
(1994) 12 KAR CK 0019

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 55 of 1991

Bangalore Soft Drinks Private Limited

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2(1)(U1)
Karnataka Sales Tax Rules, 1957 — Rule 6(4)(F)

Citation : (2000) 48 KarLJ 368

Hon'ble Judges : B. Padmaraj, J;S. Rajendra Babu, J

Judgement

B. Padmaraj, J.-This revision petition under Section 23(1) of the Karnataka Sales Tax Act, 1957, is directed against the judgment dated October 15, 1990 passed by the Karnataka Appellate Tribunal, Bangalore in S.T.A. No. 819 of 1983.

2. The facts in brief are.- The petitioner is a manufacturer of aerated drinks popularly called as Coco-cola and Fanta having its factory at Mysore Road, Bangalore. For the assessment year 1977-78 in relation to the period from April 1, 1977 to March 31, 1978, the revision petitioner claimed exclusion of freight charges and octroi duty in computing the taxable turnover, on the ground that the freight charges had been independently charged and the octroi had been paid by him for and on behalf of the wholesaler and not as a seller of the goods. This contention of the revision petitioner did not find favour with the Assessing Authority, the Appellate Authority as well as the Tribunal and they rejected the exclusion claimed by the revision petitioner. Hence, this petition.

3. We have heard the learned Counsels on both sides. The learned Counsel for the revision petitioner urged that the freight charges and octroi duty should have been excluded in the computation of the taxable turnover of the assessee as they have been incurred subsequent to the sale. As against this, the learned Government Pleader would contend that the amounts in question were liable to be included in the turnover of the assessee for the purpose of computation of the sales tax.

4. The following two questions will arise for our consideration in this case:

(1) Whether, on the facts and in the circumstances of this case, the freight charges collected separately by the revision petitioner from the wholesaler for the purpose of transportation of the goods from the factory site to the door of the buyer could be included in the sales turnover of the revision petitioner for the purpose of computation of the sales tax?

(2) Whether, on the facts and in the circumstances of the case, the octroi charges collected and paid by the revision petitioner on the value of the goods imported into the buyer's place can be charged to sales tax in the hands of the revision petitioner?

5. In our opinion, so far as the test to be applied in order to find answers to the above questions are to be found in the unreported decision of this Court in S.T.R.P. No. 59 of 1988, dated January 20, 1994 (Narayani Rao v Commissioner of Commercial Taxes in Karnataka, 1994(38) Kar. L.J. 178 (HC)), relied on by the learned Counsel appearing for the revision petitioner. This Court in the above referred order, after referring to the several decisions of this Court as well as the honourable Supreme Court including the decision of the honourable Supreme Court in Dyer Meakin Breweries Limited v State of Karnataka, (1970)26 STC 248 (SC), which still holds the field, has observed at para 11 of the order as under:

"The Full Bench of this Court has stated that test applied by the Supreme Court in Dyer Meakin's case, *supra*, and D.C. Johar and Sons Private Limited v Sales Tax Officer, Ernakulam and Another, (1971)27 STC 120 (SC), is the basic test. If the cost incurred by the dealer is incidental to his acquisition of goods, being part of his expenditure, it forms a component of the price when he sells the goods. If the cost of freight is charged by the dealer for the transportation of the goods, which is for and on behalf of the purchaser, it will be a case of post-sale expenditure, to which benefit of Rule 6(4)(f) will be available. Cost of freight incurred for the inward journey of the goods to the dealer is not deductible, but freight outward is deductible".

6. According to the revision petitioner, he had entered into a contract with the buyers, which clearly stipulated that at the option of the buyer, the petitioner-company will undertake transportation of the products purchased from the company and that the transportation charges will be charged extra. It is the specific case of the revision petitioner that the sale was completed only at the factory site and the delivery of the goods at the place of customers" had been made at the option of the customers as per the agreement entered into between the revision petitioner and the buyer and this service has been rendered by the petitioner subsequent to the completion of the sale at the factory premises. Insofar as the octroi duty is concerned, it is the case of the petitioner that the same has been paid or incurred for and on behalf of the customers. To substantiate this contention of the revision petitioner that the sale has been concluded and the delivery of the property has been made at the site of factory

and that subsequent transportation of the goods from the place of sale to the place of buyer was done or made at the instance of the wholesale buyer against the payment of freight charges paid separately by the buyers, by the revision petitioner in his capacity as a transporter, he pressed into service Clause 4 of the agreement entered into between him and the buyers, which reads as under:

