
(2008) 08 AHC CK 0034
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Gulshan Sugars and Chemicals Ltd.

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(h)

Citation : (2010) 28 VST 244

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The dealer-opposite party, a registered limited company, has been carrying on the business of manufacturing and selling calcium carbonate and admitted tax liability of Rs. 19,10,445.62 under the Central Sales Tax Act during the assessment year 1993-94. The assessing authority found that the applicant has charged freight and handling charges separately and in this head it has collected Rs. 68,69,873. It was further found that it has realised a sum of Rs. 75,28,189 from the customers towards the freight and handling charges and as such the dealer-opposite party has charged Rs. 6,58,316 in excess from its customers which shall part of the sale price and it was taxed accordingly. The said part of the assessment order was confirmed by the first appellate authority but has been set aside by the Tribunal in Second Appeal No. 94 of 1999 relating to the assessment year 1993-94 (Central).

2. In the memo of revision the following questions of law have been sought to be raised:

(a) Whether the Trade Tax Tribunal was legally justified to quash the tax imposed on the sale of Rs. 6,58,316 without recording no reason for the same?

(b) Whether the Trade Tax Tribunal was legally justified to exempt the amount of freight and handling charges?

3. The learned Counsel for the Department in support of the revision submits that u/s 2(h) of the Central Sales Tax Act, the excess amount amounting to Rs.

6,58,316 shall form part of "sale price" as defined therein. Shri Bharatji Agrawal, learned senior counsel appearing on behalf of the dealer-opposite party, submits that since the above amount was charged separately in the bill it shall not form part of the "sale price" as defined u/s 2(h) of the Act.

4. Considered the respective submissions of the learned Counsel for the parties and perused the record. The controversy in the present revision revolves around the interpretation of Section 2(h) of the Central Sales Tax Act. For the sake of convenience the said section is reproduced below:

2.(h) "sale price" means the amounts 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, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

5. The aforesaid section came up for consideration before the Supreme Court in *Hindustan Sugar Mills Ltd. v. State of Rajasthan* [1979] 43 STC 13 : [1979] UPTC 37 wherein the apex court has observed that the "sale price" as defined under the Rajasthan Sales Tax Act is in material part the same as defined under the Central Sales Tax Act. It was held therein that the definition of sale price is in two parts. The first part says that the sale price means the 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, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged. Further, while dealing with the second limb of the definition Clause (h) their Lordships observed as follows (at pages 34 and 35 of 43 STC):

...The second part enacts an inclusive clause. It says that "sale price" includes "any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in case where such costs is separately charged". Therefore, "any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof is to be regarded as part of "sale price", even if it does not fall within the first part of the definition. But there is an exception carved out of this inclusion. Not all sums charged for something done by dealer in respect of the goods at the time of or before delivery thereof are covered by the inclusive clause. The cost of freight or delivery or the cost of installation certainly represents an amount charged for transportation or installation of the goods at the time of or before the delivery thereof and would, therefore, fall within the inclusive clause on its plain terms but it is taken out by the exclusion clause, "other than the cost of freight or delivery or the cost of installation in case where such cost is separately charged". This exclusion clause does not operate as an exception to the first part of the

definition. It merely enacts an exclusion out of the inclusive clause and takes out something which would otherwise be within the inclusive clause. Obviously, therefore, this exclusion clause can be availed of by the assessee only if the State seeks to rely on the inclusive clause for the purpose of bringing a particular amount within the definition of "sale price". But if the State is able to show that the particular amount falls within the first part of the definition and, is, therefore, part of the "sale price", the exclusion clause cannot avail the assessee to take the amount in question out of the definition of "sale price". In this view the amount of freight forms part of the "sale price" within the meaning of the first part of the definition and it is not necessary for the State to invoke the inclusive clause and in fact the State has not done so. The exclusion clause is, therefore, irrelevant and cannot be called in aid by the assessee. It may be pointed out that even if the exclusion clause were read as an exception to the first part of the definition which, as has been pointed out, cannot be done, it cannot avail the assessee. It is only where the cost of freight is separately charged that it would fall within the exclusion clause and in the context of the definition as a whole, it is obvious that the "...cost of freight...is separately charged" is used in contradistinction to a case where the cost of freight is not separately charged but is included in the price. It is not intended to apply to a case where the cost of freight is part of the price of the dealer chooses to split up the price and claim the amount of freight as a separate item in the invoice. Where the cost of freight is part of the price, it would fall within the first part of the definition and to such a case, the exclusion clause in the second part has no application.

6. On consideration of the above, the following items are excluded from the sale price:

1. Cash discount allowed to buyers according to the practice normally prevailing in the trade.
2. Cost of freight or delivery, if it is separately charged in the sale bill.
3. When the cost of installation is separately shown in the sale bill.

7. Coming to the facts of the case, the authorities below have excluded Rs. 68,69,873 from the sale price which were charged towards the freight and handling charges separately. However, it was found that, as a matter of fact, in the bills the dealer-opposite party has charged much more amount than the amount spent by it towards the freight and handling charges. This excess amount was considered by the assessing officer as the charges made by the dealer-opposite party under the other heads and shall form part of the sale price. Without setting aside the finding recorded by the two authorities below to it, the Tribunal assumed that the said amount of Rs. 6,58,316 was towards the labour charges/insurance. The order of the Tribunal is far from satisfactory as it does not contain any reason as to whether the freight charged by the dealer-opposite party amounting to Rs. 6,58,316 was charged towards the labour charges/insurance charges. Without making any discussion and without setting aside the

finding recorded by the two authorities below, the finding of the Tribunal whereby it treated Rs. 6,58,316 as not part of sale price, is incorrect and is in the teeth of the judgment of the apex court referred to above. The said judgment of the apex court has been constantly followed in Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore and Others, Cement Marketing Co. of India Ltd. Vs. Assistant Commissioner of Sales Tax, Indore Region, Indore and Others, TVL. Ramco Cement Distribution Co. Pvt. Ltd., Tamil Nadu Vs. State of Tamil Nadu,

8. The learned Counsel for the dealer-opposite party has placed reliance upon the following decisions:

- (1) Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. McDowell and Co. Limited,
- (2) Seshasayee Industries Limited v. State of Tamil Nadu [1994] 92 STC 565 (Mad),
- (3) Commissioner, Trade Tax v. Indian Aluminium Cable Co. Ltd. [1999] 115 STC 444 (All),
- (4) State of Madras v. Baliga Lighting Equipment (P) Ltd. [1969] 23 STC 154 (Mad),
- (5) The State of Andhra Pradesh Vs. The Bengal Coal Company Ltd.,
- (6) State of Tamil Nadu v. Tedders Lloyd Corporation (P.) Ltd. [1984] 56 STC 191 (Mad),
- (7) State of Tamil Nadu v. T.H. Hussain [1997] 106 STC 273 (Mad), and
- (8) Aruna Trading Co. Vs. Commissioner of Sales Tax,

9. These decisions relate to exclusion of freight and insurance charges from the sale price if charged separately and are not applicable to the facts of the present case.

10. In my considered opinion, the controversy involved is covered by the 10 aforesaid decision of the apex court in Hindustan Sugar Mills [1979] 43 STC 13 : [1979] UPTC 37.

11. It is held that the dealer-opposite party is liable to pay Central sales tax 11 on Rs. 6,58,316 also.

12. In view of the above, the order of the Tribunal is indefensible. The revision succeeds and is allowed with cost of Rs. 2,000 (rupees two thousands only).