

KERALA HIGH COURT

Kottayam Electricals Ltd

Vs

State of Kerala

(V.V. Kamat, J.)

08.08.1973

JUDGEMENT

V.V. Kamat, J.

(1.) THE assessee, a company has come up in revision challenging the finding of the Sales-tax authorities and of the Tribunal that he is guilty of the offence under S. 10 (d) of the Central Sales-tax Act, 1956 (for brief the Act) and the consequent levy of penalty under S. 10-A of the Act. THE assessee-company is a registered dealer in electrical goods. It also undertakes works-contract such as wiring. During the assessment year 1967-68 the Sales-tax Officer, on verification found that the company had used electrical goods purchased by it for execution of works contract. THE purpose for which the goods were purchased as entered in the certificate of registration was 're-sale'. THE assessee company purchased electrical goods worth Rs. 9,948-60 by issuing 'c' Forms, and it was these goods that were used in the works contract undertaken by the company. Annexure A notice was therefore issued by the Sales-tax Officer proposing to take action under S. 10-A of the Act. Annexure B is the assessee's objections. THE main contentions were that the use of the goods for distribution of electricity is permitted under s. 8 (3) (b), that goods were used only when they were not otherwise available and that therefore there was no mens tea, and there was 'reasonable excuse' for the use. Overruling the objections the Sales-tax Officer imposed a penalty of rs. 1,193. 88. Annexure C is the order of the Sales-tax Officer and therein it is said: "this sort of offence had been committed by the assessee in all the prior years, and penalty had been imposed for all these cases. THE same offence is being repeated during the year. "

(2.) THE Sales-tax Officer put the offence both under s. 10 (b) and (d) of the Act. THE assessee appealed. THE Appellate Assistant commissioner also negatived the arguments based on mens rea and reasonable excuse: He said: "it is further argued, by the appellant's learned representative that there was no deliberate motive in using the goods for works contract and the same were used only when there was any necessity. From the facts and in the circumstances of the case, I find that using of these goods for the execution of contract works instead of reselling them must be

deemed to be an act knowingly done by the appellant. This is also a case where the appellant should be made liable as if he had purchased goods for his own use and not for resale. THE appellant has been imposed penally for the misuse of 'c' forms during the previous years also. It therefore, find that the appellant had knowingly committed the offence. " On further appeal the Tribunal noticed that the assessee had no case that generation and distribution of electricity were included in its activities and that wiring was incidental to those activities. Regarding the contention that the assessee had reasonable excuse for the use, the Tribunal said: "another argument advanced on behalf of the appellant is that the goods in question were used only when they were not available and hence there has been 'reasonable excuse' in using the goods for wiring contracts. No evidence has been adduced regarding non-availability of the goods. Nor have the circumstances in which the goods were not available been explained. When the appellant could effect the purchases regularly it has to be presumed that the goods were available. So the plea of non-availability cannot be raised as a reasonable excuse. The contention that the offence under clause (d) has not been committed therefore fails. " The question of mens rea as such seems not to have been taken before the Tribunal. The Tribunal found that there was no violation of S. 10 (b) but only of S. 10 (d). In that view the Tribunal upheld the levy of penalty.

(3.) MR. S. Gopalakrishna Iyer, the learned counsel for the assessee contended before us that this is a case where the assessee had no guilty mind in that he had reasonable excuse for using the goods for the purpose of works - contract, and that in any case the penalty imposed is in excess of what is provided in S. 10-A of the Act. In the light of the findings by the Sales-tax Officer, and the the Appellate Assistant Commissioner that the assessee is a habitual offender and that in previous years also he had been penalised for violation of the provision of S. 10 (d), and in view of the fact that before the Tribunal the assessee had not produced any evidence regarding non-availability of the goods in support of his plea of 'reasonable excuse,' we are of the view that the assessee had violated the provisions of S. 10 (d) with full knowledge of such violation and without reasonable excuse. The learned counsel for the assessee invited our attention to the decision of the Supreme Court in *State of Madras v, Radio & Electricals Ltd. , (1966) 18 STC. 222*, and particularly to a passage occurring at page 232 which is as follows: "but it is not for the Tax Officer to hold an enquiry whether the goods specified in the certificate of registration of the purchaser can be used by him for any of the purposes mentioned by him in form 'c', or that the goods purchased have in fact not been used for the purpose declared in the certificate. " ;