

(1968) 11 KAR CK 0002
In the Karnataka High Court
Case No : S.T.R.P. No. 68 of 1967

B.T. Narayana Shenoy

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 26-11-1968

Acts Referred:

Mysore Sales Tax Rules, 1948 — Rule 6 (1) (a), 6 (4) (f) (i)

Citation : (1969) 1 MysLJ 281 : (1969) 23 STC 411

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : P. Vasudeva Aithala, for the Appellant; Shantharaju, for E.S. Venkataramaiah, Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—In respect of the year 1961-62 the turnover of the petitioner, who was a firewood dealer in Uppinangady in the district of Mangalore, was taxed by the Commercial Tax Officer. In his return the petitioner claimed a deduction of Rs. 12,926.52 as the freight which was specified and charged separately without including it in the price of the goods sold. This deduction he claimed under rule 6(4)(f)(i) of the Mysore Sales Tax Rules. But the Commercial Tax Officer disallowed that deduction, and there were two unsuccessful appeals by the petitioner to the Assistant Commissioner and the Sales Tax Appellate Tribunal. The view taken in those appeals was that, since the agreement between the petitioner and the purchasers in which were recorded the terms of the contract between them had not been produced, the deduction claimed could not be allowed.

2. The Commercial Tax Officer recorded a finding that in the bills prepared by the petitioner the transportation charges were specified and shown separately and not included in the sale price. The firewood was collected by the petitioner in the forest in Uppinangady which was 36 miles away from Mangalore where the tile factories to which he supplied firewood are situate. The petitioner's case was that according to the contract between the parties the firewood had to be

delivered by him at the factories under an agreement under which the factories had agreed to pay the transportation charges. Now rule 6(4)(f)(i) under which the petitioner claimed reads :

"6. (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 following two heads, when specified and charged for by the dealer separately, without including them in the price of the goods sold;

(i) freight;

* * *

3. It appears to us that the discussions made by the Commercial Tax Officer and the two appellate authorities concerned quite an irrelevant question as to the place where the contract was made. The Commercial Tax Officer appears to have taken the view that since it was not proved that the sale had been completed in the forest, and that delivery had been given to the purchaser inside the forest, the deduction claimed by the petitioner could not be allowed. The Assistant Commissioner and the Tribunal appear to have shared the same view although they did not express themselves in that way. But what is clear is that it was overlooked by every one that the place where the contract was entered into had no materiality to the claim made by the petitioner. If the freight in respect of which a deduction was claimed by him was specified and charged separately in the bills prepared by him and it had not been included in the price of the goods sold, rule 6(4)(f)(i) created a right to its deduction from the total turnover determined under clauses (a) and (b) of rule 6(1). Since the finding of fact recorded by the Commercial Tax Officer which was not disturbed by the Assistant Commissioner and the Tribunal was that it had been so specified and charged separately in the bills prepared by the petitioner, its deduction could not have been refused on the irrelevant ground that the contract was not entered into inside the forest or that the delivery was not made at the spot where the fuel had been collected. Whatever be the place of the contract, so long as in the invoices prepared by the petitioner freight was shown as an independent item and charged as such and it did not form part of the sale price specified in the invoices, the deduction which was otherwise climbable under rule 6(4)(f)(i) could not have been refused.

4. The mistake committed by the Commercial Tax Officer which was shared by the Assistant Commissioner and the Sales Tax Appellate Tribunal was to think that freight could be deducted only if the fuel had been delivered inside the forest to the purchaser. If it had been so delivered, it would have been unmanaging for the petitioner to include the transportation charges in the bills prepared by him. For, in that event it was for the purchaser to transport the fuel to the factory and it would have been quite unnecessary for the petitioner to

incorporate the transportation charges and to include them in the bill.

5. It is seen from one of the letters to which the Sales Tax Appellate Tribunal referred in the course of its order as an illustration of the course of business between the petitioner and the purchaser that the agreement between them was that the petitioner should deliver the fuel at the factory, and that the purchaser agreed to pay the transportation charges. The Commercial Tax Officer observed in the course of his order that when delivery was so made by the petitioner there were shortages which were discovered at the factory. These features of the transaction between the parties, far from negating the contention that the freight, which was included in the bill was not part of the sale price, afford complete support to the claim for deduction made by the petitioner.

6. We therefore allow this revision petition and set aside the orders of the Commercial Tax Officer, the Assistant Commissioner and the Sales Tax Appellate Tribunal by which the freight charges were disallowed. We delete from the order of assessment the inclusion of those freight charges.

7. It is seen from the order of the Commercial Tax Officer which is affirmed by the Assistant Commissioner and the Sales Tax Appellate Tribunal that a sum of Rs. 1,000 was added to the total turnover determined as an amount which had been suppressed. It is clear that the inclusion of this amount was quite illegitimate. The assessment made by the Commercial Tax Officer was a best judgment assessment, and after the best judgment assessment had been made it was not possible for him to include another sum of money as some part of the turnover which had been suppressed. We quash the inclusion of that amount.

8. The Commercial Tax Officer will now prepare an amended assessment order in accordance with this judgment.

9. The petitioner will get his costs. Advocate's fee rupees one hundred (Rs. 100).

10. Petition allowed.