(1956) 03 MAD CK 0049

In the Madras High Court

Case No : Tax Rev. Case No''s. 65 and 66 of 1956

In Re: State of Madras

Date of Decision : 22-03-1956

Acts Referred:

Citation : AIR 1957 Mad 663 : (1957) ILR (Mad) 61 : (1956) 7 STC 355

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : Asst. Govt. Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

Rajagopalan, J.—These petitions filed by the State u/s 12(B) of the Madras General Sales-tax Act arose out of assessment proceedings for

the years 1951 -52 and 1952-53. The assessee was the same, and the point that arose for determination in both the petitions are identical.

2. The Appellate Tribunal held that in both the years the assessee was entitled to the exemption granted by Rule 5(1) (g) (ii) of the Turnover and

Assessment Rules. The amount for 1951-53 was Rs. 6743 representing the cost, of gunny bags, and a further sum of Rs. 33,761 representing the

cost of mats, etc, which the asgessee used for packing the materials which he had sold. In the year 1952-53 the items were Rs. 3554, the cost of

gunnies, and Rs. 38,669, the cost of mats.

The Tribunal found that the appellants had shown the packing charges separately from the price of the goods sold. The further finding of the

Tribunal was.

We fail to understand how the Commercial Tax Officer held that the charges realist by the appellants for thege services are assessable to tax..

There can be no service on account of packing without the use of packing materials and the attempt of the Commercial Tax Officer to separate the

materials from the charges is not warranted. The additions made on account of gunnies and mats for the two years will therefore be deleted.

3. It was the correctness of these findings based upon the application of Rule 5(1) (g) (ii) that the State challenged.

4. The relevant portion of Rule 5(1) runs:--

.... In determining the net turnover the amounts specified in Clauses (a) to (1) shall subject to the conditions specified therein, be deducted from

the gross turnover of a dealer. .....

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

the goods sold:--

(i) freight;

(ii) charges for packing and delivery and other such like charges.

5. The Tribunal found that the charges for packing were specified separately by the dealer without including them in the price of the goods sold.

The cost of the materials used for packing the gunny bags and the mats, was included in the charges for packing. The question is does this satisfy

the requirements of Rule 6(1) (g) (ii).

6. The main contention of the learned Government, Pleader was that only cost of services for packing would fall within the scope of Rule 5(1) (g)

(ii), and that would not include- the cost of the materials used for packing. It is not, of course, the amount Involved that can determine the scope of

Rule 5(1) (g) (ii).

7. In our opinion, the requirements of Rule 5(1) (g) (ii) were satisfied by the assessee. As we pointed out, he showed the charges for packing

separately in his bills, without including them in the price of the goods sold. No doubt, his charges for packing included the cost of the materials,

but the cost of the materials used for packing the gunny bags and the mats was not shown as different items In the bills. It was inclusive charges

that he added to the bills ""for packing"". The learned Government Pleader urged that the expression ""other such like services"" in Rule 5(1) (g) (ii)

delimited the scope of the earlier expression ""charges for packing and delivery.

Such an interpretation of a statutory provision, we are unable to accept. Charges for packing as such, if they have been specified and charged by

the dealer separately without including them in the price of the goods sold, should suffice to bring the claim within the scope of Rule 5(1) (g) (ii).

Even If the expression ""other such like serivces"". has to be interpreted on the application of the principle, ejusdem generis, that expression by itself

could not limit what the statutory provision exempts from inclusion in the gross turnover, ""charges for packing.

8. Tn Indian Leaf Tobacco Development Co, Ltd. v. The State of Madras, 1954 5 STC 354. (A) the inclusion of the cost of packing materials in

the assessable turnover of the assessee was sustained on the ground, that the requirements of Rule 5(1) (g) (ii) had not been satisfied. The assessee

in that case had charged an inclusive price for both the tobacco and the packing materials when he sold the goods to the purchasers. Neither in

Varasuki and Co. Vs. The Province of Madras, nor in Krishna and Co. Ltd. v. State of Andhra, 1936 7 STC 26: AIR 1957 And 706 (C) was

there any necessity to consider whether Rule 5(1) (g) (ii) applied at all. In both those cases the claim for sales-tax on the value of the packing

materials was sustained. In 1956 7 STC 26: AIR 1957 And 708 (C) the learned Chief Justice pointed out at page 33 (of STC): (at p. 709 of

AIR):

In the present case, no attempt was made to rely upon the aforesaid rule, presumably because the assessment related to a period prior to the

coming into force of the rule.

The claim that was negatived in 1956 7 STC 26: AIR 1957 And 706 (C) was that the packing materials had become an integral part of the drying

process. The learned Chief Justice held that the packing materials were extraneous marketable materials used to preserve dried tobacco from

contamination or loss. After pointing out at page 35 (of STC): (at p. 709 of AIR) ""the accounts clearly show that he (assessee) charged for the

material in addition to his remuneration for drying the tobacco, though the price shown In the accounts is the inclusive one"", the learned Chief

Justice held that all the ingredients of the charging section, read with the definition of sale and turnover In the Act had been satisfied. The conclusion

of the learned Chief Justice was:,

.....We hold that the packing materials were goods and that there was a sale in regard to them within the meaning of the Act. If so, the turnover in

respect of the transactions in question was certainly liable to sales-tax.

It was on these observations the learned Government Pleader relied to sustain the claim of the Department, to include the cost of the packing

materials in the assessable turnover of the assessee. As we pointed out, there was no occasion in 1956 7 STC 26: AIR. 1957 And 706 (C) to

consider whether an exemption could be claimed by the assessee under Rule 6(1) (g) (ii). It should be remembered that whatever is deducted

under Rule 5(1) (g) (ii) is from the gross turnover of a dealer.

That would imply that the definitions of turnover and sales had been satisfied before there could be a computation of a gross turnover. That there

had been a ""sale"" of the packing materials, as that expression had been defined, by the Act may not conclude the question. The real question is

does the claim of the assessee fall within the scope of the exemption granted by Rule 511) (g); (ii). to answer that question 1956 7 STC 26 : AIR

1957 And 706 (C) does not afford any direct authority. Such a question was not considered at all in that case, and there was no occasion to

consider it.

9.What Rule-5(1) (g) (11) requires is that the charges for packing should be billed separately from the price of the goods sold. As we pointed out,

that test the assessee satisfied in this case. Rule 5(1) (g) (11) does not enable the department to split up the charges for packing further between

charges for the labour involved in packing and charges for the cost of packing materials, whether on an estimate based or otherwise. If the dealer

shows only an inclusive charge for packing, and that charge includes both labour and cost of packing materials, the claim for exemption can still be

sustained on the basis of Rule 5(1) (g) (ii). The Tribunal, In our opinion, was right when it pointed out:

There can be no service on account of packing Without the use of packing materials and the attempt of the Commercial Tax Officer to separate

the materials from the charges is not warranted.

10. These petitions fail and are dismissed.