
(2006) 11 AHC CK 0201
In the Allahabad High Court

Avon Elastomers (India)

APPELLANT

Vs

The Commissioner of Trade Tax

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 2(i)

Citation : (2008) 16 VST 510

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of U. P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 15.04.2006 relating to assessment year 1999-2000 under the U.P. Trade Tax Act.

2. The brief facts of the case are that the applicant was sole Selling Agent of M/S T.P. R. Compound, Ahmedabad in the State of U.P. and is registered under the U.P. Trade Tax Act as well as Central Sales Tax Act with the Assessing Authority, Agra. It appears that the goods were received by way of stock transfer from Principal M/S T. P.R. Compound and the same were sold within the State of U.P. to various parties. It appears that in bill, applicant has charged the value of the goods fixed by the Principal and the amount of freight relating to the transportation of goods from Ahmedabad to Agra. Applicant claimed that the freight from Ahmedabad to Agra since being charged separately in the bill, would not be a part of the turnover in view of Explanation of Section 2 (i) of the Act which defines "Turnover". The Assessing Authority had not accepted the plea of the applicant and included the amount of freight relating to transportation of the goods from Ahmedabad to Agra in the turnover and levied the tax accordingly. The order of the Assessing Authority in this regard, has been confirmed by the Joint Commissioner (Appeals), Trade Tax Agra and by the Tribunal in the impugned order.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that since the amount of freight had been charged separately in the bill from the customers, therefore, it would not be the part of the turnover in view of Explanation-II of Section 2 (i) of the Act, which defines the "Turnover". He relied upon the decision of Apex Court in the case of Vinod Coal Syndicate v. Commissioner of Sales Tax, U.P. Lucknow reported in 1988 UPTC 218. Learned Standing Counsel submitted that under Explanation-II of Section 2 (i). "Turnover" means the aggregate amount for which goods are supplied or distributed by way of sale. He submitted that admittedly, the goods were sold at Agra after taking the delivery of the goods by the applicant to the various parties. Thus, the aggregate amount for which, the goods were supplied includes freight relating to the transportation of the goods from Ahmedabad to Agra, inasmuch as, for sale at Agra, it was obligation of the applicant to transport the goods from Ahmedabad to Agra and to pay freight. He submitted that under Explanation-II to Section 2 (i) exclusion of freight relates to those freight which have been charged at the instance of buyer for further delivery of the goods from Selling Point to the buyer destination. In support of his contention, he relied upon the decisions of this Court in the cases of Commissioner of Trade Tax, U.P. Lucknow v. S/S Sharma Coal Company, Azamgarh reported in 2005 NTN 69, 2005, Commissioner of Sales Tax v. Rampati Tewari reported in 2005 UPTC 76 and Commissioner of Trade Tax, U.P. Lucknow v. S/S Yardhaman Trading Company, Meerut reported in 2006 29 NTN . 96.

5. Having heard learned Counsel for the parties and perused the order of Tribunal and the authorities below.

6. There is no dispute that the applicant had sold the goods to various parties from its place of business at Agra after receipt of the goods from Ahmedabad. For the sale of goods from its place of business at Agra, it was the responsibility of the applicant or his Principal to dispatch the goods from Ahmedabad to Agra, thus, payment of freight from Ahmedabad to Agra was the obligation of the applicant or its Principal and not of the buyer.

7. Sub-clause (i) of Explanation-II to Section 2 (i) has been considered by this Court in the case of Commissioner of Trade Tax, U.P. Lucknow v. S/S Sharma Coal Company, Azamgarh (supra). This Court held as follows:

Definition of turnover thus says that the aggregate amount for which, the goods are supplied to the buyers is the turnover. Admittedly, dealer was required to pay freight to acquire the goods, therefore, such freight is included in the aggregate amount and form part of the turnover. Exclusion provide by Sub-section (i) of Explanation-II is in respect of freight i.e. paid by the buyers for transportation of the goods after their purchase from sellers, supplied to the buyers. Freight subject matter of dispute is not a freight contemplated by exclusionary provisions contained in the explanation. Freight paid by the seller for the goods purchased by him for sale is his legal burden and is a part of costs for acquiring the goods.

It is the dealer who had settled the amount of Truck hire from Colliery to his place of business and therefore, it was his legal obligation to pay the amount of Truck hire and it is of no consequence that subsequently recovers from the buyers.

