(1985) 04 KAR CK 0013

In the Karnataka High Court

Case No : S.T.R.P. No''s. 76 to 79 and 82 to 86 of 1975

Arvind Motors and Another — APPELLANT

Vs

The State of Karnataka — RESPONDENT

Date of Decision : 18-04-1985

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2, 21 (2), 22, 3

Citation : (1985) ILR (Kar) 2675 : (1985) 59 STC 337

Hon'ble Judges : S.R. Rajasekhara Murthy, J;S.A. Hakeem, J;K.S. Puttaswamy, J

Bench : Full Bench

Advocate : K. Srinivasan and H. Raghavendra Rao, for the Appellant; S. Rajendra Bahu, Government Advocate, for the Respondent

Judgement

Rajasekhara Murthy, J.—A Division Bench of this Court consisting of Sri Srinivasa Iyengar and Sri Rama Jois, JJ., has referred the following question of law for the opinion of the Full Bench :

"Whether the Division Bench decision of this Court in Webbs Sales and Service (P.) Ltd. v. Commissioner of Commercial Taxes, Bangalore [1969] 24 STC 84 AP has been impliedly overruled by the decisions of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, and D. C. Johar & Sons (P.) Ltd. v. Sales Tax Officer, Ernakulam [1971] 27 STC 120 (SC) ?"

2. In order to appreciate the question referred, it is necessary to notice the facts that are not in dispute, in the first instance.

M/s. United Trading Corporation and Workshop Private Ltd., a private limited company incorporated under the Companies Act, and M/s. Arvind Motors, Mangalore, a registered partnership firm engaged in the business of selling motor-cars and trucks, such as Ambassador Cars, Tata Mercedes Benz trucks on agency basis in Mangalore used to get them from their manufacturers having their factories at Calcutta and Jamshedpur. Both of them are registered dealers under the Karnataka Sales Tax Act of 1957 and the Central Sales tax Act of 1956

("K.S.T. and C.S.T. Acts"). The new cars and trucks are first purchased by the assessees from their manufactures outside the State, and then they are brought and sold to their customers or purchasers within the State of Karnataka. In the normal circumstances, the freight and insurance charges incurred by the assessees prior to the delivery of the vehicles at their place of business to their purchasers or customers, would form part of the sale price recovered by the assessees from their purchasers and customers. But, evidently with the sole object of avoiding payment of sales tax under the K.S.T. Act, on such freight charges collected an arrangement or an agreement is entered into between the assessees and their individual purchasers or customers providing for charging separately the freight and insurance charges incurred by the assessees on each car or truck to be borne by the purchasers, as the case may be, in these terms :

"The above car (or commercial vehicle) should be brought on my/our behalf from Calcutta/Jamshedpur to Mangalore and I/we will bear transportation charges and transit insurance that may be incurred thereto."

3. In the returns submitted by the assessees for the years in question they included in the taxable turnover only the retail price of the vehicle exigible to tax under the K.S.T. and C.S.T. Acts, and claimed exemption in respect of the freight and insurance charges, for which the assessees had issued separate debit note to their customers.

4. The C.T.O. completed the assessments allowing the claim of the assessees relying on a ruling of this Court in Webbs Sales and Service (P.) Ltd. case [1969] 24 STC 84 and distinguishing the ruling of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala,

The Deputy Commissioner of Commercial Taxes, Mangalore (the "D.C.") in exercise of his powers of suo motu revision conferred by section 21(2) of the K.S.T. Act, held that the exempted turnover relating to freight and insurance charges should be included in the taxable turnover of the assessees.

Being aggrieved by the order of the Deputy Commissioner, the assessees filed appeals before the Karnataka Sales Tax Appellate Tribunal, Bangalore, ("Tribunal") u/s 22 of the Act. The Tribunal by its order dated 30th August, 1975 dismissed the appeals and upheld the order of the D.C.

Both the D.C. and the Tribunal relied upon a ruling of this Court in Agro Private Ltd. v. State of Mysore [1974] 34 STC 1 Mys, and observed in the course of their order that the decision of this Court in Webbs Sales and Service case [1969] 24 STC 84 is impliedly overruled by the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala,

5. Before the Division Bench which referred the matter to a larger Bench, the assessees maintained that the declaration made by this Court in Agro Private Ltd. case [1974] 34 STC 1 was erroneous and the earlier ruling in Webbs Sales and Service (P.) Ltd. case [1969] 24 STC 84 which had correctly interpreted the

provisions of the K.S.T. Act was still good law and their cases were governed by Webbs case [1964] 24 STC 84 only. This contention of the assessees was naturally countered by the Revenue. On an examination of the rival contentions, the referring Bench doubting the view expressed by the Division Bench in Agro (P.) Ltd. case [1974] 34 STC 1 has referred the question to a Full Bench of this Court for opinion.

