 04.07.2022, has made the following observations:-

“18. It is also noticed that railway siding, locomotives and transmitters are not such goods as can be included in any other class of goods for which certificate of registration had already been obtained by the revisionist and hence neither it has been argued nor it is established that railway siding, locomotives and transmitters are such goods which can be included in any other class or category of goods for which registration certificate has already been granted to the revisionist.

19. Lastly it has been submitted by the revisionist that unless there is element of 'mens rea' which is essential for imposing penalty under Section 10 of the Act is missing and therefore

the penalty order is illegal and arbitrary relying upon the judgment of Supreme Court rendered in the case of Commissioner of Sales Tax, U.P. Vs. M/s Sanjeev Fabrics (alongwith another connected case), reported in 2010 NTN (Vol. 44) - 69.

20. In the aforesaid case, the applicant therein had applied for registration of 'cotton' and had claimed exemption on 'cotton' waste' and he was under bona fide belief that 'cotton' includes 'cotton waste' and he had purchased the goods in question and furnished Form-C for the said goods and in the aforesaid circumstances it was canvassed that there was no mens rea which is essential ingredient prior to levying penalty under Section 10 of the Act.

21. In the present case, the revisionist had never applied for registration of Railway Siding, Locomotives and Transmitters and in absence of registration of such goods Form-C was issued to him for purchase of the said items and it could not be demonstrated by the revisionist that he had done this under any bona fide belief or under mistake of fact. Apart from the above, clearly Railway Siding, Locomotives and Transmitters cannot be related to any other goods or class of goods for which registration had already been obtained by the revisionist, so as to show that he was under some bona fide belief that the said goods are included in the class of goods for which Registration Certificate had already been issued. In absence of any such bona fide belief, or any other circumstance indicating that revisionist could have validly purchased the said goods against Form-C, it cannot be said that the same had been obtained in a bona fide manner and hence leads to inevitable conclusion that Form-C had been utilized malafidely and unauthorizedly only with intention to evade tax.

22. From the aforesaid facts it cannot be demonstrated that purchase of goods against Form-C was done in bona fide manner nor had the revisionist moved any application for inclusion of said goods for registration under Section 7 of the Act.

23. In the above circumstances it cannot be said that there is any infirmity in imposition of penalty by the revenue under Section 10 of the Act. Hence this Court is of the considered view that there is no infirmity in the order of Tribunal and hence no interference is required by this Court. ”

- 18.** In the present case, purchases of valves, regulator, PP caps, aluminum seal, etc. are not mentioned in the registration certificate and use of Form – C could not be demonstrated by the revisionist that the same are covered under the word “container” was under bonafide belief or under mistake of fact as on remand, notice was issued, but the revisionist failed to bring on record any cogent materials to justify the bonafide belief and therefore, a finding of fact was recorded by the assessing authority, which was not challenged by the revisionist, either in the first appeal or in

second appeal. Only legal submission on mens rea was raised. Even otherwise, the word “container” mentioned in registration certificate cannot, by any stretch of imagination, be connected with the items purchased by the revisionist, i.e., valves, regulator, PP caps, Aluminum Seal, etc.

19. In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in *M/s Indian Farmers Fertilizer Cooperative Limited Aonla* (supra), the impugned judgements & orders passed by Commercial Tax Tribunal in these revisions do not require any interference by this Court as there is no infirmity in the same.
20. Accordingly, both the revisions are dismissed.
21. The questions of law are answered against the assessee and in favour of the revenue.

Order Date :-25/01/2024

Amit Mishra