

(1992) 06 MAD CK 0003

In the Madras High Court

Case No : Tax Case (Revisions) No's. 347 to 349 of 1983

Dalmia Cement (Bharat) Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-06-1992

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1992) 06 MAD CK 0003

Hon'ble Judges : K.S. Bakthavatsalam, J; Doraiswamy Raju, J

Bench : Division Bench

Advocate : S.V. Subramaniam, for P.P.S. Janarthana Raja, for the Appellant;
Mrs. Chitra Venkataraman, Additional Government Pleader, for the Respondent

Judgement

K.S. Bakthavatsalam, J.—These tax (revision) cases have been preferred by the assessee/company, a manufacturer of cement, against the

orders passed by the Tamil Nadu Sales Tax Appellate Tribunal under the Tamil Nadu General Sales Tax Act, 1959, Tamil Nadu Sales Tax

(Surcharge) Act, 1971 and Tamil Nadu Additional Sales Tax Act, 1970, for the assessment year 1977-78. The petitioner herein reported a

taxable turnover of Rs. 10,41,22,891.23. However, after check of accounts with regard to the facts, the taxable turnover was at Rs.

11,49,03,500.74. The appellant disputed a turnover of Rs. 97,61,718.02 relating to disallowance of claim under special rebate, railway freight

charges and cashewnut purchases exported to outside India. The first appellate authority dismissed the appeals. On a further appeal, the Sales Tax

Appellate Tribunal, Madurai, gave relief with regard to freight charges, and relying upon a judgment of this Court in [1986] 61 STC 1 (Dinod

Cashew Corporation v. Deputy Commercial Tax Officer), with regard to other two reliefs the Tribunal dismissed the appeals of the petitioner.

2. The assessee/petitioner has filed these revisions against the order of the Tribunal holding that the special rebate in question would not be

deducted from the sale price of the appellants and hence it is liable to tax and also against the order of disallowing the exemption on cashewnut

purchase.

3. Mr. S. V. Subramaniam, the learned senior counsel appearing for the assessee/petitioner, in view of the decision of the Division Bench of this

Court in Dinod Cashew Corporation v. Deputy Commercial Tax Officer [1986] 61 STC 1 did not press the point with regard to the disallowance

of exemption of cashewnut purchase, on the score that cashewnut and cashewnut kernels are different commercial commodities. The only point

urged by the learned senior counsel appearing for the petitioner is with regard to the order of the Tribunal in so far as it disallowed the contention

of the petitioner with regard to ""special rebate"".

4. The question argued before the Tribunal was that whether ""special rebate"" can be deducted from the sale price of the assessee or whether it is

liable to be brought into the net of taxation. The learned senior counsel referred us to a bill or a sample which is to the following effect : (It has also

been in the assessment order) :

.....

TNGST No. 115128/6-5-70

CST No. TRI/1502/12-7-57 Bill No. 243 dated February 20, 1978.

Dr. TO DALMIA CEMENT (BHARAT) LIMITED

To value of imported cement 600 (bags)

30 tonnes at per tonne 35.38 Rs. 10,658.40

LESS : (a) Freight rebate 315.00

(b) Special rebate 145.50

Rs. 460.50

Rs. 10,197.90

ADD : (a) TNGST at 8% on

Rs. 10,658.40 852.67

(b) Surcharge at 5%

on above 42.63

Rs. 895.30

ADD : Loading charges recoverable

at Rs. 2 per tonne Rs. 60.00

Total amount due Rs. 11,153.20

E. & O.E.

.....

According to the learned senior counsel, though the assessee has collected sales tax on the sale price of 30 tonnes of imported cement at 8 per

cent, i.e., on a sum of Rs. 10,658.40, the cement was sold only for a sum of Rs. 10,197.90 after deducting ""special rebate"" Rs. 145.50. So

according to him, when the assessee has sold the cement (30 tonnes) for a sum of Rs. 10,197.90 giving special rebate of Rs. 145.50 and freight

rebate of Rs. 315.00 from the value of cement of Rs. 10,658.40, he can claim deduction from the turnover. The learned counsel points out that the

special rebate has been allowed by the cement controller as subsidy to maintain parity in the prices of imported cement and indigenous cement and

as per the instructions of the Cement Controller, a copy of which has been produced before us, rebate received from the Government was allowed

to the stockists. The learned senior counsel points out that special rebate allowed to the stockists were shown separately in the invoices and as

such this amount will not form part of the turnover under clause (iii) of explanation (2) to section 2(r) of the Tamil Nadu General Sales Tax Act,

1959.

5. We have carefully considered the arguments advanced by Mr. S. V. Subramaniam, the learned senior counsel appearing for the

assessee/petitioner, and of Mrs. Chitra Venkataraman, the learned Additional Government Pleader (Taxes). The short question to be decided in

these tax cases (revision) is whether "special rebate" given by the petitioner/assessee is an allowable deduction under the provisions of the Tamil

Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act") and the Rules made thereunder.