6. Sri K. Srinivasan, learned counsel for the assessees urged for answering the question in the negative while Sri S. Rajendra Babu, learned Government Advocate appearing for the Revenue, urged for answering the question in the affirmative.

7. Before we examine the several rulings, we consider it appropriate to briefly notice the scheme and object of the Act and some of the material provisions which have a bearing on the question referred.

The K.S.T. Act has been enacted to levy tax on the sale/purchase of goods in the State of Karnataka. The terms, "sale", turnover", "total turnover" and "taxable turnover", have been defined in section 2 of the Act as hereunder.

Section 2(t) of the Act defines the term "sale" thus :

" ''sale'' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge."

On this very definition of the term "sale" itself the assessees who purchase the trucks and cars from their manufacturers on making payment towards their price which included the freight and insurance charges incurred for bringing the vehicles from the places of their manufacture to the place of delivery and in turn charge those amounts to their customers cannot contend that those charges do not form part of their sale price and is, therefore, not includible in their turnover.

"Taxable turnover" is defined u/s 2(u-1), as follows :

"(u-1) ''taxable turnover'' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India."

"Total turnover" is defined u/s 2(u-2), as follows :

"(u-2) ''total turnover'' means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India."

Rule 6(1) of the K.S.T. Rules ("Rules") that regulates the mode of determination of total and taxable turnover, reads thus :-

"6. Determination of total and taxable turnovers. - (1) The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of -

(a) the total amount paid or payable by the dealer as the consideration for the purchase of any of the goods in respect of which tax is leviable at the point of purchase under one or more of the provisions specified hereunder, where such purchase has taken place inside the State."

Rule 6(4)(f) that provides for the deductions of freight charges from the total turnover, which clause is material reads :

"(4) In determining the taxable turnover, the amount specified in clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the total turnover as determined under clauses (a) and (b) of sub-rule (1).

.... (f) all amounts falling under the head "freight'', when specified and charged for by the dealer separately without including such amounts in the price of the goods sold."

Rule 9(f) of the Kerala Sales Tax Rules, framed under the Kerala General Sales Tax Act, 1963 corresponding to rule 6(4)(f)(i) of the Rules, which reads as follows :

"In determining the taxable turnover, the amount specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer .....

(f) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the ''price of goods sold'';''

(i) freight,

(ii) charges for packing and delivery."

8. The Central Sales Tax Act of 1956 that regulates the levy of sales tax on inter-State sale defines the term "sale" thus :

" ''Sale'', with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods."

9. Chapter II, section 3, of the Central Sales Tax Act lays down the principle for determining when a "sale" or "purchase of goods" takes place in the course of inter-State trade or commerce or outside State, or in the course of import or

export.

"3. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase -

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another."

The definition of "sale" in the C.S.T. Act is the same as defined under the K.S.T. Act.

10. We are required to furnish the opinion, whether the decision of this Court in Webbs Sales and Service case [1969] 24 STC 84 is impliedly overruled by the decision of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, and the case of D. C. Johar & Sons [1971] 27 STC 120 (SC).

In Webbs case [1969] 24 STC 84 the facts in brief were these :

The appellants assesses in that case, Webbs Sales and Service were dealers in motor trucks manufactured by Tatas in their factory at Jamshedpur. In the invoice prepared by the appellants with reference to sales which were effected pursuant to the orders placed by their customers, the retail price fixed by the manufacturer was shown separately and the amount incurred by the appellants for bringing the trucks from Jamshedpur to Bangalore was shown separately. But the amount paid by the purchaser towards the vehicle sold to him was the aggregate of the retail price of the vehicle and the freight charges.

In the assessment under the K.S.T. Act, the appellant claimed deduction of the freight charges from its total turnover under clause (i) of rule 6(4)(f) of the K.S.T. Rules. That deduction which was disallowed by the C.T.O., was allowed by the D.C. in appeal, but again disallowed by the Commissioner in exercise of his revisional powers conferred on him by section 22-A of the Act. The assessees filed an appeal before the High Court challenging the order of the Commissioner.

The High Court, while agreeing with the appellant''s contention held as follows, at page 86 :

"The freight to which clause (f) refers is the freight which has been paid by the dealer in the context of a sale which he has agreed to make to the customer. So, the freight paid by the dealer in order to bring the goods from any place to any other place after he has agreed to sell the goods to the customer so that he could deliver these goods to the customer at the point specified by him, is of course deductible under clause (f) of rule 6(4). If the dealer agrees to sell to the customer goods of a particular description and these goods have to be purchased by the dealer from the manufacturer so that there could be an implementation of that agreement to sell, and the customer who agreed to purchase these goods consents to pay the freight which the dealer has to incur for bringing the goods from the place of manufacture to the place where the purchaser wants them to be delivered, there could be very little doubt that the freight incurred by the dealer in that situation falls wholly within clause (f)(i) of rule 6(4)."

