Supreme Court of India
M/S. Electro Optics (P) Ltd vs State Of Tamil Nadu on 26 February, 2016
Author: S K Singh
Bench: Shiva Kirti Singh, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10554 OF 2010

M/s. Electro Optics (P) Ltd. …..Appellant

Versus

State of Tamil Nadu …..Respondent

W I T H

C.A.Nos.10562 of 2010 and 10563 of 2010

J U D G M E N T

SHIVA KIRTI SINGH, J.

Common judgment and order of the High Court of Judicature at Madras dated 29.09.2009 in Tax Case Nos.1834 of 2006, 2307 of 2008 and Writ Petition No.18770 of 2000 is under challenge in these appeals. The High Court has rejected the case of the appellant assessee in respect of Assessment Years 1993-94 and 1994-95 and as a consequence also rejected the challenge to the penalty and thereby upheld order of Sales Tax Appellate Tribunal which arose out of orders under Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the Act') passed by the original authority as well as appellate authority, all against the appellant. For both the assessment years the dispute is confined to an issue of law relating to classification of the goods sold by the appellant. According to the appellant it is engaged in the sale of electronic goods (survey instruments) imported from other countries and such goods should rightfully fall within Entry 50, Part B of Schedule I of the Act attracting rate of 3%. On the other hand the authorities have taken the stand that survey instruments, whether electronic or otherwise, are covered by Entry 14, Part F of Schedule I, chargeable @ 16%. Since appellant's claim was not accepted by the Commercial Tax Officer who assessed the appellant at 16% leading to demand of tax as well as penalty, the appellant preferred appeal before the Appellate Commissioner. On being unsuccessful, the appellant preferred further appeal before the Tribunal and then the matter reached the High Court leading to the impugned order under appeal. The two relevant entries, i.e., Entry 50 of Part B and Entry 14 of Part F of Schedule I are as follows:

“Part B |Sl. |Description of Goods |Point of levy |Rate of| |No. | | |tax | |50 |Electronic systems, instruments, |At the point of |3% | | |apparatus, appliances and other |first sale in the| | | |electronic goods (other than those |State | | | |specified elsewhere in the Schedule)| | | | |but including electronic cash | | | | |registering, indexing, card | | | | |punching, franking, addressing | | | | |machines, and computers of analog | | | | |and digital varieties, one record | | | | |units, word processor and other | | | | |electronic goods and parts and | | | | |accessories of all such goods | | | Part F |Sl. |Description of Goods |Point of levy |Rate of| |No. | | |tax | |14 |Binoculars, monoculars, opera |At the point of |16% | | |glasses, other optical telescope, |first sale in the| | | |astronomical instruments, |State | | | |microscopes, binocular microscopes, | | | | |magnifying glasses, diffraction | | | | |apparatus and mountings therefor | | | | |including theodolite, survey | | | | |instruments and optical lenses parts| | | | |and accessories thereof | | | There is no difficulty in accepting the consistent finding of the authorities based upon appellant’s own declaration in respect of goods which were imported and declared before the customs authorities as survey instruments, that the goods are covered by the generic expression ‘survey instruments’. The main controversy is whether on account of being electronic survey instruments the goods would be out of Entry 14 so as to fall under Entry 50. The High Court and all the authorities have taken a consistent view that Entry 50 itself clarifies that it covers all electronic instruments, apparatus, other than those specified elsewhere in the Schedule and since the goods in question are specified under the generic term ‘survey instruments’ in Part F Entry 14, they will stand excluded from Entry 50 of Part B.

We have heard learned counsel appearing for the parties at length. In order to persuade us to take a different view than that of the High Court and the Authorities, learned counsel for the appellant reiterated the submissions advanced before the High Court and further highlighted some entries in Part – B of Schedule I such as Entries 38 to 42 and pointed out that these entries, all providing for rate of tax at 3% use the word “electronic” in all the entries before various machines such as duplicating machines, teleprinters, typewriters, tabulating/calculating machines and clocks/time pieces. The submission is that after enumerating such electronic machines in the various entries noted above, the policy was to charge same 3% rate of tax for all residuary electronic system, apparatus and other electronic goods and if any other meaning is given by placing reliance upon words used in Entry 50, especially those in parenthesis – “other than those specified elsewhere in the Schedule” then there would be no rationale for using the word “electronic” to qualify duplicating machines, teleprinters etc. covered by Entries 38 to 42. The submission lacks merits. Part-B of the Schedule covers various kinds of goods such as agricultural products, vegetable oils, kerosene, aluminium domestic utensils, raw wool, hosiery goods, gold and silver articles, cycles, tractors, different electronic items, television sets, gramophones, all chargeable at the rate of 3%. In this background, Entry 50 of Part-B is meant to accommodate only such left over electronic system, apparatus etc. which are not specified elsewhere in the Schedule and are therefore chargeable at the rate of 3%. Clearly, if specified elsewhere and chargeable at a different rate, they cannot be included under Entry 50. This conclusion is further strengthened by a look at some of the entries in Part-F, just preceding Entry 14. Entries 10, 11, 12 and 13 cover goods chargeable at the rate of 16%, such as typewriters, teleprinters, tabulating, calculating machines and duplicating machines etc. In all these four entries there is a specific exclusion of electronic variety of these machines. On the other hand in relevant Entry no. 14 such exclusion of electronic variety of any of the machines and apparatus such as survey instruments is conspicuously missing. Clearly the intended effect is deliberate so as to

include binoculars, monoculars, survey instruments etc. of all varieties, be they manual or electronic. Had the intention been different, in Entry 14 also exclusion of 'electronic' survey instruments could have been inserted and specified as in Entry Nos. 10 to 13 in respect of other different machines or instruments. Hence, the conclusion is obvious that even electronic survey instruments are covered by Entry No. 14 in Part-F of the First Schedule of the Act.

