(1960) 11 MAD CK 0042

In the Madras High Court

Case No : Tax Case No. 120 of 1958 (Revision No. 60 of 1958)

Devi Films (Private) Ltd. APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 24-11-1960

Acts Referred:

Citation : (1961) 12 STC 274

Hon'ble Judges : Srinivasan, J;Rajagopalan, J

Bench : Division Bench

Advocate : S. Swaminathan and K. Ramagopal, for the Appellant; G. Ramanujam, for The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Rajagopalan, J.—Among the trading activities of the assessee firm was the sale of cinema machinery and apparatus; some of its sales were effected under long term hire-purchase agreements. In the assessment year 1955-56 the assessee claimed that under Rule 5(1)(b) of the Turnover and Assessment Rules it was entitled to a deduction of Rs. 68,275 from its gross sales turnover. That claim was disallowed by the department, and the Tribunal upheld the disallowance.

2. Rs. 68,275 was the total amount due from four purchasers for the machinery sold to them by the assessee under hire-purchase agreements. These sales were in 1949, 1950 and 1951. The aggregate amount due under each of those agreements was taken into account in computing the taxable turnover of the assessee in the year of the transaction. The transactions being in form of hire-purchase agreements, the sale price was payable in instalments. The agreements provided that, in default of payment of the instalments due, the assessee was entitled to a return of the goods. When the goods were returned to the assessee, the liability of the purchaser to pay the remaining instalments ceased; so did his right to exercise his option to retain the goods on the payment of one rupee after the completion of the payment of all the instalments. In the assessment year 1955-56 four of the purchasers defaulted payment. The aggregate of the unpaid

instalments on all, these four transactions was Rs. 21,191-1-6. The assessee however claimed that the entire amount of Rs. 68,275 which had suffered tax in the previous years, should be deducted from its gross turnover in the assessment year 1955-56, during which the agreements were terminated and the goods were returned to the assessee. That was the claim the Tribunal rejected, and the Tribunal had no occasion to determine what was the unpaid instalments. The correctness of the figure of Rs. 21,191-1-6 was established from the accounts of the assessee which were produced for our inspection, and that was accepted by the learned Government Pleader.

3. The questions are, whether under Rule 5(1)(b) of the Turnover and Assessment Rules the assessee is entitled to any deduction, and if he is, what is the amount that should be deducted in the assessment for 1955-56.

4. Under what circumstances hire-purchase agreements amount to sales as defined by the Act was discussed by a Division Bench of this Court in Commercial Credit Corporation v. Deputy Commercial Tax Officer [1958] 9 S.T.C. 599. We must emphasis even at the outset that it was never in issue between the assessee and the department that the transactions the assessee entered into under the form of hire-purchase agreements were sales assessable to sales tax. It was on that basis the assessee firm was assessed to sales tax on Rs. 68,275. Though in form it was a hire-purchase agreement the element of sale predominated. The instalments payable under the agreement by the purchaser were thus instalments of the sale price. What remained unpaid in the year of assessment, Rs. 21,191-1-6 represented the unpaid sale price. The goods that were sold were returned to the assessee under the terms of the agreement, and as we said the liability to pay the balance of the purchase price ceased.

5. Rule 5(1)(b) of the Turnover and Assessment Rules provided :

. . .In determining the net turnover the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer. . . (b) all amounts allowed to purchasers in respect of goods returned by them to the dealer, provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser.

6. The requirements of the rule were, in our opinion, satisfied in this case. The goods sold by the assessee were returned to the seller. It is true there was a considerable interval between the sale and the return of the goods, but the length of the interval is, in our opinion, not a relevant factor at all in deciding whether the requirements of the rule have been satisfied by a given assessee. If an allowance is made against the goods returned the deduction can be claimed only in the year in which that allowance has been made and to the real extent of that allowance, independent of the date of the sale. The rule itself makes that clear. The date of the sale decides the inclusion in the assessee''s assessable turnover. The date of the allowance determines the exclusion from the gross

turnover under Rule 5(l)(b). What has been really "allowed" to purchasers in this case was the amount of the unpaid instalments of the sale price. The assessee is not entitled to claim that the entire sale price has been allowed within the meaning of Rule 5(1)(b), and that whatever was collected and retained by the assessee represented only the hire. Such a contention is not permissible in view of the real nature of the transactions which we have already emphasised. It was a sale, and what was payable under the agreement was the sale price, but payable in instalments.

7. In the case of a transaction of a sale in the form of a hire-purchase agreement, where the goods themselves are returned to the seller and the unpaid instalments of the purchase money ceased to be payable under the terms of the agreement, the seller is entitled to claim under Rule 5(1)(b) the total of the unpaid instalments as an "allowance" made within the meaning of Rule 5(1)(b), provided of course that factually the liability for the unpaid purchase money is terminated and the other requirement, that the transactions should be shown in the accounts, is satisfied. In the case of the assessee he terminated that liability under the terms of the agreement, and the ledger accounts were closed. It was those accounts that disclosed what the unpaid purchase money was.

8. We hold that the assessee was entitled under Rule 5(1)(b) to a deduction of Rs. 21,191-1-6 in the assessment year 1955-56.

9. The petition is allowed to that extent and the assessment be reduced accordingly. The assessee will be entitled to the cost of this petition. Counsel''s fee Rs. 100.