11. This Court had occasion to consider the correctness of this decision in a later case in Agro Private Ltd., v. State of Mysore [1974] 34 STC 1 Mys. The facts of that case were :

The assesses company had acquired the right exclusively to deal in the motor cycles manufactured by Escorts Ltd., in their factory situated in the State of Haryana, in the State of Mysore. In its return filed under the K.S.T. Act, the assessee claimed deduction in respect of the freight charges incurred by it in transporting the motor cycles from the site of the factory in Haryana to Bangalore, its place of business. The assessing authority disallowed that claim and levied sales tax on the freight charges incurred by the assessee and that order was confirmed in the appeals before the D.C. and the Tribunal. Aggrieved by the order of the Tribunal, the assessee preferred a revision petition before the High Court.

12. The assessee, Agro Private Ltd., had claimed deduction of the freight charges under rule 6(4)(f)(i) relying upon the decision of this Court in Webbs case [1969] 24 STC 84. Disallowing that claim the High Court in Agro Private Ltd. case [1974] 34 STC 1 opined that the view expressed by the Division Bench in Webbs case [1969] 24 STC 84 was no longer good law in view of the two decisions of the Supreme Court in the cases of Dyer Meakin Breweries Ltd. Vs. State of Kerala, and D. C. Johar [1971] 27 STC 120 (SC) which were rendered after Webbs case [1969] 24 STC 84 was decided by this Court.

This Court considered the facts in Dyer Meakin Breweries Ltd. Vs. State of Kerala, and those involved in D. C. Johar & Sons [1971] 27 STC 120 (SC) and took the view that the decision in D. C. Johar & Sons (P.) Ltd. case [1971] 27 STC 120 (SC) was on all fours with the Agro Private Ltd. [1984] 34 STC 1 and further held that the ratio of the Supreme Court in the two decisions of the Supreme Court referred to above should govern the case in Agro Private Ltd. case [1974] 34 STC 1 also.

This Court observed at page 4 of its order thus :

"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 STC 120 (SC), we are of the opinion that the decision of this Court in the case of Webbs Sales and Service (P.) Ltd. [1969] 24 STC 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."

13. At this juncture, it would be necessary to extract the facts involved and the observations made by the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, by Sri Shah, Acting C.J. :

Dyer Meakin, a company registered under the Kerala (General) Sales Tax Act, as a dealer, transported for sale from its breweries and distilleries in U.P. and Haryana to its place of business in Ernakulam. The assesses company made out two bills - one for the ex-factory price and the other for "freight and handling charges" separately and claimed deduction of the freight charges under rule 9(f) of the Kerala (General) Sales Tax Rules. That claim was rejected by all the authorities under the Act and the revision filed before the High Court of Kerala was also dismissed. In the further appeals filed by the assessee before the Supreme Court, the Supreme Court held in the context of the provisions of the Kerala Act and after examining rule 9(f) of the Kerala General Sales Tax Rules, 1963 at page 250 of the judgment as follows :

Rule 9(f) of the Kerala General Sales Tax Rules, 1963 provides :-

"In determining the taxable turnover, the amount specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer ....

(f) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of goods sold;

(i) freight,

(ii) charges for packing and delivery."

The company claims that the amount expended by it for freight and for "handling charges" of goods from the factories to the warehouse at Ernakulam is liable to be excluded from the taxable turnover and the taxing authorities and the High Court were in error in refusing to allow the deduction.

It is common ground that the sale of the liquor took place in Ernakulam. The company arranges to transport liquor for sale from the factories to its warehouse at Ernakulam. It was not brought for any individual customer. All the expenditure incurred is prior to the sale and was evidently a component of the price for which the goods were sold. It is true that separate bills were made out for the price of the goods ex-factory and "freight and handling charges". But, in our judgment, the Tribunal was right in holding that the exemption under clause (f) of rule 9 applies when the freight and charges for packing and delivery are found to be incidental to the sale and when they are specified and charged for by the dealer separately and expenditure incurred for freight and packing and delivery charges prior to the sale and for transporting the goods from the factories to the warehouse of the company is not admissible under rule 9(f). Rule 9(f) seeks to exclude only those charges which are incurred by the dealer either expressly or by necessary implication for and on behalf of the purchaser after the sale when the dealer undertakes to transport the goods and to deliver the same or where the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale.

