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IN THE HIGH COURT OF DELHI

STC No. 2/2003

Judgment reserved on : April 19, 2005

Date of Pronouncement : May 12, 2005

M/s. Orwo Limited,
Stadium House, 1st Floor,
Block No. 1, V.N. Road, Mumbai,
(Branch office 1/18-B, Asaf Ali Road,
New Delhi, Closed)

...Petitioners

through: Mr. Balram Singal, Advocate.

Versus

The Commissioner of Sales Tax,
Bikri Kar Bhawan,
New Delhi.

...Respondent

through : Mr. Jagdish R. Goel, Advocate.

CORAM :

HON'BLE MR. JUSTICE SWATANTER KUMAR

HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not? *Yes*
3. Whether the judgment should be referred in the Digest? *Yes*

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Signature Not Verified

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the digital data is as per the physical
file and no page is missing.

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SWATANTER KUMAR, J.

The petitioner has filed the present application under Section 45 (2) of the Delhi Sales Tax Act, 1975 (hereinafter referred to as 'the Act') praying that the Appellate Tribunal Sales Tax be required to stay the case and refer the following questions of law for determination:-

- “1. Whether under the facts and circumstances of the case the Id. Tribunal Sales Tax was justified in upholding the levy of penalty in respect of tax payable on sales made to M/s. Oriental Trading Corpn.
2. Whether under the facts and circumstances of the case the degree of proof required for levying penalty in respect of sale made to M/s. Oriental Trading Corpn. should have been larger as compared to the sales made to other four dealers.
3. Whether under the facts and circumstances of the case there was any mensrea on the part of the applicant company to furnish inaccurate particulars of sales so far as sales made to M/s. Oriental Trading Corpn. were concerned.
4. Whether under the facts and circumstances of the case when the revenue did not lead any evidence to establish as to what was the fakeness in the forms ST-1 of M/s. Oriental Trading Corpn., could it alleged against the applicant company that it knew about the falsity/fakeness of ST-1 forms.
5. Whether under the facts and circumstances of the case the levy of penalty of Rs.12 lacs, i.e. Two and a half time of the tax assessed, sales made to M/s. Oriental Trading Corpn.

was justified or not.

6. Whether under the facts and circumstances of the case when a consolidated penalty of Rs.15 lacs was imposed by the A.A. the Tribunal could determine the penalty payable more than two and a half time on the tax leviable on sales of M/s. Oriental Trading Corpn.
7. Whether under the facts and circumstances of the case the penalty imposed is exorbitant/excessive.

The petitioner-company was engaged in business of dealing in photographic goods with its head office at Stadium House, First Floor Block, V.N. Road, Mumbai and its branch office at Asaf Ali Road, New Delhi. The Branch office was registered under the provisions of the Act. It filed its regular return of sales tax and was assessed for the year 1982-83 on 22nd October, 1984 under Section 23 (3) of the Act which later on was reopened under Section 24 of the local Act. The petitioner raised various objections to the reopening of the assessment. However, despite objections of the petitioner the assessment was made vide order dated 15th May, 1985 thereby raising a tax demand of Rs.1046145.50 which included tax of Rs.763465.58 and interest of Rs.282680.22 by way of disallowing deductions under Section 4 (2) (a) (v) of the Local Act.

The petitioner challenged the order of re-assessment by filing an

appeal which was also dismissed by the Commissioner of Sales Tax, vide his order dated 14th January, 1993 and the Second appeal preferred by the assessee before the Sales Tax Appellate Tribunal also met the same fate. The order of the Tribunal dated 9th April, 2001 is the foundation for filing an application under Section 45 (2) of the Act, a copy of which has been annexed to the petition as Annexure P-5 and P-6 respectively. The case of the petitioner is that the above substantial questions of law arise for consideration of the Court as the the penalty action initiated by the authorities under Section 56 of the Act culminated into the judgment of the Criminal Court holding that no criminal case was made out against the petitioner-company and as such no penalty could have been imposed. However, the Department issued a notice on 3rd September, 1985 to which the petitioner filed a reply and finally vide order dated 6th September, 1985 the penalty was imposed upon the petitioner.

All the questions raised by the petitioner were duly considered by the Appellate Tribunal in its order dated 14th October, 2002. The questions have been considered in consonance with the provisions of the Act and the judgments of the Supreme Court. The main contention raised on behalf of the petitioner is that the petitioner had furnished the ST-1 Forms from all the five dealers with whom he

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had entered into transaction and sale of photographic goods. Thus, the assessee had discharged the onus and the reasons given for rejection of the ST-1 Forms are without any basis.

