(1993) 11 RAJ CK 0015

In the Rajasthan High Court

Case No : Sales Tax Revision No. 149 of 1988

C.T.O. APPELLANT

Vs

Radiant Industries of India RESPONDENT

Date of Decision : 22-11-1993

Acts Referred:
Central Sales Tax Act, 1956 — Section 2

Citation : (1994) 95 STC 463

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : S.R. Joshi, for G.S. Bapna, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—The Board of Revenue has referred the following question of law on the directions being given by this Court :

"Whether, on the facts and in the circumstances of the case, the Board of Revenue was justified in holding that trade discount does not form part of the sale price, while u/s 2(h) of the Central Sales Tax Act, 1956, only cash discount has to be excluded from the sale price ?"

2. The brief facts of the case are that in the assessment order for 1968-69 and 1969-70 u/s 9(2) of the Central Sales Tax Act, the assessing authority levied tax on the trade discount. The decision which was taken by the assessing authority was that u/s 2(h) of the Central Sales Tax Act, it is only the cash discount which is allowed. Section 2(h) read as under :

" ''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."

3. The definition of "turnover" of Section 2(j) of. the Central Sales Tax Act is as under :

" ''turnover'' used in relation to any dealer liable to tax under this Act means 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 made during any prescribed period and determined in accordance with the provisions of this Act and the rules made thereunder."

4. According to the submission of the learned counsel for Revenue, if any deduction is made subsequent to the sale of goods by way of issue of credit note, it is not allowable as deduction. The decision of the Andhra Pradesh High Court in the case of Sirpur Paper Mills Limited v. State of Andhra Pradesh [1979] 43 STC 126 has been relied. In this case, the amount of the bill was split into sale price of the goods and balance as discount payable to the distributor. The customer paid total amount of the bills. The amount of discount was credited to account called balance discount. In these circumstances, it was held that on the definitions of "sale price" and "turnover", the "balance discount" formed part of the sale price of goods. It is immaterial what the assessee did subsequently so long as the payment was in respect of goods sold.

5. The decision of the Madras High Court in the case of India Pistons Limited v. State of Tamil Nadu [1974] 33 STC 472 has also been relied upon where a distinction was drawn between the local Act and the Central Act and it was held that the expression "other discount" used under the Act included the bonus discount but, it is not a "cash discount" so as to attract the applicability of Section 2(h) of the Central Sales Tax Act which merely excludes "cash discount" and not all trade discounts. The decision of Brown v. National Provident Institution [1921] 2. AC 222 was also taken into consideration where it was observed, "the word ''discount'' is in the Oxford English Dictionary defined, in its primary meaning, as an abatement or deduction from the amount, or from the gross reckoning or value of anything, and, as used in commerce (1) is defined to mean a deduction (usually at a certain rate per cent) made for payment before it is due of a bill or account ; or any deduction or abatement from the nominal value or price ; (2) ''the deduction made from the amount of a bill of exchange or promissory note by one who gives value for it before it is due".

6. In Orient Paper Mills Ltd. v. State of Orissa [1975] 35 STC 84 (Ori) it was held that the cash discount as referred in Section 2(h) of the Central Sales Tax Act is different from the trade discount. As the trade discount was to be deducted from the catalogue price in accordance with the terms of the agreement and it was only thereafter that the consideration was to be fixed, the trade discount was not part of the sale price.

7. The extracts from the book of "Advanced Accounting" by J.R. Batliboi, which are as under were also taken into consideration :

"Distinction between trade discount and cash discount :...... Trade discount is an allowance made by the wholesale dealers to retailers off the catalogue or invoice price. This allowance is made between buyers and sellers engaged in the same class of trade. The object of the trade discount being allowed by the wholesale dealer to the retailer is to enable the latter to sell the goods at the price mentioned in the catalogue or price list issued by the wholesale trader. The trade discount is to enable the dealer to meet all the necessary business expenses and yet leave him a margin of profit on his selling the goods at the catalogue price. The amount of trade discount allowed varies considerably according to different trades and even on different articles in the same trade. In the books of the wholesale dealer, trade discount is deducted from the outward invoice sent to the retailer and the entry in the sales book is made of the net amount, because the actual amount realisable by him is the catalogue price less the trade discount. Similarly, in the books of the retailer, the entry in the purchase book is made of the net amount, i.e., the amount for which he is liable. Thus, trade discount as a rule does not appear in the books either of the seller or of the purchaser. Cash discount is an allowance in addition to the trade discount made by the seller to the purchaser, provided the latter settles his account promptly or within a specified time, known as the ''period of credit''. This allowance for the prompt payment of accounts may be either receivable or payable. It is receivable by the trader when he pays his account promptly of within the period of credit, and is allowed by him to his own customers in consideration of the prompt settlement of amounts due to him."

