
(1990) 04 MAD CK 0045

In the Madras High Court

Case No : Tax Case (Revision) No. 818 of 1980

Bojaraj Textile Mills Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-04-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1990) 04 MAD CK 0045

Hon'ble Judges : Venkataswami, J; Govindasamy, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; Kaja Naziruddeen, for the Respondent

Judgement

Venkataswami, J.—This revision u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, is directed against an order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A. No. 439 of 1979 dated the 19th March, 1980. It may be mentioned that the matter related to an assessment under the Central Sales Tax Act, 1956 (hereinafter called "the Central Act").

2. Brief facts leading to the filing of this revision are the following : Petitioners are manufacturers and dealers in yarn. In the course of their business dealings, they entered into an agreement on 16th April, 1977, with Messrs. Anglo-French Textiles Limited, Pondicherry (hereinafter called "the customer"). Under the agreement, the customer had agreed to buy polyester/cotton 67/33 blended yarn on cones free from manufacturing defects at Rs. 65 per kg. Pursuant to that, goods were sent by the petitioners to the customer. After receiving the goods, the customer complained about the quality of the blended yarn supplied and as a result of which, the petitioners arranged for the inspection of the yarn and all the cloths processed out of that blended yarn. After inspection, the petitioners agreed by their letter dated 26th September, 1977, that the quality of the blended yarn supplied by them was not up to the expectations of the customer,

and in order to continue the cordial relationship between them, they had decided to grant quality allowance of Rs. 14 per kg. on the stocks supplied by them. Based on the said communication dated 26th September, 1977, a credit note for a sum of Rs. 1,19,750.15 was given to the customer. The petitioners sought relief by deletion of this amount from the taxable turnover under the provisions of the Central Act. All the authorities below rejected the claim of the petitioners holding that the credit note for the said sum of Rs. 1,19,750.15 cannot be excluded from the taxable turnover as there is no provision under the Central Act for giving such a relief. Before the Tribunal, it was argued that the original contract regarding the price of the blended yarn per kg. had been rescinded and in its place, a fresh contract at a revised sale price had come into existence and, therefore, the sale price must be taken minus the credit note given by the petitioners. The Tribunal did not agree with that contention and consequently confirmed the assessment including the credit note turnover in the taxable turnover. Aggrieved by that, the petitioners have filed this revision petition.

3. It may be mentioned that on facts, there is no controversy, Mr. C. Natarajan, learned counsel for the petitioners, took us through the credit note dated 30th September, 1977, the contract between the parties, definition of "sale price" and "turnover" in the Central Act as well as to sections 9, 15, 16 and 41 of the Sales of Goods Act, 1930. Based on the above materials, learned counsel submitted that the petitioners are entitled to the relief sought either on the ground that the original contract regarding the price per kg. on the blended yarn had been rescinded and a new contract had come into effect or alternatively on the basis that the amount representing the credit note cannot be included in the taxable turnover having regard to the definition of "sale price" and "turnover" in the Central Act. He also submitted that the observations of the Supreme Court in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Advani Oerlikon (P.) Ltd.* reported in [1980] 45 STC 32 will support his contention. Likewise, he submitted that the observations of a Division Bench of this Court in *India Pistons Limited v. State of Tamil Nadu* reported in [1974] 33 STC 472 also support his contention though the Tribunal construed the same otherwise.

4. The learned Government Advocate (Taxes), placing reliance on the order of the Tribunal, submitted that the disputed turnover cannot, by any stretch of imagination, be treated as "cash discount" which alone can be deducted from the taxable turnover in accordance with the definition of "sale price" in the Central Act.

5. Let us now consider the rival submissions. "Sale price" is defined u/s 2(h) of the Central Act to mean that 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. Likewise section 2(j) defines "turnover" to mean the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce.

