

(1990) 09 KAR CK 0019
In the Karnataka High Court
Case No : S.T.R.P. No. 107 of 1984

Geep Industrial Syndicate Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-09-1990

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (1) (v)

Citation : (1992) 86 STC 64

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J

Bench : Division Bench

Judgement

M.P. Chandrakantaraj Urs, J.—The question formulated for our determination is as follows :

On the facts and in the circumstances of the case whether the discount equivalent to freight charges allowed amounts to "other discount" liable to be excluded in the turnover as contemplated in explanation (iii) to section 2(1)(v) of the Karnataka Sales Tax Act, 1957 ?

2. The undisputed facts are these : For the assessment year 1977-78, the appellant-company was assessed on a taxable turnover of Rs. 27,62,032.32 as against the declared taxable turnover of Rs. 27,35,223.60 levying a tax of Rs. 2,75,988.62 and additional tax of Rs. 27,598.86. In doing so, the assessing authority rejected the claim for exemption of Rs. 26,808.72 which the appellant had claimed as freight charges.

3. Aggrieved with disallowance, it filed an appeal before the first appellate authority, namely, the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore. That appeal came to be dismissed by an order dated August 30, 1980. Against the said order of dismissal, it preferred a further appeal to the Karnataka Appellate Tribunal where it remained ex parte after lodging the appeal. Therefore the appeal was disposed of without the assistance of the assessee or its counsel. But in the light of the grounds urged in the

memorandum of appeal, following the decision of the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, the Tribunal came to the conclusion that the invoice which gave deduction or discount of the freight charges from the catalogue price was clearly a method by which notwithstanding the terms of the contract, the manufacturer-dealer himself paid the freight charges and therefore its case clearly fell within the example discussed by the Supreme Court in the case of Hindusthan Sugar Mills Vs. State of Rajasthan and Others, .

4. Mr. Bhavani Shankar Rao, learned counsel for the revision petitioner, contended that his case clearly fell within the four corners of the ruling of the Supreme Court in the case of Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh [1969] 24 STC 487 and not in any other manner covered by the observations or the ruling in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, . It so happens that in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, , the Supreme Court, very soon after examining the case illustrated by it in paragraph 11 of the judgment as reported in the All India Reporter (at page 30 of STC) considered its earlier ruling in Hyderabad Asbestos Cement Products Ltd [1969] 24 STC 487, and observed as follows :

"The appellant despatched goods to the customers by rail under railway receipts with "freight to pay" and made out invoices at the catalogue rate, deducted discount from it and charged sales tax on the balance and then gave credit for the amount of freight to be paid by the customers."

5. We have seen a sample of invoice which has been annexed to the petition found at page 24 of the paper book. It does not tally with the description of the invoice referred to by the Supreme Court in the case of Hyderabad Asbestos Cement Products Ltd [1969] 24 STC 487. What has happened in the invoice in question is that the catalogue price is disclosed for its products. Thereafterwards, freight discount representing the freight charges is given and on the amount so arrived at, sales tax is charged and the amount charged to the customers is disclosed at the end, though the contract of sale which is also exhibited at page 22 of the paper book provides that all orders accepted by the manufacturer-dealer would be despatched to locations wherever possible on the basis of "freight to pay" and shall be payable by the purchasers at the destinations and the amount or rate shown in the case sheet shall be deducted from the gross invoice value. In other words, by the method adopted even though the purchaser is made to pay the freight charges at his end, on delivery at the railway station or at the point of delivery, it has already been given credit in the invoice for the freight charges as a discount. In other words, what emanates from the analysis of the invoice is that the freight charges are really part of the catalogue price but it is given as a discount and invoice prepared to arrive at the sale price and despatched on the basis "freight to pay" with the purchaser paying the freight which is no more than a way of reimbursing the purchaser even before the goods are despatched. Therefore, the case instead of falling within the compass of the

ruling of the Supreme Court in the case of Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh, falls clearly within the example discussed by the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, as reported in the All India Reporter (at page 29 of STC) and therefore we must conclude that it was always intended by the assessee that freight charges were to be paid as part of the sale price and therefore in computing the assessable taxable turnover it could not be excluded from the sale price. We do not find any error committed by the authorities below including the Karnataka Appellate Tribunal and answer the question against the petitioner that the sale price included freight charges and formed part of the turnover and it was eligible to tax though that was not the case before the Appellate Tribunal (where the assessee-petitioner was placed ex parte) or the other authorities.

Petition is therefore dismissed.

6. Petition dismissed.