
(1998) 12 GUJ CK 0057
In the Gujarat High Court
Case No : Sales Tax Reference No. 2 of 1996

Ceepeem Engineering Co. Pvt. Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 12, 13, 15, 16

Citation : (1998) 12 GUJ CK 0057

Hon'ble Judges : Rajesh Balia, J; Anil R. Dave, J

Bench : Division Bench

Judgement

1. At the instance of the assessee, the Gujarat Sales Tax Tribunal has referred the following question of law arising out of its appellate order dated April 30, 1992 in Second Appeal No. 320 of 1991 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that for the purpose of deduction under clause (i) of second proviso to rule 42 of the Gujarat Sales Tax Rules, 1970 the whole of the purchase price inclusive of the tax element should be taken into consideration while granting set-off under rule 42 of the Gujarat Sales Tax Rules, 1970 ?"

2. Rule 42 of the Gujarat Sales Tax Rules envisages that in assessing the tax payable by a manufacturer, the Commissioner shall, subject to the general conditions of rule 47, and further conditions specified below, grant him drawback, set-off or as the case may be refund, of the whole or any part of the tax in respect of the purchases of goods used by him in Manufacture. For operation of this rule the goods manufactured as well as goods purchased are to be taxable goods.

3. Computation of drawback to which the assessee is entitled has been provided in clauses (A) and (B). Clause (B) is reproduced hereunder :

"(B) For the purchases of goods on or after the appointed day. - (i) In respect of the purchases made on or after the appointed day from a registered dealer

without giving any certificate under sections 12 and 13 of the Act.

(a) the amount of sales tax or of general sales tax or as the case may be, of both recovered separately, under the Act,

(b) the amount calculated in accordance with the formula hereunder where the amount of sales tax or of general sales tax or as the case may be, of both has not been so recovered separately :

Formula : $9P \text{ multiplied by } R \div 100 + R$

[Where "P" means the purchase price of the goods and "R" means the rate of sales tax or of general sales tax or of both (whichever has not been recovered separately), applicable to the respective goods under the Act, at the relevant time of the purchase thereof.]

Provided that the assessee proves to the satisfaction of the Commissioner that the relevant tax leviable under the Act has been paid, or has become payable on an earlier transaction in the same goods and produces a certificate in form 40 issued by the dealer from whom such goods were purchased by the assessee, stating, inter alia, that the sale of the same goods has been or will be included in his turnover of sales and the amount of tax payable, if any, by him under the Act, on such turnover has been or as the case may be, will be paid within the time laid down in rule 31.

(ii) the amount of purchase tax paid or payable u/s 15 or 16 of the Act :

Provided that the aggregate of the amounts if any calculated in accordance with clauses (A) and (B) above, shall be granted to the, assessee after deducting therefrom,

(i) two per cent of the purchase price of the goods considered for the grant of set-off under the above stated clauses (A) and (B);

(ii) two per cent of the purchase price of the goods used in the goods manufactured by him and despatched to his own place of business or to his agent's place of business situate outside the State of Gujarat but within India, where he, or as the case may be, his agent is registered under the Central Sales Tax Act, 1956 (74 of 1956) and sold there, subject however that no such deduction shall be made where on the goods so purchased the assessee is liable to pay purchase tax u/s 15B or section 15C of the Act;

(iii) four per cent of the sale price of the goods which have been manufactured, where the sale of the said goods is made at any place within India but outside the State of Gujarat the goods having been transported there by the assessee to his own place of business or to the place of business of his agent on or after the appointed day."

4. There is no dispute between the parties about the computation of gross aggregate eligible amount of drawback. The dispute is confined to proviso which

states about deduction from the aggregate of the amount calculated in accordance with clauses (A) and (B). Such deductions are 2 per cent of purchase price of goods considered for determination under the said clauses.

5. The revenue after arriving at the figure of aggregate of the amount eligible for drawback under clauses (A) and (B) for the purpose of making deduction therefrom 2 per cent of the purchase price, has determined the purchase price by grossing it up with the amount of 2 per cent as purchase price payable on it.

6. The assessee's contention is that for considering the purchase price for the purpose of deduction, it can only be the purchase price which has been taken for the purpose of operation of formula for calculating the amount of drawback under clauses (A) and (B) or at any, rate, as per definition of purchase price u/s 2(22) of the Act. But in no case, percentage of amount sought to be deducted under the proviso can be added to the purchase price and on such enhanced price, deduction of 2 per cent can be made for the purpose of reducing the aggregate amount of drawback, set-off and refund under clauses (A) and (B).

7. The Tribunal has found against the assessee and in favour of the Revenue by holding that purchase price for the purpose of these provisions include purchase tax also.

