

(1984) 02 MAD CK 0019
In the Madras High Court
Case No : Tax Case No. 235 of 1978

Deputy Commissioner (CT), Coimbatore

APPELLANT

Vs

A.N. Angamuthu Mudaliar and Sons

RESPONDENT

Date of Decision : 21-02-1984

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 6

Citation : (1986) 63 STC 135

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; T.V. Ramanathan, for the Respondent

Judgement

Ramanujam, J.—In this tax cases filed by the State the question that comes up for consideration is as to whether in a case where the seller

agrees to deliver the goods at the buyer's place for a consolidated price it is open to the seller to claim deduction of the transport charges for

bringing the goods to the buyer's place, under rule 6(c) of the Tamil Nadu General Sales Tax Rules, 1959, merely on the ground that the transport

charges have been separately billed for. The Sales Tax Appellate Tribunal has taken the view that though the contract between the buyer and the

seller provides for an all inclusive price for the goods to be supplied at the buyer's place, the split up of that price into two components, one

representing the actual price of the goods and the other representing the transport charges will by itself enable the seller to claim deduction of the

transport charges under rule 6(c) of the Tamil Nadu General Sales Tax Rules, 1959. The question is whether the view taken by the Tribunal is

legally tenable.

2. The respondents herein are forest contracts at Anthiyur and they had declared a taxable turnover of Rs. 5,77,107.91 in their A-2 returns for the year 1973-74. After a check of their accounts, the assessing authority found that the assessee had transported bamboos from the forest area to the paper mills at Pallipalayam, and that the transport charges amounting to Rs. 2,40,502.50 had been deducted from the taxable turnover of the assessee which they were not entitled to. He therefore, adding the said transport charges to the taxable turnover returned, determined the actual taxable turnover at Rs. 8,38,438. The assessee challenged the assessment in appeal before the Appellate Assistant Commissioner inter alia contending that the transport charges for transporting the bamboos from the forest area to the paper mills should not have been included in the taxable turnover. The Appellate Assistant Commissioner did not, however, accept the said contention. The assessee thereafter went before the Sales Tax Appellate Tribunal reiterating the same contention that the transport charges should be excluded from the taxable turnover. The Tribunal held that in view of the fact that the split up of the all inclusive price referred to in the agreement has been made by the assessee with the consent of the buyer, the freight charges received by the assessee from the buyer cannot be included as part of the taxable turnover. In support of that view the Tribunal relied on the decision of this Court in *Lipton (India) Limited v. State of Tamil Nadu* [1973] 32 STC 194 and *Agricultural Farms Ltd. v. State of Tamil Nadu* [1974] 34 STC 143.

3. There is no dispute as regards the facts. The assessee had entered into contracts for the supply of bamboos to M/s. Seshasayee Paper and Boards Ltd., hereinafter called as the buyers, at Rs. 115 per ton at mill site. One of such contracts dated 25th July, 1973, is found at page 111 of the assessment file. The said contract contains the following clauses :

1. Not less than 1000 tonnes of dry bamboo shall be supplied under this contract.
2. The supply shall be from the abovementioned areas only delivered at mill site.
3. The supply shall be completed on or before 31st March, 1974. No extension of time shall be allowed.
4. The bamboo shall not be less than 1" diameter at the thin end. They shall not be less than 5 feet and not more than 5 feet in length.
5. Bamboo shall be free from decay or fungus attack. Loads found to contain

even a very small portion of such bamboo shall be rejected and the contractor shall remove such rejected loads within 3 days of receipt of intimation from the company.

6. For the bamboos delivered at mill site you shall be paid at the rate of Rs. 115 per air dry tonne computed in accordance with the formula prescribed by the Tamil Nadu Forest Department.

7. A sum of Re. 1 per tonne shall be deducted from each bill as security deposit for due performance of the contract. This security amount shall be released only after the guaranteed quota (1000 tonnes) is supplied within the stipulated time and not otherwise.

7A. Bills shall be preferred in accordance with the procedure prescribed by the company.

8. You shall abide by the usual terms and conditions covering bamboo supplies prescribed by the company.

9. In cases of dispute the decision of the General Manager of the company shall be final and binding.

4. As per the said terms, the assessee have undertaken to supply bamboos collected by them from the forests in Coimbatore North Division at the

rate of Rs. 115 per air dried ton at the mill site should be completed on or before 31st March, 1974, and the bills should be preferred in

accordance with the procedure prescribed by the buyer. Thus, the provisions of the sale contract indicate that only a lump sum price is to be paid

by the buyer and it does not indicate that there was a bargain between the parties for two separate payments one as regards the actual price

payable and the other as regards payment of separate transport charges. The learned counsel for the assessee relies on clause 7A in support of

his submission that the charges contemplated two separate bills being made out by the assessee, one in respect of the actual price of the bamboos,

and the other in respect of the transport charges. But it is not possible for us to agree with the learned counsel unless some document showing that

such a procedure has been prescribed by the buyer-company is produced. It may be that the procedure prescribed by the company may relate to