Learned Counsel for the appellant has placed reliance upon judgment in the case of M/s BPL Ltd. v. State of Andhra Pradesh reported in (2001) 2 SCC

139. This judgment has been elaborately discussed by the High Court and held to be not applicable to the facts of this case. We have also considered the facts and law involved in the said judgment and we agree with the conclusion of the High Court. In that case the dispute under the Andhra Pradesh General Sales Tax Act, 1957 was on the interpretation of definition of the term "Electronic Goods". On the basis of the definition it was held that the goods "automatic washing machine" was covered by the term electronic goods and not under the other item i.e, Entry 38 (IV) which related to electrical items including electrical washing machine. The wordings and expressions used and interpreted in that case were entirely different and are of no help to the appellant in the present case. As a result, the Civil Appeals arising out of Tax Case Nos. 1834 of 2006 and 2307 of 2008 must fail. However, the Appeal arising out from Writ Petition containing challenge to imposition of penalty deserves further consideration in the light of submissions to the effect that appellant has been in same business since 1985 and no controversy or dispute of this nature ever arose except for the two assessment years under consideration. It has been pointed out that all earlier Schedules were re-written on account of extensive amendments in the year 1993 and since most of the electronic items were brought under Part-B, a genuine controversy or misunderstanding arose as to whether the goods in question would be covered by Entry No. 50 of Part B or not. Genuinely believing that it is so covered, the appellant contested the matter and in the process suffered penalty for both the assessment years in total amounting to Rs. 15.48 lakhs approximately. Out of this, appellant claims to have paid approximately Rs. 3.74 lakhs but still about Rs. 11.73 lakhs remain as balance payable towards penalty. It was pointed out that considering the merit of appellant's case this Court has stayed realization of penalty. Hence, it has been submitted that in the interest of justice the balance penalty be set aside on account of bona fide belief on the part of the appellant that it was liable to pay only at the rate of 3% and therefore there was absolute lack of any mens rea in not paying in time the tax assessed by the authorities. It was also pointed out that against the total tax demand of Rs. 16.39 lakhs approximately the appellant has by now paid about Rs. 16.18 lakhs.

Learned counsel for the appellant has supported the submissions against imposition of penalty by placing reliance upon the following judgments:- (1) M/s Hindustan Steel Ltd. v. State of Orissa, (1969) 2 SCC 627 (2) Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics, (2010) 9 SCC In M/s Hindustan Steel Ltd. in paragraph 8 it was held that although the Statute permitted imposition of penalty but still the authority concerned had the judicial discretion to consider whether penalty should be imposed for failure to perform a statutory obligation. In such a situation the discretion has to be exercised judicially after consideration of all the relevant circumstances. Even if minimum penalty is prescribed, the authority may be justified in refusing to impose any penalty in some peculiar situations, such as, where the breach flows from a bona fide belief that the offender is not

liable to act in the manner prescribed by the Statute. In Sanjiv Fabrics it was reiterated that there is a rebuttable presumption that mens rea is essential ingredient in every offence. For examining whether mens rea is essential for an offence created under a tax Statute, three factors require particular attention, (i) the object and scheme of the Statute; (ii) the language of the section; and (iii) the nature of penalty. Since the relevant expression for constituting the offence in that case was – "falsely represents", the Court held that the offence attracting penalty would be established only where it is proved that the dealer has acted deliberately in defiance of law and is guilty of contumacious or dishonest conduct.

In the present case penalty is imposable by the assessing authority under Section 12 of the Act, both, for failure to submit return or for submission of incorrect or incomplete return. Appellant, in the eyes of the Authorities has submitted incorrect return leading to imposition of penalty in accordance with relevant clauses of Section 12. Considering that the situation of dispute arose on account of amendments in the Schedule in 1993 and was confined only to immediate two assessment years and also considering that the appellant had a good arguable case even in this Court which had stayed the penalty orders, we find that the return submitted by the appellant was on account of bona fide belief in correctness of appellant's stand that the goods in question were chargeable only at the rate of 3%. In our considered view, in the facts of the case it would not be proper to hold that the appellant had submitted a return which was incorrect to its knowledge or belief. Only after the outcome of the legal dispute by virtue of this judgment, the authorities can be justified in holding henceforth that the return was incorrect. In such a situation it would not be just and proper exercise of discretion to hold the appellant guilty of submitting incorrect return so as to attract penalty for the same. Hence, in the peculiar facts of the case and in the interest of justice, we set aside the balance dues of penalty. However, the penalty already paid by the appellant shall not be refunded and the same may be retained by the respondent authorities by way of cost of this protracted litigation.

In the result, the Civil Appeal Nos. 10554 and 10562 of 2010 containing challenge to assessments orders are dismissed. The remaining appeal Civil Appeal No. 10563 of 2010 relating to penalty is allowed to the extent that balance amount of penalty shall not be realised from the appellant. There shall be no order as to further costs.

.....J.

[SHIVA KIRTI SINGH] .....J.

[R. BANUMATHI] New Delhi.

February 26, 2016.