"4. That the company will sell its products to you at the rate applicable from time to time on ex-factory rate basis only. That however at your option the company can carry out transportation of the products you may purchase from the company and that the transport charges for the services rendered, will be charged extra. Though the company maintains special types of transport vehicles to avoid the transport breakages however the transportation carried out by the company will be at the wholesaler's risk only and any transit breakages of fulls or empty bottles will be wholesaler's account only except when such breakages are due to accident of the vehicle concerned".

7. Basing on the above term of the contract and in view of the fact that he had separately collected the freight charges from the buyer under the debit notes issued in this regard, the learned Counsel for the petitioner submitted that the freight charges collected by the revision petitioner are subsequent to the sale and hence, they are liable to be exempted under Rule 6(4)(f) of the Act. According to the revision petitioner, the goods were sold at the factory site and at the instance of the buyers and in view of the fact that the freight charges were paid separately by the buyers, the revision petitioner had undertaken to transport the goods of the buyers at their risk to their place. There appears to be force in the submission of the learned Counsel for the petitioner having regard to the above nature of the contract entered into between the parties. The above condition or term of the contract would clearly go to indicate that the revision petitioner has a dual role to play; one that of seller of the goods and the other that of a transporter or the carrier of the goods. It is to be seen here that the revision petitioner had acted both as a seller of the goods as well as the transporter of the goods for effecting delivery of the goods at the buyer's place. In his capacity or while acting as a seller or manufacturer of the goods, he sold and delivered the goods at the site of the factory and in his other capacity, while acting as a transporter or the carrier of the goods, he had undertaken to deliver the goods at the place of the buyers, which is very clear from the nature of the contract entered into between the parties as well as from the fact that he had collected the freight charges separately from the buyer.

8. In this case, the Tribunal having found that the revision petitioner had sold Fanta and Coca-cola, the products manufactured by the revision petitioner, during the relevant assessment year, at Rs. 23 per crate, which is an ex-factory rate, as per condition 4 of the contract, at the factory site vide para 14 of the judgment, is not justified in holding that the so called delivery of the products by the appellant at the factory had remained only on paper and that actually the goods were sold and delivered at the wholesalers' godown in the vehicles

maintained by the revision petitioner, in the absence of any cogent materials to draw such an inference. According to the Tribunal, as the goods were not taken delivery of by the wholesale buyer at the factory site, it is a delivery at the place of the buyer by the revision petitioner. This may not be correct in view of the fact that in this case, the revision petitioner has a dual role to play, one as that of seller and the other as that of a carrier or transporter of the goods in view of the above nature of the contract and in view of the fact that the freight charges were collected by him for transportation of the goods from the factory site to the place of the buyer. This is clearly borne out from the nature of the contract entered into between the parties particularly in view of condition 4 of the contract and as a consequence thereof, he had also collected the freight charges separately from the buyer as per the debit note issued or prepared separately, which has been extracted in the assessment order made by the Assessing Authority. Therefore, the Tribunal had lost sight of the fact that the petitioner here has a dual role to play, one of a seller and other of a carrier of the goods and it is in his other capacity as a carrier of the goods, he received the goods for and on behalf of the buyer, who is a wholesaler in this case, for the purpose of transportation of the goods to the buyers' place. So the Tribunal is not correct in saying that the goods were delivered at the door of the buyer. True, the petitioner had transported the goods to the place of wholesale buyer in the vehicle belonging to the revision petitioner. But this does not mean that the goods were delivered by the seller at the place of the buyer, because in this case, as we have already stated the revision petitioner had also undertaken and collected the freight charges from the buyer to deliver the goods at the place of the buyer and thus in his capacity as a carrier of the goods, he had undertaken to transport the goods to the place of the buyer and not in his capacity as a seller of the goods. The Tribunal as well as the Assessing and the Appellate Authority having forgotten about dual role of the revision petitioner, one as that of a seller of the goods and the other as that of a carrier of the goods having collected the freight charges separately from the buyer, have fallen into a serious error in including the freight charges to the sales turnover of the assessee, which is patently incorrect in view of the nature of the contract entered into between the parties and in view of the fact that the petitioner had collected the freight charges separately. In fact, the Tribunal has also found on facts that these amounts, i.e., the transportation charges were collected not in the regular invoice, but by raising a separate debit note. If this is so, then the freight charges being collected separately, they do not form part of the sale price and therefore, the question of the freight charges being included in the turnover of the assessee will not arise. Even assuming that the buyer had no option but to transport the goods only through the vehicles belonging to the revision petitioner, that makes no difference because that is a matter between the buyer and the revision petitioner in his capacity as a carrier of the goods and it has nothing to do with his capacity as a seller of the goods. No doubt, it is true that the revision petitioner has charged freight charges uniformly irrespective of the distance. For this the revision petitioner contended that it has charged uniform rate of Rs. 4 per crate with a view to maintain a

