
(1974) 09 AHC CK 0008

In the Allahabad High Court

Case No : Sales Tax Reference No. 782 of 1972

Commissioner, Sales Tax

APPELLANT

Vs

Indian Traders

RESPONDENT

Date of Decision : 12-09-1974

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1975) 36 STC 294

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Judgement

Satish Chandra, J.—This reference relates to the assessment year 1965-66 under the Central Sales Tax Act. The assessee disclosed a turnover in sun hemp, rope cutting, etc., of Rs. 8,27,127.01. It was indicated that on these transactions freight amounting to Rs. 18,552 was paid by the purchasers and, therefore, it was not included in the turnover. The assessing authority held that the freight was charged as a part of the sale price and it was liable to tax under the Central Sales Tax Act. On appeal it was held that the amount of freight could not be included in the sale price. The imposition of tax at ten per cent on this amount was set aside. This view was upheld in revision. At the instance of the Commissioner, the revising authority has referred the following questions of law for the opinion of this court :

(1) Whether, in view of the above facts and in the circumstances of the case, the amount of freight would be deemed to be separately charged by the seller from the purchaser ?

(2) Whether, in view of the above facts and in the circumstances of the case, the learned Additional Revising Authority, Sales Tax, Varanasi, was justified in excluding the amount of freight from the total sales in the light of explanation of Section 2(i) of the U. P. Sales Tax Act ?

2. Before the Judge (Revisions) it was conceded that the sales were made by the

assessee on f. o. r. basis. The freight was paid by the purchasers. The bills were prepared by the assessee in the following way :

The cost of 250 bales of hemp/BE Agmark as per above weighing Rs. 51,591.37 M. Tonnes 45-3-75 against supply order No. 8992/20(H) S. O. No. 912/ 8965 dated 22-12-1965 at Rs. 1,137 per M. Tonne f. o. r. Hashangabad Security Paper Mill Project sidings :-

Less freight	Rs. 2,852.00	-----	Rs. 48,739.37	Less 5%	2,437.00
142.57	-----	2,579.57	Rs. 2,579.57	-----	Rs. 46,159.80

3. It is true that the gross amount mentioned at the beginning of the bill representing the cost of the product included the freight, but immediately thereafter the freight was excluded. On the balance alone the discount of 5 per cent was granted by the assessee. This shows that the assessee did not really get from his purchasers the freight charges. This coupled with the other finding that in fact the freight was invariably paid by the purchasers at delivery shows that the purchasers were under the terms of the agreement between the parties liable to pay the freight charges.

4. For the department, the learned standing counsel placed reliance upon the decision of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*. This case was considered and followed by a Division Bench of this Court in *United Timber Corporation v. Commissioner of Sales Tax, U.P. 1972 U.P.T.C. 211*. In both these cases the bills were framed in the same manner as in the present case, namely, the cost of product included the freight but thereafter the actual amount of freight was deducted from the price. It was held that since the cost of freight was not separately charged, the same was liable to be included in the sale price as denned by Section 2(h) of the Central Sales Tax Act. In these cases there was no plea or finding that the purchasers had in fact paid the freight or that under the terms of the agreement they were liable to pay it. A Bench of this Court distinguished the decision in *Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh*, . on the view that in that case it appeared that the contract required the purchaser to pay the freight and although the price shown as the sale consideration included the charge on account of freight, the subsequent reduction on that account from the price was in conformity with the contractual condition that the purchaser should pay the freight. It could not be said, therefore, that having regard to the terms of the contract the price could include the charge on account of freight. In accordance with the terms of the contract, the price shown in the bill should not have been calculated by including the charge on account of freight.

5. In the present case the finding is that the freight was invariably paid by the purchasers. That would show that under the terms of the contract the purchasers were liable to pay the freight and that is why they paid it. Though the terms of the contract, if any, between the assessee and his purchasers is not on record, yet the finding that the purchasers invariably paid the freight would lead to the

inference that this was the understanding between the parties. In other words, the liability to pay the freight was agreed to be that of the purchasers. In this view, the only possible conclusion is that having regard to the terms of the contract the price shown in the bill on account of freight was wrongly added. It should not have been shown in the bill. The present case is in line with the decision in Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh, and on this view the decisions in United Timber Corporation 1972 29 S.T.C. 646 as well as in Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, become distinguishable.

6. In our opinion, the Judge (Revisions) was justified in holding that the amount of freight would be deemed to have been separately charged by the assessee and on this view the amount of freight was validly excluded from the turnover.

7. Our answer to both the questions referred to us is in the affirmative, in favour of the assessee and against the department.