

(1973) 07 MAD CK 0034

In the Madras High Court

Case No : Tax Cases No"s. 353 and 354 of 1969 (Revisions No"s. 228 and 229 of 1969)

India Pistons Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 24-07-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 2
Madras General Sales Tax Act, 1939 — Section 2

Citation : (1974) 33 STC 472

Hon'ble Judges : Ramanujam, J;J. V Ramaswami-II, J

Bench : Division Bench

Advocate : S. Padmanabhan, assisted by S.V. Subramaniam, for Subbaraya Aiyar, Sethuraman and K. Venkataswami, The First, Tax, for the Appellant;

Final Decision : Dismissed

Judgement

Ramanujam, J.—These two cases relate to the same assessee in relation to two different assessment years, 1964-65 and 1965-66. The assessee, in the course of the assessment under the Central Sales Tax Act, 1956, claimed before the assessing authority that an amount of Rs. 3, 61, 986.79 for the year 1964-65 and Rs. 33, 93, 140.48 for the year 1965-66 should not be included in the taxable turnover as the said amounts represented discount it had granted to the purchasing dealers. The claim of the assessee was rejected by the assessing authority on the ground that what has been given by the assessee to its distributors was only a rebate or bonus and not a cash discount as contemplated u/s 2(h) of the Central Sales Tax Act, 1956. The Appellate Assistant Commissioner as well as the Sales Tax Appellate Tribunal upheld the order of the assessing authority in this respect. The assessee has therefore come to this court seeking deduction of the said amounts from the taxable turnover.

2. The learned counsel for the assessee contends that the assessee is maintaining its books of account on a mercantile basis, that the amount allowed

as discount to each of the distributors is credited to their accounts at the end of the year and that such crediting is as good as cash payment. It is urged that the amount given as discount actually goes to reduce the sale price payable by the distributors, that it never forms part of the consideration of the sale and that, therefore, it is only the net amount after deducting the said discounts that can be taken to be the taxable turnover. The learned counsel placed before us the details of the discount scheme that was effective during the assessment years in question. The scheme itself is called "bonus discount scheme" and the benefit of the scheme is not extended to all the customers but only to the distributors whose net purchases of all the finished products from the assessee exceeds the target figure agreed to between the parties. The bonus discount given under that scheme is called "rebate" and the rebate to be given is subject to certain terms and conditions. The following conditions, namely, conditions 3 to 5, appear to be relevant here :

"3. Any rebate due will not be paid in cash but credited to your current account to be adjusted against further despatches to be made against your orders. Accordingly, it must not be in any circumstances regarded as an anticipated credit to contra accounts falling due before the rebate is actually credited to your account and credit note passed to you.

4. We reserve the right, at our sole discretion, to vary or cancel the scheme, at any time, in the event or circumstances arising of whatever nature, which, in our opinion, render a continuance of the scheme impossible.

5. If any difference or dispute shall arise having reference to this bonus discount scheme, or the amount payable thereunder, it shall be referred to our auditors, for the time being, whose decision must be accepted as final and binding. The object of this scheme is to co-operate with you to the fullest extent in anticipation of your turnover being increased during the current year. It is a gesture of our good faith coupled with the desire to serve you to the best of our ability."

3. From the above conditions of the scheme, it is seen that the rebate due cannot be received in cash by the purchaser, and that it does not reduce the actual sale value of the goods already purchased and paid for. The amount of rebate is credited to the customer's account and it is treated only as a reserve which the distributors can draw to make future purchases. The ultimate effect of the grant of rebate by the assessee in pursuance of this particular expansion scheme is that at the end of the stated period the customer gets credit for a specified amount depending upon the total purchases effected by him during that period and that such credit can be used only for the purchase of goods in future from the assessee. Therefore, it is clear that the rebate or bonus discount granted by the assessee does not directly or indirectly go to reduce the pre-determined or pre-paid sale price. Therefore, the amounts paid as rebate or bonus discount cannot be taken to be in reduction of the actual sale price agreed or paid for the goods purchased earlier by the distributor. As per the scheme, the

distributors whose total value of the purchases from the assessee exceeds the predetermined target figure, five per cent of the net purchase is given as bonus discount and the said five per cent is determined after the close of the agreed period. It is true that the five per cent bonus discount given by the assessee to the distributors is treated as a credit reserve for making future purchases, but it does not go to reduce the sale price already agreed or paid for during the period nor is it refunded to the distributors. What the learned counsel contends is that, in effect, it amounts to a refund of five per cent of the aggregate sale price paid by the distributor. But the amount of bonus discount credited in the distributor's account can only be utilised for purchase of the articles in future and cannot be received as cash. Therefore, the learned counsel is not right in his submission that the bonus discount credited to the distributors' account can be equated to a cash payment resulting naturally in the deduction of the aggregate of sale prices. We are of the view that the effect of the scheme is to give the distributors who are eligible to the bonus discount under the said scheme goods worth five per cent of the total purchases made during the qualifying period free of cost. We are not able to distinguish this scheme from some of the schemes adopted by the dealers as an incentive under which the customers purchasing articles for above a particular amount are given free of cost an article having a particular value. There cannot be any dispute that such schemes cannot be taken as providing a cash discount on the sale price and, in those cases, it may be the customer gets an article free of cost for making a purchase above a particular value. But it cannot be said that the price paid for the purchases made has been reduced to the extent of the value of the article given free of cost. By no stretch of imagination the gift of an article can be treated as giving a cash discount in respect of the purchase effected. Section 2(h) of the Central Sales Tax Act, 1956, which defines "sale price" so far as it is relevant is as follows :

"Sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade"

4. Unlike explanation 2 to section 2(r) of the Madras General Sales Tax Act which provides that any cash or other discount on the price allowed in respect of any sale shall not be included in the turnover, section 2(h) of the Central Sales Tax Act merely restricts the allowance to cash discount alone, and even the cash discount which is allowable should be in accordance with the practice normally prevailing in the trade. We are not, therefore, in a position to accept the contention of the learned counsel for the assessee that the amounts in this case are to be treated as cash discounts.