uniform price of their product throughout their territory of operation and charging of such equalised price is a common trade practice. The petitioner in support of his contention placed reliance on a decision of this Court in the case of Premier Breweries Limited v State of Karnataka, 1984 Kar. L.J. (Tri. Supp.) 35 (HC). In this decision, this Court has approved the charging of uniform rate of freight charges irrespective of distance of transportation. Therefore, the revision petitioner with a view to see that his products should be available for sale at all places at a uniform price, has charged the freight charges at uniform rate.

8-A. Here, we have to remember that the price of the goods are not fixed by any statute and the revision petitioner was entitled to consolidate the price irrespective of the freight charges he may have incurred. In this view of the matter, the revision petitioner in order to maintain the uniform price for his goods at all places, might have charged uniform freight charges. Be that as it may, the real test to be applied is whether the goods have passed to buyer at the factory of the assessee or at the place of the buyer. For this, the Tribunal itself has clearly found that the revision petitioner has sold Fanta and Coca-cola at the factory itself and even otherwise, the materials available on record would clearly indicate that the goods have passed to the buyer at the site of the factory and the subsequent transportation of the goods by the revision petitioner was done in his capacity as a transporter of the goods. That being so, the observations made by the Tribunal that it was only on paper and not in reality does not appear to be correct, as the Tribunal as well as the Appellate and Assessing Authority have totally forgotten the fact that the revision petitioner has another role to play which was that of the carrier of the goods to transport the goods for and on behalf of the buyer to the place of the buyer.

9. The facts here would clearly indicate that the revision petitioner in his capacity as a seller delivered the goods at the factory site and in his another capacity as a carrier of the goods, he took delivery of the same for and on behalf of the buyer as his transport agent and he transported the same in the vehicles belonging to him to the place of the buyer for its delivery to the buyer in his capacity as a carrier and not as a seller of the goods. This is the only inference that could be drawn from the facts and circumstances of this case, and having regard to the nature of the contract entered into between the parties. Therefore, the freight charges which were collected separately by the revision petitioner in his capacity as the carrier of the goods cannot be included in the sales turnover of the revision petitioner for the purpose of computation of the sales tax. So, they are liable to be excluded from the turnover of the assessee for computing the sales tax.

10. In view of our finding that transport of the goods from the factory to the place of the buyer was done or undertaken by the revision petitioner in his capacity as a transporter or a carrier agent of the buyer and the said transportation having been made for and on behalf of the buyer, it has to be construed that the octroi charges were collected and paid by him in his capacity

as a transport agent of the wholesaler, on whose behalf the goods were transported. Therefore, the octroi charges collected and paid by the revision petitioner cannot also be included in the sales turnover of the revision petitioner for computing the tax. They were subsequent to the sale and were paid by the revision petitioner at the octroi gate in his capacity as a carrier of the goods.

11. Therefore, for the foregoing reasons, we hold that the freight charges and the octroi charges cannot be included in the sales tax turnover of the assessee for the purpose of computing the sales tax. In this view of the matter, the judgment passed by the Tribunal as well as the Appellate and the Assessing Authority are liable to be set aside and the revision petition filed by the petitioner is liable to be allowed.

12. In the result, therefore, the revision petition filed by the petitioner is allowed and the orders passed by the Tribunal as well as by the Appellate and the Assessing Authority are hereby set aside while holding that the freight charges and octroi charges shown by the assessee shall not be included in arriving at the taxable turnover of the assessee for the assessment year under consideration. There will however be no order as to costs.