This argument is without any merit. All the five dealers with whom the petitioner had entered into sale transactions had not admitted that they had purchased such goods from the petitioner. In fact, as per the record of the Department, all these dealers were not even 'Registered Dealers' and as such the transactions were fake and only intended to avoid sales tax liability of the petitioner. It has been specifically noticed in the order of the Assessing Officer dated 25th April, 1986 that the dealers specified in the order was also found to be fake and a further opportunity was granted to the dealer to file proper declarations. Despite grant of opportunity on 7th May, 1985 as well as 8th June, 1986, no such declarations were filed. However, it was stated that the files be summoned from all the concerned purchasers with whom the petitioner had sale transactions. Certainly, it was expected of the dealer to fully and completely discharge the primary onus placed upon him and to show that the forms/declarations submitted by the assessee were genuine and were by 'Registered Dealers'. The Assessing Officer has specifically noticed "it is evident that the dealer failed to produce any

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documentary evidence to prove the genuineness of the declarations.” The case of each of the purchaser from the petitioner-dealer was found to be fake as no such dealer existed, and none was registered in different wards as specified in the ST-1 Forms. The findings of fact concurrently recorded by all the authorities is that the ST-1 Forms were never issued to the aforesaid dealers to whom the petitioner allegedly sold the goods. The goods being photographic goods, were taxed at 10%. As per the record of the Department, M/s. S.V. Enterprises, 21/51, Shakti Nagar, Delhi, was not authorised in dealing photographic goods. Furthermore, the declarations filed were fake. Findings recorded by the Appellate Tribunal in its order dated 17th April, 2001 can be usefully referred at this stage:-

“A few of the arguments of Sh. Sangal may be examined first. The argument that registration creates an agency has no force. A registration under the Act does neither create nor so purports to create an agency between the State and the dealer. No representation can be imputed to the Government by simply registering a person for a particular purpose. Similarly, the argument that the selling dealer is bound to sell all and sundry registered dealers merits no credence. The Act and the rules and notifications framed thereunder constitute public notice. Every selling dealer is presumed to know as to when and under what circumstances the purchasing dealer can obtain a form from the department and under what circumstances a selling dealer can claim deduction under Section 4 (2) (a) (v) of the Act. We could not be led to any provision or precedent creating a liability on the selling dealer to sell to a registered dealer without charging tax on an express or implied representation by the State.....

.....The appellant has avoided furnishing any material indicating that the sales had in fact been made to the purchasing dealers M/s Mchar Enterprises and M/s. Jay Enterprises inspite of ample opportunities including the one in this Tribunal. The question of deduction of the sales to registered dealers would arise only after sale has been proved to have been made to the registered dealers. To that extent, it is the selling dealer who has to carry the ball. The appellant emphasized on the acceptance of his account books. The role of the account books is to record the monetary transaction. The nature of transaction is to be proved by other mean such as purchase orders, invoices/bills, delivery challans, correspondence, transport receipts, proof of payment etc. Only after the sale has been proved to have been made to a registered dealer that the question of it being supported by the declaration in the proper statutory form would arise and only then the question would be whether the dealer has been a victim of the inaction, negligence or fraud of the purchasing dealer or there is some connivance or collusion between the selling dealer and the purchasing dealer. Unfortunately, the appellant has neglected to file any evidence in this regard.

In this view the claim of deduction of RD sales against unverified forms is also rejected. These sales are liable to be taxed under the Local Act."

The above findings were again taken note of by the Appellate Tribunal while rejecting the appeal of the appellant-dealer vide its order dated 14th October, 2002 against the order of penalty. Making a reference to its earlier order, the Tribunal held as under:-

"...The quantum appeal was dismissed by the Tribunal vide

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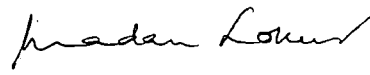
order dated 9-4-01. In the penalty appeal the Tribunal noticed, inter-alia, that whereas other 4 alleged purchasing dealers were registered dealers the one, M/s. Oriental Trading Corporation to whom bulk of such sales amounting to Rs.48,14,869/- were allegedly made and said to be supported by 32 declaration in statutory forms was not even a registered dealer. The Tribunal held that so far as the dealers other than the Oriental Trading Corporation are concerned the material is that the forms were not issued to those purchasing dealers, although they were registered or that their ST-2 account differed. From that it was inferred that the appellant had not made any transactions to these purchasing dealers. However, the department was to establish that the appellant had accepted those forms knowingly or having reason to believe them to be false."

The above recorded findings by the Appellate Tribunal and our discussion on the merits of the case clearly show that no question of law, much less any substantial question of law arises for consideration from the order of the Appellate Tribunal. It is primarily a finding of fact whether the declaration submitted by the dealer were genuine or not. The dealer is under obligation to submit such declarations and the declarations ought to be genuine and from registered dealers. No benefit can accrue to a dealer in terms of Section 4 of the Act, unless the sale transactions are in favour of a Registered dealer. No documentary evidence like bills, receipts of goods supported by books of accounts were produced by the Dealer before the Assessing Officer. They even failed to

furnish confirmation from any of the alleged dealers to whom the photographic goods were sold. When the Department confronted the dealers with a specific averment that the alleged registered dealers are non-existent or do not exist in the records of the circle from where such forms are alleged to have been issued, the onus on the assessee-dealer is heavier. Having failed to discharge this obligation, the petitioner cannot be permitted to avoid the liability arising from the impugned orders.

For the reasons aforesaid, we are of the considered view that no questions of law arise for consideration from the order impugned in the present petition. The same is dismissed, while leaving the parties to bear their own costs.


SWATANTER KUMAR
(JUDGE)


MADAN B. LOKUR
(JUDGE)

May 12, 2005
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Certified that the corrected copy of the judgment has been transmitted in the main Server.