8. In the case of *Dyer Meakiii Breweries Ltd. v. State of Kerala* 26 SIC 248 (SC), Company was engaged in the manufacturing of liquor at various places in U.P. and Haryana, transported the goods from its breweries and distilleries to its place of business in Ernakulam and sold them there While selling liquor to the customers the appellant made out separate bill for ex-factory price and for "freight and handling charges". The appellant claimed that the amount charged for "Freight and handling charges" incurred by it in transporting the goods from the breweries and distilleries to the warehouse in Kerala were eligible for deduction under Rule 9(f) of the Kerala General Sales Tax Rules. 1963. a rule which is in the same terms as Section 2 (i). This claim was negated by Apex Court. The Court observed:

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 in 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 for "freight and handling charges". But, in our judgment, the Tribunal was right in holding that the exemption under Clause (f) of Rule 9 applied 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 the 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.

9. The aforesaid decision has been followed by the Apex Court in the case of *D.C. Johar & Sons (P) Ltd. v. Sales Tax Officer, Ernakulam and Anr.* reported in 26 STC 120.

10. Both the aforesaid decisions have been relied upon in the case of *TVL. Ramco Cement Distribution Co. Pvt. Ltd., Tamil Nadu Vs. State of Tamil Nadu*, In the case of *Hindustan Sugar Mills v. State of Rajasthan* reported in 1979 UPTC 37, the Section 2 (p) of the Rajasthan Sales Tax Act which defines sale price has been considered which means "the amount payable to a dealer as consideration for the sale or 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" and the aforesaid provision is almost similar to Section 2(i) of U. P. Trade Tax Act which defines turnover. On consideration of the aforesaid provision. Apex Court held as follows:

The second part enact an inclusive clause. It says that "sale price" includes 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 installation in case where such costs is separately charged." Therefore, any sum charged for anything done by the dealer in respect of . the goods of "sale price" even if it does not fall within the first part of the definition. But there is an exception carved out of this inclusion. Not all sums charged for something done by dealer in respect of the goods at the time of or before the delivery thereof are covered by the inclusive clause. The cost of freight or delivery or the cost of installation certainly represents an amount charged for transportation or installation of the goods at the time of or before the delivery thereof and would, therefore, fall within the inclusive clause on its plain terms but it is taken out by the exclusion clause, "other than the cost of freight or delivery or the cost of installation in case where such cost is separately charged." This exclusion clause does not operate . as an exception to the first part of the definition, It merely enacts and exclusion out of the inclusive clause and takes out something which would otherwise be within the inclusive clause. Obviously, therefore, this exclusion clause can be availed of by the assessee only, if the State seeks to rely on the inclusive clause for the purpose of bringing a particular amount within the definition of "sale price". But if the State is able to show that the particular amount falls within the first of the definition and, is therefore, part of the "sale price" the exclusion clause cannot avail the assessee to take the amount in question out of the definition of "sale price" Here on the view taken by us, the amount of freight forms part of the "sale price" within the meaning of the first part of the definition and it is not necessary for the State to invoke the inclusive clause and in fact the State has not done so. The exclusion is, therefore, irrelevant and cannot be called in aid by the Assessee. We may point out that even if the exclusion clause were read as an exception to the first part of the definition, which, as we have pointed out, cannot be done. It cannot avail the assessee. It is only where the cost of freight is separately charged that it would fall within the exclusion clause and in the context of the definition as a whole, it is obvious that the ".... Cost of freight... is separately charged" is used in contradistinction to a case where the cost of ""freight" is not separately charged but is included in the price. It is not intended to apply to a case where the cost of freight is part of the price but the dealer chooses to split up the price and claim the amount of freight as a separate item in the invoice. Where the cost of freight is part of the price, it would fall within the first part of the definition and to such a case, the exclusion clause in the second part has no application.

11. In the case of Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh reported in 24 STC 487, Apex Court held "mat the form in which the invoice was made out was not determinative of the contract between the company and its customers". The substance of transaction is to be considered.

12. Present case is not a case where during the course of movement of goods from Ahmedabad to Aura, sale was made by transfer of documents in favour of the buyer. If this would be the case, position could be entirely different.

13. In the present case, applicant had sold the goods from its place of business at Agra to the various parties on Principal to Principal basis, it was intra-State sale. Applicant had disclosed the turnover and also admitted the liability of tax under the U.P. Trade Tax Act. Payment of freight from Ahmedabad to Agra was the responsibility of applicant or its Principal. In the circumstances, freight was the part of sale price and is outside the purview of exclusion clause in view of decisions of Apex Court and this Court referred hereinabove.

14. For the reasons stated above, the order of the Tribunal is upheld.

15. In the result, revision fails and is, accordingly, dismissed.