the time when the bills are to be preferred. Therefore, it cannot straightaway be stated from clause 7A that the parties had bargained for the

transport charges being paid separately. If under clause 7A the parties had

agreed for payment separately of the transport charges as contended by the assesseees then clause 6 providing for a consolidated price of Rs. 115 per tonne to be delivered at the mill site will have no meaning. If there was a contract between the parties to pay separately for the transport charges, clause 6 would have been worded differently and clause 6 itself would have shown the price proper and the transport charges. We are, therefore, not in a position to attribute any significance to clause 7A and the same cannot be taken to override clause 6 which fixes an all inclusive price for the bamboos to be delivered at the mill site. Further, if as contended by the learned counsel for the assessee, clause 7A contemplates the split up of the price, then the letter dated 25th May, 1977, written to the assesseees by the buyer is quite unnecessary. The said letter shows that there was no earlier agreement for the splitting up of the price and it is only under the said letter the buyer agreed for splitting up of the price at the request of the assesseees. Thus the actual position in this case is as follows : At the time of the entering into the contract of sale, the bargain was for an all inclusive price. Subsequently, the bills have been rendered by the assesseees separately for the price proper and the transport charges and such bill have been accepted by the buyer and payments have been made. The question is whether the subsequently splitting up of the all inclusive price agreed to by the parties at the time of the original contract of sale, though with the consent of the buyer will enable the seller (assesseees) to claim the benefit of rule 6(c).

5. Rule 6(c) provides that in determining the taxable turnover the amounts specified in clause (a) to (h) shall, subject to the conditions specified therein be deducted from the total turnover of a dealer and clause (c) refers to all amounts falling under the heads "freight" and "charges for delivery" when specified and charged for by the dealers separately without including them in the price of the goods sold. Thus normally the transport charges will be taken to the part of the total turnover of a dealer and the seller is entitled to deduction of the transport charges if it has been charged for separately without including them in the price of the goods sold. If the parties have agreed to Rs. 115 per ton as the price of the bamboos sold at the mill site, then even if the transport charges are charged for separately, no deduction could be allowed. Thus the whole thing

depends upon the bargain between the parties at the time of entering into the contract of sale. As already stated, in this case, the contract of sale provides for an all inclusive price and there is no mention of the transport charges being separated from the price of the bamboos. It is only at a later stage, presumably at the instance of the assesseees, there has been an arrangement for splitting up of the price agreed. If there is an alteration of the original contract based on the subsequent arrangement, showing the price proper and the transport charges separately, the assesseees can claim the benefit of rule 6(c) at least from the date of such variation of the contract. But in this case the original sale contract has not been varied and the agreement between the parties continues to be the same.

6. The Tribunal has, in support of its view, referred to the decision of this Court in *Agricultural Farms Limited v. State of Tamil Nadu* [1974] 34

STC 143. But, in that case the assessee were limestone suppliers to a cement company and they entered into an agreement of sale fixing an all

inclusive price for the supply of limestone. Subsequently, the agreement itself was amended fixing separately the price of limestone at the point of

extraction and the freight and transport charges from the place of extraction to the buyer's factory. It is on the basis of the amended agreement the

assesseees prepared the invoices showing the sale price of the limestone and the transport charges separately and claiming deduction of the

transport charges from the total turnover returned by them. On these facts this Court held that merely because the assesseees had originally

bargained for an all inclusively and the invoices being in accordance with the terms of the amended agreement between the parties, the assesseees

were entitled to the deduction. It is because of the amended agreement indicating the actual intention of the parties, the splitting up of the payment

should have been agreed to between the buyer and the seller. In this case, as already stated, there is no amendment of the agreement of sale and

merely from the subsequent conduct of the buyer accepting the bills rendered separately by the assesseees, we cannot assume that there was a

bargain to pay separately for the transport charges. The case in *Lipton (India) Ltd. v. State of Tamil Nadu* [1973] 32 STC 194 to which reference

has been made by the Tribunal is also not applicable, for, in that case there was evidence of the bargain between the parties for a separate

payment of transport charges apart from the price for the goods agreed to be sold.

7. The learned counsel for the assessee refers to the bills passed by the buyer wherein the following expression occurs ""freight charges paid on

our account"". As already stated under the contract of sale the buyer has not undertaken the obligation of payment of the freight charges separately.

Therefore the said expression is not consistent with the original contract. When the actual contract of sale is for the supply of bamboos at the mill

site for a consolidated price of Rs. 115 per ton, there is no obligation on the part of the purchaser to incur any freight charges and there is no

question of the seller spending at the purchaser's account. As a matter of fact, the contract of sale provides for inspection and rejection of the

unapproved goods which will mean that the property in the bamboos do not pass unless the goods are delivered at the mill site after inspection or

approval. Therefore the expression ""freight charges paid on our account"" occurring in the same documents cannot have any significance.

8. In this view of the matter, we are of the view that the Tribunal is not right in excluding the turnover of Rs. 2,38,379.67 from the taxable turnover.

The tax case is, therefore, allowed. No costs.

9. Petition allowed.