

(1991) 02 MAD CK 0105

In the Madras High Court

Case No : Tax Case No. 1094 of 1981 (Appeal No. 45 of 1981)

Bharat Steel Tubes Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 28-02-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1991) 02 MAD CK 0105

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : N. Inbarajan for M/s. Chandrasekara Sastri, C. Natarajan and S. Chandrasekaran, for the Appellant; R. Lokapriya, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This tax appeal is directed against the order on a suo motu revision by the Board of Revenue, Commercial Taxes, Madras.

2. The appellants are the assesseees. They submitted their accounts before the assessing officer showing a total turnover of Rs. 27,60,526.44. Out of the total turnover, a sum of Rs. 2,09,730.14 was claimed by way of deduction towards the sales returned and an amount of Rs. 39,328.98 towards the discount allowed by the assessee to various purchasers. The total taxable turnover reported by the assessee, therefore, worked out to Rs. 25,11,367.32 for the assessment year 1977-78. The Deputy Commercial Tax Officer found that the claim of deduction in respect of Rs. 39,328.98 towards the discount allowed to customers represented incentive discount, by the assessee for the purchases made by its customers which was allowed at a particular rate at the end of the year on the basis of the total purchases reflected in the accounts. The incentive discount was allowed in the form of credit notes for utilisation by the customers for future purchases. The assessing authority was of the opinion that since the discount allowed by the assessee was not in accordance with the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Rules framed thereunder, the deduction of Rs.

39,328.98 was not permissible. Aggrieved, the assessee filed an appeal before the Appellate Assistant Commissioner. It was the case of the assessee that the incentive discount which had been given to the purchasers by the assessee were entitled to be deducted according to the provisions of section 2(r), explanation (2) (iii) read with rule 5A(a) of the Tamil Nadu General Sales Tax Rules, 1959. It was claimed that the incentive discount has been given in accordance with the trade practice of the assessee and, therefore, it was projected that the assessing authority had fallen in error in not allowing the deduction of the incentive discount amounting to Rs. 39,328.98 from the total turnover. The Appellate Assistant Commissioner accepted the contention on behalf of the assessee and holding that the incentive discount given by the assessee to the purchasers was eligible for deduction from the total and taxable turnover, the order of the assessing authority to that extent was therefore, set aside. The Board of Revenue, it appears, on a suo motu revision examined the order of the Appellate Assistant Commissioner. The Board did not accept the contention of the assessee that the incentive discount was entitled to be deducted in view of explanation (2) to section 2(r) of the Tamil Nadu General Sales Tax Act, hereinafter referred to as "the Act" read with rule 5A(a) of the Tamil Nadu General Sales Tax Rules, hereinafter referred to as "the Rules". According to the Board the incentive discount was not entitled to be deducted. The Board did not dispute that the incentive discount had been given as a normal trade practice but opined that it was not enough that if the discount was allowed as a regular practice by the dealer to grant deduction, as in the opinion of the Board, since the discount granted by the assessee did not go directly or indirectly to reduce the pre-determined sale price, it was not entitled to be deducted from the total and taxable turnover. It was also found that there was non-repayment of the tax collected on the discount amount which may amount to collection of tax without authority of law and, therefore, the incentive discount could not be considered to be a discount for the purpose of section 2(r), explanation (2), of the Act read with rule 5A(a) of the Rules. Holding so, the Board set aside the order of the Appellate Assistant Commissioner and restored that of the assessing authority. This appeal is directed against the order of the Board of Revenue dated October 13, 1980.

3. The relevant portion of section 2(r) needs to be extracted at this stage along with rule 5A(a) of the Rules :

"2(r) "Turnover" means the aggregate amount for which goods are brought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), 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, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover;

Explanations (1) and (1-A)

Explanation (2). - Subject to such conditions and restrictions, if any, as may be prescribed in this behalf -

(i) omitted

(ii)

(iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;

Rule 5A. In pursuance of explanation (2) to section 2(r) of the Act, the amounts specified in the following clauses shall not, subject to the conditions specified therein, be included in the total turnover of a dealer :

(a) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into in a particular case, and provided also that the accounts show that the purchaser has paid only the sum originally charged less the discount."

4. The ambit and scope of these provisions came up for consideration by this Court firstly in *State of Madras v. Dunlop Rubber Company (India) Limited* [1973] 32 STC 648. A Division Bench of this Court repelled the argument raised before it on behalf of the Revenue that since the discount in that case had not been allowed with reference to any particular sale or purchase but only as an incentive for prompt payment of the aggregate of price at the time of the settlement of account, the same did not fall u/s 2(r), explanation (2), clause (iii) of the Act and held that since the only relation between the parties to the transaction was that of vendor and purchaser the discount allowed could not but be in relation to the sales. It was also held that it would make no difference whether it was allowed in a lump sum or proportionately to each of the sales or purchases. Again in *State of Madras v. Jeewanlal (1929) Ltd.* [1973] 32 STC 649 another Division Bench of this Court considered the question relating to the discount allowed from the turnover in the light of the provisions of section 2(r), explanation (2), clause (iii) of the Act read with rule 5A(a) of the Rules. The interpretation that was placed by the Division Bench on clause (iii) of explanation (2) to section 2(r) read along with rule 5A(a) was to the effect that all amounts allowed either as cash discount or other discount on the price payable in respect of any sale in accordance with the regular practice of the dealer or in terms of any contract entered into between the seller and the purchaser would not form part of the total turnover of the dealer. We fail to understand why the Board did not follow the law laid down by the Division Benches of this Court in the two judgments cited. To say the least, it was not proper on the part of the Board to ignore, the law laid down by the Division Benches of this Court. The reasoning advanced by the Board had been considered by the Division Bench in *State of*

Madras v. Jeewanlal (1929) Ltd. [1973] 32 STC 649. Therefore, the question involved in the case is no longer res integra. The order of the Board of Revenue under the circumstances, being contrary to the law laid down in the above noted Division Bench judgments, cannot be sustained. We, therefore, set aside the order of the Board of Revenue and restore the order of the Appellate Assistant Commissioner.

5. In view of the fact that we have found that the judgments referred to above in State of Madras v. Dunlop Rubber Company (India) Limited [1973] 32 STC 648 and State of Madras v. Jeewanlal (1929) Ltd. [1973] 32 STC 649 squarely and fully apply, with all force to the facts of the instant case, we have refrained from discussing the other judgments cited by the learned counsel for the parties, which in any event, are not the judgments, arising out of consideration of the provisions of section 2(r), explanation (2), clause (iii) of the Act and rule 5A(a) of the Rules but revolve round the consideration of the provisions of section 2(h) of the Central Sales Tax Act, which provision is materially different than the provision contained in section 2(r), explanation (2), clause (iii) of the Act. As a matter of fact, this distinction has been clearly spelt out and noticed by this Court in India Pistons Limited v. State of Tamil Nadu [1974] 33 STC 472.

6. As a result of the above discussion the appeal succeeds. The order of the Board of Revenue is set aside and that of the Appellate Assistant Commissioner is restored. There shall, however, be order as to costs.

7. Appeal allowed.