14. We may now refer to D. C. Johar & Sons case [1971] 27 STC 120 (SC) which was disposed of by the Supreme Court on the same day following their decision rendered earlier in Dyer Meakin Breweries Ltd. Vs. State of Kerala, the facts being identical with the facts in Dyer Meakin Breweries Ltd. Vs. State of Kerala, . In that case also the assesses company (D. C. Johar & Sons) had claimed deduction of freight and packing and delivery charges in respect of which separate bills were made out when selling the goods at Ernakulam. The Supreme Court held, that the transport charges formed a component of the price for which goods were sold and held that the tax levied was not a tax on railway freight but it is a tax on turnover, that is on the aggregate of sale price received by the dealer in respect of sale of goods. So saying, the Supreme Court dismissed the appeals.

From the above discussion, it follows that it was rightly held by the Division Bench in Agro Private Ltd. [1974] 34 STC 1 that the decision rendered earlier by this Court in Webbs case [1969] 24 STC 84 was no longer good law and that it should be deemed to have been impliedly overruled by the two decisions of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, and D. C. Johar & Sons [1971] 27 STC 120 (SC) cases.

The contention of the assessees before the Division Bench in the S.T. R.P., that if the goods are brought pursuant to an order placed by an individual customer it is liable to be deducted from the total turnover has no substance and has to be rejected.

We also derive support from a later decision of the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, , in which their Lordships followed the principle laid down in Dyer Meakin Breweries Ltd. Vs. State of Kerala, , and reaffirmed the same.

The question before the Supreme Court in the said case was : whether in the sale of cement effected under the Cement Control Order, 1967 the amount of freight forms part of the "sale price" so as to be exigible to sales tax under the Rajasthan Sales Tax Act.

15. In Hindusthan Sugar Mills Vs. State of Rajasthan and Others, the assessee entered into diverse contracts of sale of cement with the purchasers at the price fixed by the Cement Control Order. The assessee, in fulfilment of these contracts dispatched the cement to the purchasers at various destinations by rail and the railway receipts were made out on the basis of "freight to pay".

The question arose as to whether the freight charges deducted from the aggregate amounts shown by the assessee in its invoices formed part of the "sale price" within the meaning of that term in section 2(p) of the Rajasthan Sales Tax Act and Central Sales Tax Act.

The sales tax authorities took the view that the freight charges formed part of the "sale price" and was, therefore, liable to be included in the total turnover of the assessee for the purpose of assessment to sales tax.

The assessee challenged the correctness of this view by filing a writ petition in the High Court of Rajasthan. But the High Court agreed with the view taken by the sales tax authorities. The assessee thereupon preferred the appeal before the Supreme Court.

16. The Supreme Court in the said decision considered the definition of "sale price" in section 2(p) of the Rajasthan Sales Tax Act, which reads as follows :

"...... the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in case where such cost is separately charged."

The Supreme Court, analysing the definition of "sale price" observed that,

"...... ''sale price'' means the amount payable to a dealer as consideration for the sale of any goods. Here, the concept of real price or actual price retainable by the dealer is irrelevant. The test is, what is the consideration passing from the purchaser to the dealer for the sale of the goods. It is immaterial to enquire as to how the amount of consideration is made up, whether it includes excise duty or sales tax or freight. The only relevant question to ask is as to what is the amount payable by the purchaser to the dealer as consideration for the sale and not as to what is the net consideration retainable by the dealer."

The Supreme Court further observed with regard to "freight and handling charges" that :

"What the dealer receives as the price for which the goods are sold is inclusive of freight and handling charges incurred by him in transporting the goods and that the said charges included in the price would undoubtedly be a part of the sale price."

17. In a recent decision of this Court in Premier Breweries v. State of Karnataka [1984] 56 STC 14 the ratio of the above decision was followed, and it was held, that "fright and handling charges" if it becomes part of the price for which the goods are sold, then it is not liable to be excluded under rule 6(4)(f) and (ff). One other similar decision of this Court on the point is that rendered in State v. Yadvad & Co.

After carefully examining all the facts involved in the Webbs case [1969] 24 STC 84 and the two cases of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, and D. C. Johar & Sons (P.) Ltd. [1971] 27 STC 120 (SC) we overrule the decision rendered in Webbs case [1969] 24 STC 84.

18. In the light of the law laid down in several decisions referred to supra

rendered by the Supreme Court, we answer the question referred to us in the affirmative and hold that the Division Bench decision of this Court in Webbs Sales and Service (P.) Ltd. v. Commissioner of Commercial Taxes, Bangalore [1969] 24 STC 84 has been impliedly overruled by the decisions of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, and D. C. Johar & Sons (P.) Ltd. v. Sales Tax Officer, Ernakulam [1971] 27 STC 120 (SC).