8. In Shri Baidya Nath Ayurved Bhawan (P.) Ltd. v. Commissioner of Sales Tax [1970] 26 STC 171 (All.) it was held that the provisions of the Central Sales Tax Act differs from the U.P. Sales Tax Act, inasmuch as the Central Act does not allow payment of discount in kind ; the allowable discount must be paid according to the practice prevailing in the trade, In that case the annuity was allowed for purchases of medicines in a year which was graded in accordance with the total purchases of the year. The High Court has allowed the annuity paid considering it to be a cash discount under the local law but for the Central Sales Tax Act the matter was remanded for ascertaining as to what is the practice normally prevailing in the trade.

9. The Kerala High Court in Deputy commissioner of Sales Tax v. Advani Oerlikon (Private) Limited [1976] 37 STC 1 has held that the trade commission is not a part of the sale price. The cash discount is an allowance in addition to the trade discount made by the seller to the purchaser provided the latter settles his account promptly or within a specified time known as the period of credit.

10. In State of Tamil Nadu v. Poly-Em General Industries [1977] 39 STC 254 (Mad.) it was held that under the Central Act cash discount alone is allowable as a deduction and it can be given either simultaneously with the preparation of the sale bill or subsequently and the motive for granting such a discount is immaterial. The rebate of 50 paisa per liner which was being given subsequently on receipt of the import licence was held falling within the scope of cash discount.

11. In Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Travancore Rayons Ltd. [1977] 40 STC 432 (Ker) it was held that where a trade commission or discount has been granted by a dealer to buyers of goods and has been deducted from the invoices of sales issued to the buyers, the consideration for the sale is only the amount which is actually paid or payable after the commission or discount is deducted and the amount representing the commission or discount is not liable to be added to or included in the turnover of the dealer for the purpose of assessment to Central sales tax.

12. In Deputy Commissioner (C.T.) v. South India Viscose Ltd. [1977] 40 STC 442 (Mad.) where the assessee claimed the deduction from the turnover, rebate on sales of rayon yarn and the Tribunal found that the rebate formed an integral part of the agreement or contract between the assessee and its buyers and had been allowed by the assessee in accordance with regular practice, it was held that the rebate was an allowable deduction under the Central Sales Tax Act.

13. In Deputy Commissioner of Sales Tax v. Advani Oerlikon (P.) Ltd [1980] 45 STC 32 it was held by the apex Court that the cash discount and the trade discount are two separate and distinct concepts and under the Central Sales Tax Act cash discount is allowed when the purchaser makes the payment promptly or within the period of credit allowed and it is granted in consideration of expeditious payment. A trade discount is a deduction from the catalogue price of goods allowed by wholesalers to retailers engaged in the trade. 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 was also observed that 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. As the sale price is arrived at after deducting the trade discount, no question of deduction from the sale price of any sum by way of trade discount arises. In this case the judgment of the Gujarat High Court in the case of Ambica Mills Ltd. v. State of Gujarat [1964] 15 STC 367 was also considered where the remission was allowed from the sale price to the purchaser on account of a general fall in prices when delivery of the goods was effected. It was held that the sale price remained the stipulated price in the contract between the parties and the fail in prices occurred after the contract of sale had been finalised and, with a view to relieving the purchaser to some extent of the loss which could have been occasioned there by, the manufacturer sought to bear part of the loss by granting a rebate or remission to the purchaser. Another decision of the Madras High Court in the case of India Pistons Limited v. State of Tamil Nadu [1974] 33 STC 472 was also referred where the bonus of which the deduction was sought by the assessee from the turnover was paid under a bonus discount scheme not to all customers but only to distributors whose net purchases from the assessee exceeded the target figure agreed to between the parties. The amount of rebate allowed was credited to the customer''s account and treated as a reserve from which the distributors could make future purchases. The rebate of the bonus discount was not allowed as a deduction by the Madras High Court, which was approved. It

was in the nature of an incentive bonus paid to distributors whose net purchases exceeded the target figure. It did not, and could not, affect the sale value of the goods sold by the assessee. The sale price remained undisturbed in the contract between the parties. This judgment of the apex Court was relied in the case of Deputy Commissioner of Agricultural Income Tax and Sales tax v. Aluminium Industries Ltd. [1980] 45 STC 251 (SC) where the assessee effected sales of goods to its dealers and allowed a trade discount on the catalogue price to cover the expenses incurred by the dealers and permit a margin of profit to them. It was held that the trade discount could not be included in the taxable turnover.

