

(1956) 03 MAD CK 0019

In the Madras High Court

In Re: The State of Madras

Date of Decision : 22-03-1956

Acts Referred:

Citation : (1956) 69 LW 387 : (1956) 2 MLJ 222

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

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 was 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 1951-52 was Rs. 6,743 representing the cost of gunny bags, and a further sum of Rs. 33,761 representing the

cost of mats, etc., which the assessee used for packing the materials which he had sold. In the year 1952-53 the items were Rs. 3,554, 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 realised by the appellants for these 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 (l) 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 services.

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 5(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 services", 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. In *Indian Leaf Tobacco Development Co. Ltd. v. The State of Madras* (1954) 2 M.L.J. 588 :, 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 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 & Co. Ltd. v. State of Andhra* (1956) An.W.R. 11 : 7 S.T.C. 26 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 *Krishna & Co. Ltd. v. State of Andhra* (1956) An.W.R. 11 : 7 S.T.C. 26, the learned Chief Justice pointed out at page 33:

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 negated in *Krishna & Co. Ltd. v. State of Andhra* (1956) An.W.R. 11 : 7 S.T.C. 26, was that the packing material 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

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 definitions 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 *Krishna & Co. Ltd. v. State of Andhra* (1956)

An.W.R. 11 : 7 S.T.C. 26, to consider whether an exemption could be claimed by the assessee under Rule 5(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 has been denned 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 5(1)(g)(ii). To answer that, question, *Krishna & Co. Ltd. v. State of Andhra* (1956) An.W.R. 11 : 7 S.T.C. 26,

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)(ii) 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)(ii) 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 stil be

sustained On the basis of Rules (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.