Section 9 of the Sale of Goods Act, 1930, deals with "ascertainment of price" Sub-section (1) of section 9 states that the price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. Sections 15 and 16 of the Sale of Goods Act deal with "sale by description" and "implied conditions as to quality or fitness" respectively. Section 41 of the Sale of Goods Act deals with "buyer's right of examining the goods" It is not dispute that the contract between the parties was to the effect that the blended yarn must be free from manufacturing defects and the price for such blended yarn will be at Rs. 65 per kg. It is again not in dispute that on the complaint of the customer, the petitioners arranged for an inspection of the goods supplied by them and thereafter conceded the complaint made by the customer regarding minor shortfall in the quality, as a result of which, the petitioners agreed to give credit in a sum of Rs. 14 per kg. That means, though the original price for the blended yarn supplied was Rs. 65 per kg., the ultimate price agreed was Rs. 51 per kg. Ultimately, the petitioners received the amount for the blended yarn supplied, at the rate of Rs. 51 per kg. In those circumstances, the point to be decided is, whether it can be said that the original contract was rescinded so far as the price was concerned, and a new contract was substituted. In this connection only, Mr. C. Natarajan, learned counsel for the petitioners, invited our attention to section 9(1) of the Sale of Goods Act. That provision enables the parties to a contract to fix the price by way of a contract or they can leave the price to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. Though originally there was a contract fixing the price in the case, the parties have subsequently, in course of dealings decided to revise the price, and the petitioners have ultimately reduced the price for the supply of the goods at the revised rate. Therefore, we are inclined to agree with the learned counsel for the petitioners that the original contract was rescinded so far as the price was concerned and a new contract was substituted. On that ground itself the petitioners are entitled to succeed.

6. The matter can be looked at from another angle as well. In Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam Vs. Advani Oorlikon (P) Ltd., , the Supreme Court, while construing the scope of section 2(h) has observed as follows :

"Under the Central Sales Tax Act, the sale price which enters into the computation of the turnover is the consideration for which the goods are sold by the assessee. In a case where trade discount is allowed on the catalogue price, the sale price is the amount determined after deducting the trade discount. The trade discount does not enter into the composition of the sale price, but exists apart from and outside it and prior to it. It is immaterial that the definition of "sale price" in section 2(h) of the Act does not expressly provide for the deduction of trade discount from the sale price. Indeed, having regard to the circumstance that the sale price is arrived at after deducting the trade discount, no question arises of deducting from the sale price any sum by way of trade

discount.

Nor is there any question here of two successive agreements between the parties, one providing for sale of the goods at the catalogue price and the other providing for an allowance by way of trade discount. Having regard to the nature of a trade discount, there is only one sale price between the dealer and the retailer, and that is the price payable by the retailer calculated as difference between the catalogue price and the trade discount. There is only one contract between the parties, the contract being that the goods will be sold by the dealer to the retailer at the aforesaid sale price."

Placing reliance on these two passages, learned counsel for the petitioners submitted that the "sale price" in the present case has to be determined at the revised rate agreed between the parties, particularly in the light of the correspondence exchanged between the parties, the genuineness of which had not been doubted. We find force in the argument of the learned counsel for the petitioners. In our view, the authorities below are not right in including the disputed turnover in the sale price and consequently in the taxable turnover.

7. In *India Pistons Limited v. State of Tamil Nadu* [1974] 33 STC 472, a Division Bench of this Court again, while constructing the scope of section 2(h) has observed as follows :

"Though the learned counsel for the assessee strongly relies on the above decision *Shri Baidya Nath Ayurved Bhawan (P.) Ltd. Vs. Commissioner of Sales Tax*, we are not inclined to apply the principle in that case to the case on hand where, admittedly, no cash payment is made, but only a credit note is given to the distributor and they are enabled to purchase goods from the assessee for the said amount in the subsequent year. We are not, therefore, in a position to treat the issue of credit notes with the condition that they can be utilised for purchase of the goods in future, as cash payments."

After inviting our attention to the above passage, learned counsel Mr. Natarajan, submitted that in the case on hand, the credit note was not with any condition and it represented "cash payment". The only ground on which the deduction was disallowed by the authorities was, according to the learned counsel, that this type of cash discount could not be brought within the scope of section 2(h) of the Central Act. That reasoning of the authorities, according to the learned counsel, cannot be sustained in the light of the above observation of this Court. If the correspondence that exchanged between the parties regarding the quality of the yarn and consequential reduction in price are not questioned, then, the price payable by the customer will be only at the reduced rate. Therefore, even, on the definitions of section 2(h) and (j) of the Central Act, the disputed turnover is not liable to be included in the taxable turnover.

8. For all these reasons, we hold that the disputed turnover is not includible in the taxable turnover of the assessee for the assessment year 1977-78 and the tax case is allowed accordingly. However, there will be no order as to costs.

9. Petition allowed.