

(1969) 07 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 910 Of 1968

Dyer Meakin Breweries Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-07-1969

Acts Referred:

Kerala General Sales Tax Rules, 1963 — Rule 9

Citation : (1970) 3 SCC 253 Supp : (1970) 3 SCC 253 : (1970) 26 STC 248

Hon'ble Judges : J. C. Shah, Acting C.J.; V. Ramaswami, J; A. N. Grover, J

Bench : Full Bench

Final Decision : dismissed

Judgement

J.C. Shah, C.J.—The appellant-company is registered as a dealer in "Indian made foreign liquor" under the Kerala General Sales Tax Act, 1963. The company has a place of business in Ernakulam, in the State of Kerala. Liquor sold by the company is manufactured or produced in distilleries or breweries at different places in the States of U.P. and Haryana. Liquor is transported for sale by the company from its breweries and distilleries to its place of business at Ernakulam. It is the practice of the company to maintain a uniform "ex-factory price" in respect of each brand of liquor and liquor is sold at different centers after adding to the ex-factory price the appropriate amount attributable to freight and other charges. The company transports its goods from its factory to the warehouses maintained by it at Ernakulam and when selling liquor to the customers the company makes out separate bills for the ex-factory price and for "freight and handling charges."

2. In proceedings for assessment of sales tax for 1963-64 the company claimed under Rule 9(f) of the Kerala General Sales Tax Rules, 1963, Rs. 59,188.99 as an admissible deduction in respect of charges for "freight and handling charges" collected from the customers, in the computation of the taxable turnover. The Sales Tax Officer rejected the claim, and the order was confirmed by the Appellate Assistant Commissioner and by the Sales Tax Tribunal. A revision

application filed before the High Court of Kerala was summarily dismissed. The company has appealed to this Court with special leave.

3. Rule 9(f) of the Kerala General Sales Tax Rules, 1963, provides :

In determining the taxable turnover, the amount specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer....

(f) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of goods sold;

(i) freight,

(ii) charges for packing and delivery.

4. The company claims that the amount expended by it for freight and for "handling charges" of goods from the factories to the warehouse at Ernakulam is liable to be excluded from the taxable turnover and the taxing authorities and the High Court were in error in refusing to allow the deduction.

5. It is common ground that the sale of the liquor took place in Ernakulam. The company arranges to transport liquor for sale from the factories to its warehouse at Ernakulam. It was not brought for any individual customer. All the expenditure incurred is prior to the sale and was evidently a component of the price for which the goods were sold. It is true that separate bills were made out for the price of the goods ex-factory and for "freight and handling charges". But, in our judgment, the Tribunal was right in holding that the exemption under Clause (f) of Rule 9 applies when the freight and charges for packing and delivery are found to be incidental to the sale and when they are specified and charged for by the dealer separately and expenditure incurred for freight and packing and delivery charges prior to the sale and for transporting the goods from the factories to the warehouse of the company is not admissible under Rule 9(f). Rule 9(f) seeks to exclude only those charges which are incurred by the dealer either expressly or by necessary implication for and on behalf of the purchaser after the sale when the dealer undertakes to transport the goods and to deliver the same or where the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale.

6. The decisions of the Madras High Court in *State of Madras v. R.M.K. Viswanatha Pillai* [1957] 3 S.T.C.601 and of the Andhra Pradesh High Court in *Motilal Hari Prasad and Bros. v. State of Andhra* [1959] 10 S.T.C.20 support the view which we have expressed, although we may observe that we do not subscribe to all the reasons given in the first case for the conclusion recorded by the Madras High Court.

7. The appeal therefore fails and is dismissed with costs.