14. In State of Tamil Nadu v. Ultramarine and Pigments Ltd. [1980] 46 STC 220 the Madras High Court had held that quantity discount under a scheme, subject to: periodical variations, on the basis of customer''s off-take in a specified period, with an idea to see that a customer got an incentive to place orders and increase the volume of purchases is allowable. As soon as the period was over the purchases of each customer were totalled and credit notes were passed. It was held that the allowance of the discount formed an integral part of the agreement or contract between the parties affecting the price and would qualify for deduction. It was further observed that even if a discount allowed does not fall strictly within the concept of cash discount as contemplated u/s 2(h) of the Act, still the amount is capable of adjustment in the sales tax assessment provided it goes to vary the price payable in respect of the goods.

15. In Deputy Commissioner of Sales Tax v. Motor Industries Co. [1983] 53 STC 48 (SC) it was held that the additional trade discount called "service discount", allowed by the assessee in accordance with the trade agreement to its main distributors (purchasers), viz., the T.V.S. Group of Companies, which constituted a prestigious group of commercial concerns, over and above the normal trade discount in consideration of the extra benefit derived by the assessee by reason of the marketing of its goods through them, and reflected truly by the accounts of the assessee was deductible as a discount from the turnover, and the fact that the discount was not allowed at the time of sale but, on a later date at the end of the month did not make it any-the-less a trade discount.

16. In State of Andhra Pradesh v. T.V. Sundaram lyengar & Sons Ltd. [1987] 65 STC 41 the Andhra Pradesh High Court has held that ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can be legitimately claimed as a deduction from the turnover and the fact that the discount was not allowed at the time of sale, but on a later date, does not make it any-the-less a trade discount.

17. From the language of the Central Sales Tax Act, it is evident that it is only the cash discount which has been allowed as a deduction from the sale price and that should also be according to the practice normally prevailing in trade. According to the normally prevailing practice in the trade different types of the discounts are being given. The important factor which is to be seen is the agreement or the contract which has been entered into between the buyer and

the seller. If at the time of entering of the contract for sale of any goods it is stipulated that the price which has been charged or mentioned in the catalogue shall stand reduced if a particular purchase is made within a particular month or even a year, then it would be the abatement of the said price and in accordance with the contract the price shall stand reduced as contemplated in the contract.

18. If at the time of effecting the sale or entering into the contract of sale no such stipulation is made and subsequently a contract is entered into then it would not be reducing the price of the sale which has already been concluded.

19. It is no doubt true that trade discount and cash discount are two different aspects as understood in commercial parlance. The trade discount is given from the price list by way of reduction or abatement of price. The cash discount is given to make the prompt payment by the buyer. The trade discount docs not form part of the sale price and after the sale price is determined, then the cash discount has to be allowed, thereafter from the total sale price, the trade discount may be given on account of quantity based purchases in the bill itself or such discount may be having reference to a particular period and may be given subsequently by way of credit note or otherwise. It is the initial agreement under which the sale is effected that has to be seen. If while effecting the sale, it is agreed upon that, if the total purchases by such buyer exceeds a particular limit in a particular time then the trade discount at a particular percentage would be given, then, in that case inspite of the fact that the initial bill was for the higher sale price, the entire purchases of the said period will be taken into consideration and the discount will have to be allowed, that discount will not form part of the sale price.

20. In respect of cash discount, if a particular seller frames the scheme that the payment of the bill is to be made within three months, but, if the payment is made within two months, then the discount wilt be "X", if the payment is made within a month, then the discount will be "Y" and if the payment is made in cash, then the discount will be "Z". In all these cases the discount which is being given will be considered to be as a cash discount, and this discount has to be deducted from the sale price. Accordingly, I am of the view (hat the Board of Revenue was right in allowing the discount from the computation of sale price u/s 2(h) of the Central Sales Tax Act.

The revision is accordingly dismissed.

