

(1973) 11 KAR CK 0006

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 36 of 1973

Agro Private Limited

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 13-11-1973

Acts Referred:

Citation : (1974) ILR (Kar) 285 : (1974) 1 KarLJ 283 : (1974) 34 STC 1

Hon'ble Judges : K. Bhimiah, J;E.S. Venkataramiah, J

Bench : Division Bench

Advocate : S.P. Bhat, for the Appellant; M.P. Chandrakantaraj Urs, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

E.S. Venkataramiah, J.—The petitioner herein is a company dealing in motor cycles, spare parts, tractors, etc. in the course of its business, the petitioner used to purchase motor cycles from the manufacturers, Escorts Limited. The factory in which the motor cycles are manufactured is situated in the State of Haryana. The petitioner has acquired the right exclusively to deal in the motor cycles manufactured by Escorts Limited within the State of Mysore (now State of Karnataka) under an agreement entered into with Escorts Limited. Under the terms of the said agreement, the petitioner would become the owner of the motor cycles before it sells the same to its customers within the State of Karnataka. The turnover in respect of motor cycles is liable to sales tax under the Mysore Sales Tax Act, 1957 (hereinafter referred to as the Act). In its return in respect of the assessment year 1965-66 (1st January, 1965, to 31st December, 1965), the petitioner claimed deduction in respect of the freight charges incurred by it in transporting the motor cycles from the site of the factory at Haryana to Bangalore where its place of business is situated. The Assistant Commissioner of Commercial Taxes, who was the assessing authority, disallowed the said claim and levied sales tax on the freight charges incurred by the petitioner in transporting the motor cycles from the site of the factory to Bangalore also. The

Deputy Commissioner of Commercial Taxes and the Sales Tax Appellate Tribunal confirmed the said order passed by the assessing authority. Aggrieved by the order of the Sales Tax Appellate Tribunal, the petitioner has filed this revision petition.

2. Sri S.P. Bhat, the learned Counsel for the petitioner, contended that the freight charges incurred by the petitioner in transporting motor cycles from Haryana to Bangalore have to be exempted from payment of sales tax on two grounds, (i) that such freight charges are exempt from sales tax by Rule 6(4)(f)(i) of the Mysore Sales Tax Rules, 1957; and (ii) that such charges did not form part of the consideration.

3. In support of his first contention, Sri Bhat relied upon a decision of a Division Bench of this Court reported in *webs Sales and Service (P.) Ltd. v. Commissioner of Commercial Taxes, Bangalore* [1969] 24 S.T.C. 84. In that case, the facts were these : Under an agreement entered into with the manufacturers, the assessee was purchasing trucks and thereafter used to sell it to its customers at Bangalore. The question which arose for consideration in that case was whether the freight charges paid by the assessee for transporting the trucks from the place where they were manufactured to its place of business were liable to sales tax or not. This court took the view that such "inward freight charges" were exempted from sales tax under Rule 6(4)(f)(i) of the Rules. The above decision no doubt fully supports the contention of the petitioner in this case. But, we are of the opinion that the view expressed by the Division Bench of this Court in the above case is no longer good law in view of the two decisions of the Supreme Court in *Dyer Meakin Breweries Limited v. State of Kerala* [1970] 26 S.T.C. 248 (S.C.) and *D.C. Johar & Sons (P.) Ltd. v. Sales Tax Officer, Ernakulam, and Anr.* [1971] 27 S.T.C. 120 (S.C.).

4. In *Dyer Meakin's case* [1970] 26 S.T.C. 248 (S.C.), the facts were these : The assessee was manufacturing liquor at its distilleries and breweries situated in different places in the States of Uttar Pradesh and Haryana and used to transport liquor to Ernakulam where it had a place of business. From the said place of business at Ernakulam, it used to supply liquor to the consumers in the State of Kerala. The assessee contended before the sales tax authorities that the freight charges incurred by the assessee in transporting the goods from their place of manufacture to Ernakulam were liable to be deducted from the turnover and were not liable to sales tax. The Supreme Court rejected the said contention holding that such transportation charges could not be permitted to be deducted from the taxable turnover on the ground that they were not incidental to the sale to the consumers in the State of Kerala from its place of business at Ernakulam. It was further of the opinion that the freight charges that had been incurred by the dealer, which were unconnected with the sale, could not be allowed to be deducted from the turnover. The view expressed in the above decision was followed in the case of *D.C. Johar & Sons (P.) Ltd.* [1971] 27 S.T.C. 120 (S.C.), in which the facts were slightly different. In that case, the assessee was purchasing

the goods from the manufacturers who had their place of manufacture outside the State in which the assessee was carrying on business and thereafter used to sell the goods to the customers. The Supreme Court was of the opinion that, in such a case, the assessee could not claim deduction in respect of the freight charges incurred by it in transporting the goods from the place of manufacture to its place of business. We feel that the decision in the case of D.C. Johar & Sons (P.) Ltd. [1971] 27 S.T.C. 120 (S.C.) is on all fours so far as the facts of the present case are concerned. The principle enunciated by the Supreme Court in the two decisions, referred to above, is that if the freight charges in respect of which deduction is claimed are unconnected with the sales effected by the dealer, such freight charges could not be deducted from the turnover under the Rules.

5. Sri Bhat contended that the freight charges incurred by the assessee petitioner in this case in transporting the goods from Haryana to Bangalore were incidental to the sales effected by the petitioner to its customers and, in support of the above contention, relied upon an affidavit filed by one of the officers of the petitioner-company. The petitioner has produced before the court the form in which the application for registration for purchase of motor cycles is made by the customers to the dealer. On going through it, we find that there is no reference to the freight charges to be incurred by the petitioner in transporting the goods from the place of manufacture to its place of business. Nor does it show that the customer had any option to take delivery of the goods either at Bangalore or at Haryana. The averment made in the affidavit that such option was available cannot be accepted in view of the contents of the form in which applications are made by the customers. Sri Bhat also has not been able to place before us any instance wherein any of the customers of the petitioner had taken delivery of the goods at the place of manufacture. In the circumstances, we cannot attach any value to the statement made in the affidavit stating that the freight charges incurred by the petitioner in transporting the goods from the place of manufacture to Bangalore were incidental to the sales effected by the petitioner to its customers in the State of Karnataka.

6. In view of the decisions of the Supreme Court referred to above and in particular the decision in the case of D.C. Johar & Sons (P.) Ltd. [1971] 27 S.T.C. 120 (S.C.), we are of the opinion that the decision of this Court in the case of Webs Sales and Service (P.) Ltd. [1969] 24 S.T.C. 84 stands impliedly overruled. The Tribunal below was right in holding that the petitioner was not entitled to claim deduction in respect of the freight charges under Rule 6(4)(f)(i) of the Rules.

7. The next contention of Sri Bhat that the freight charges incurred by the petitioner in getting the goods to its place of business from the place of manufacture, could not form part of the consideration paid for the motor cycles, and hence is not liable to sales tax has only to be stated to be rejected. The expression "turnover" is defined under the Act as the aggregate amount for which goods are bought or sold or supplied or distributed by a dealer, either

directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration. It is not disputed that in the aggregate amount recovered from the customer, the freight charges incurred by the petitioner in transporting the goods from the place of manufacture to Bangalore have been included and unless they are permitted to be deducted under any rule framed under the Act or by any other provision of law, the petitioner cannot claim that such freight charges do not form part of the assessable turnover. We, therefore, reject the above contention also.

8. In the result, this petition fails and it is dismissed with costs. Advocate's fee Rs. 100.