6. To decide the question mentioned above, it is necessary to quote the relevant sections of the Tamil Nadu General Sales Tax Act, 1959 and the

Rules framed thereunder.

Section 2(r) of the Act is as follows :

"turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways

referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred

payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea,

grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise shall be

excluded from his turnover ...

Clause (iii) of explanation (2) of section 2(r) of the Act reads as follows :

..... any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by

customers shall not be included in the turnover ...

Rule 5-A(a) of the Rules framed under the Tamil Nadu General Sales Tax Act is as follows :

..... All amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in

accordance with the terms of a contract or agreement entered into in a particular case, and provided also that the accounts show that the purchaser

has paid only the sum originally charged less the discount

Relying upon the rule extracted above, the learned senior counsel contends that with a view to avoid loss as a result of fall in prices, the assessee

allowed certain rebates to the purchasers to compensate the loss and that the assessee/petitioner is entitled to a deduction of the rebate amount

from the total turnover.

7. We have considered the section and the rule cited supra and the facts of the case. If the petitioner had given a rebate and received price, what

was less than the original price, whether the petitioner/assessee is entitled to deduct it from the turnover is the question to be considered. The

learned senior counsel appearing for the petitioner/assessee relies upon the decisions in Fertiliser Corporation of India Ltd. v. Commercial Tax

Officer [1991] 83 STC 129 (AP) and in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Motor Industries

Co., Ernakulam, for the proposition that the petitioner/assessee is entitled to get the special rebate deducted from the turnover as allowable

deduction. The Apex Court of the land in Deputy Commissioner of Sales Tax v. Motor Industries Co. [1983] 53 STC 48 was concerned with rule

9(a) of the Kerala General Sales Tax Rules, 1963. Rule 9(a) of the Kerala General Sales Tax Rules, 1963 is in pari materia with rule 5-A(a) of the

Tamil Nadu General Sales Tax Rules, 1959. The Apex Court of the land in Deputy Commissioner of Sales Tax v. Motor Industries Co. [1983] 53

STC 48 has held as follows :

..... ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can legitimately be

claimed as a deduction from the turnover under clause (a) of rule 9 of the Kerala General Sales Tax Rules, 1963

In Fertiliser Corporation of India Ltd. v. Commercial Tax Officer [1991] 83 STC 129 the Andhra Pradesh High Court has held that no amount

had been paid on behalf of the purchaser nor any amount collected by the dealer in excess of the price mentioned in the bills, any subsidy received

by a manufacturer could not be treated as a part of turnover within the meaning of section 2(s) of the Andhra Pradesh General Sales Tax Act,

1957. In our view, the bill extracted above will clearly show that the petitioner has not collected any amount towards the sale price though he had

collected sales tax for the total amount. In another case in State of Andhra Pradesh v. Ranka Cables Pvt. Ltd. [1990] 78 STC 111 a Division

Bench of the Andhra Pradesh High Court, while considering the scope of section 2(h) of the Central Sales Tax Act, 1956, which defines ""sale

price"", has held that ""sale price"" means the amount payable to a dealer as

consideration for the sale of any goods. In that case, it has also been held that the scheme evolved by the Central Government in that case was in the larger interests of industry and commerce and not merely or exclusively with a view to help the purchaser of electrical goods from the assessee therein and that in such a situation the excise duty component cannot be included in the turnover of the assessee. On the facts of the case before us, from the bill extracted above, we are of the opinion that the appellant/assessee did not receive more than the amount shown by the assessee as "sale price" though of course, he has collected sales tax on the total amount of the bags of cement. If the assessee has collected excess of sales tax, it may be open to the department to take any other action to penalise the assessee and surely that cannot be a reason to include in the special rebate given to the assessee to bring that turnover into the net of taxation. A Division Bench of the Gujarat High Court in *Ambica Mills Ltd. v. State of Gujarat* [1964] 15 STC 367, while considering the scope of section 2(20) of the Bombay Sales Tax Act, 1953, had held as follows :

The sale price receivable under the contracts would be the sale price agreed to in the contracts and if the assessee gave remissions and therefore received less than what was receivable by them under the contracts, they would not be entitled to have their turnover calculated on the basis of the contract price less the remissions permitted by them to their purchasers

In our view, the decision of the Division Bench of the Gujarat High Court, cited *supra*, will not apply to the facts of the case because the definition of "turnover" u/s 2(20) of the Bombay Sales Tax Act, 1953, is wider than the definition of "turnover" which occurs in section 2(r) of the Tamil Nadu General Sales Tax Act, 1959. In the view we take that the "special rebate" is not includible in the turnover of the assessee and is entitled to have a deduction u/s 2(r) of the Act read with rule 5(A)(a) of the Rules, the order of the Tribunal is set aside and the tax cases (revision) are partly allowed. No costs.

8. Petition partly allowed.