8. Having carefully considered the rival contentions, we are of the opinion that on a plain reading of provisions, the order of the Tribunal is erroneous. Rule itself does not define the term "purchase price". For a purchaser, whatever price he pays to the vendor, different elements constituting price constitute purchase price. For vendor it may constitute of different elements, viz., his cost of purchase, profit and sales and the sales tax payable by him on the transaction of sale. If a question is raised as to what is the cost to the vendor of articles sold by the vendor. The question may be relevant for that purpose. But so far as purchaser is concerned, he is not entitled to bifurcate various elements contained in the sale price of vendor for his purpose. But at the same time, nothing can be added to such price as part of purchase price except what may be provided by the statute to arrive at notional figure of purchase by applying the formula grossing up of the price paid by the purchaser. Section 2(22) of the Act which defines the term "purchase price" also shows that purchase price means the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, and includes the amount of cash, deferred payment or other valuable consideration paid or payable under consideration. It does not provide for including any tax liability which a purchaser has to incur on such purchase after the property of the goods which passes on to him.

9. The proviso to rule 42 under which deduction of 2 per cent of purchase price is to be made from the aggregate of sum calculated under clauses (A) and (B) also makes it clear that purchase price for the purpose of computing 2 per cent

deduction is that sum as has been considered for computing the amount of set-off/drawback, refund under clauses (A) and (B), that is to say, what constitutes purchase price for the purpose of computing drawback, etc., for bringing out sales tax element in the purchase price borne by the assessee, must also be the purchase price for the purpose of reducing it by 2 per cent of that sum. The rule does not envisage different sums for the purpose of computing drawback under clauses (A) and (B) and for computing 2 per cent to be deducted from such aggregation for the purpose of clause (a) to proviso to clause (B).

10. There is no room for assuming a notional grossed up price for inflating purchase price for the purpose of calculating 2, per cent thereof to be deducted from the aggregate of sum calculated under clauses (A) and (B) eligible for drawback, set-off or refund as the case may be, under rule 42.

11. Learned counsel for the Revenue has relied on the decision of the Supreme Court in *Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore* [1971] 28 STC 331(GUJ) and decision of the Bombay High Court in *Commissioner of Sales Tax, Maharashtra State v. National Plastic & Allied Industries* [1995] 99 STC 10(BOM). Both the cases are not relevant for the controversy raised before us.

12. Decision in *Delhi Cloth and General Mills Co. Ltd., etc. Vs. The Commissioner of Sales Tax, Indore*, was concerned on the question - whether sale price includes sales tax passed on by dealer to purchaser. The court found that there is no statutory provision in the Act which gives statutory power to collect sales tax as such from any class of buyers. If the dealer passes on his tax burden to his purchasers, he can only do it by adding the tax in question to the price of the goods sold. In that event the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchaser for the goods purchased by him and the tax collected by the dealer from his purchaser becomes a part of the "sale price" as defined in section 2(c) of the M.P. Act. This does not go counter to what we have stated above. So far as seller is concerned in the absence of any specific authority to charge sales tax and collect from buyer, the fact that he actually pass on the burden to his buyer, can only by way of adding it in the sale price and the entire consideration is to be considered as sale price. The court was not concerned with whether buyer's purchase price would be hypothetically increased by the tax liability, if any, to which he may be subjected to after he has purchased the goods.

13. In the like manner, the Bombay High Court in *National Plastic* case [1995] 99 STC 10 (BOM), was concerned with a situation where the dealer seeking benefit of like provisions sought to reduce his purchase price deducting therefrom the element of sales tax paid to his vendor so as to reduce the amount of deduction from the aggregate of eligible amount of drawback, set-off, refund. The assessee had purchased goods amounting to Rs. 23,75,414 which included general sales tax chargeable under the Bombay Sales Tax Act, 1959 separately which amounted to Rs. 70,729. While computing drawback, for the purpose of reducing

3 per cent of purchase price therefrom, the assessee had reduced from the said consideration the amount of sales tax element. In appeal, this contention was rejected by the Bombay High Court by holding that :

"We, therefore, do not find any basis or justification to accept the contention of the assessee that for the purpose of the second proviso to rule 41A, "purchase price" should be construed as "purchase price" less the element of profit and sales tax comprised therein."

14. We are in respectful agreement and add that we do not find any justification and reason in the contention that for the purpose of proviso (i) to rule 42 appended to clauses (A) and (B) purchase price should be construed as purchase price plus purchase tax payable thereon.

15. As a result, we answer the question referred to us in the negative, that is to say, in favour of the assessee and against the Revenue.

16. Reference answered in the negative.