5. The amounts in question, if at all, may be treated as a trade discount but not as a cash discount. It is not possible to say that all trade discounts can be taken to be cash discounts merely because the discount can be converted into money value. When the Legislature has specifically used the words "cash discount according to the practice normally prevailing in the trade", it should be taken to

have been aware of the other trade discounts which may not be equated to cash discounts, and its intention was to restrict the exclusion only to the cash discounts. While "trade discount" is general, cash discount is a special category of discount and the exclusion contemplated in section 2(h) is only in relation to cash discount and not any other trade discount. A discount is generally a deduction from gross invoice price quotations or published list price, and cash discount normally denotes an amount allowed to customers either for prompt payment of the invoices amount or for payment within a certain period of time. The bonus discount given in these cases cannot, therefore, strictly come under "cash discount". The learned counsel for the assessee refers to the following passage in *Brown v. National Provident Institution* 1921 2 A.C. 222 . :

"The word "discount" is in the Oxford English Dictionary defined, in its primary meaning, as an abatement or deduction from the amount, or from the gross reckoning or value of anything, and, as used in commerce (1) is defined to mean a deduction (usually at a certain rate per cent) made for payment before it is due of a bill or account; or any deduction or abatement from the nominal value or price; (2) "the deduction made from the amount of a bill of exchange or promissory note by one who gives value for it before it is due"

and also to the decision in *Wellsted's Will Trustees, In re : Wellsted v. Hanson* 1949 Ch. 296, to illustrate as to how the word "cash" occurring in the expression "cash discount" is to be understood. Lord Greene, M.R., had expressed in the later case :

""Cash", of course, is a loose expression. Nowadays it does not mean mere cash in one's pocket, but it includes a chose in action like money or current or deposit account at the bank."

6. Relying on the above passages the learned counsel for the assessee contends that even though actual cash has not been paid by the assessee to the distributors by way of reduction in the aggregate price and only the facility of getting free of cost goods worth the amount is given, bonus discount should be taken to be cash paid in the hands of the distributors. But we are of the view that these general observations will not help us to decide the issue before us.

7. In *Ambica Mills Ltd. v. State of Gujarat* 1964 15 S.T.C. 367, the assessees had entered into a contract of sale of goods manufactured by them with several dealers and the goods were sold to them at the rates mentioned in those contracts. However, before the purchasers took delivery, there was a fall in prices and the purchasers declined to take delivery of those goods. With a view to avoid losses the assessees induced the purchasers to take delivery of the goods assuring them that a part of the losses borne by them as a result of the fall in prices would be compensated by way of rebate. After delivering the goods and giving invoices to the purchasers as per the contracts, the assessees issued credit notes in favour of the purchasers. The question arose as to whether the assessees were entitled to a deduction of the rebate amount from their total

turnover. It was held that the sale price receivable under the contracts would be the sale price agreed to between the parties and if the assessee gave remissions and therefore received less than what was receivable by them under the contracts, they would not be entitled to have their turnover calculated on the basis of the contract price less the remissions permitted by them to the purchasers and that, therefore, the assessee was not entitled to deduct the rebate amount from their total turnover. The learned Judges in that case took the view that the price payable to the assessee as valuable consideration for the sale of the goods was the original contract price and not the price actually received by them, as the offer to give the rebate was subsequent to the sale contract and the rebate promised by the vendors was given by way of credit notes, that the fact that the rebate was given by way of credit notes showed that the sale price was still the original contract price and the obligation on the part of the purchasers to pay the contract price still remained, that the arrangement under which the rebate was given was in substance and effect to induce the purchasers to take delivery of the goods by offering a remission, and that the question of remission will arise only after the contracts are performed, that is, after the goods were delivered and accepted and invoice price as per the original contract paid by the purchasers. Section 2(14) of the Bombay Sales Tax Act, 1953, which was considered in that case is practically on the same lines and section 2(h) of the Central Sales Tax Act, and deduction is allowed only for a cash discount given according to the trade practice. While rejecting the contention put forward on behalf of the assessee that sale price that would be relevant for the purpose of determining the turnover of the assessee would be the price actually received by the assessee and not the price agreed to under the contracts, the learned Judges expressed :

"Under section 2(20), turnover means the aggregate of the amounts of sale price received and receivable by a dealer in respect of a sale of goods. The sale price receivable under the contracts would be the sale price agreed to in the contracts and if the assessee gave remissions and, therefore, received less than what was receivable by them under the contracts, the sale price relevant for the purpose of "turnover" would be the price receivable by them under the contracts and clearly, therefore, the assessee was not entitled to have their turnover calculated on the basis of the contract price less the remissions permitted by them to their purchasers."

8. On the facts of the case before us, the principle of the above decision is applicable.

9. Even here the distributors have paid for the goods purchased by them as per the contract or list price and it is only at the end of the year their eligibility to the bonus discount is ascertained on the basis of the purchase turnover for the year and the same is credited in the distributors' account. Therefore, it is not possible to say that the bonus discount has been given on the sale price as such for the sale price has been duly paid for at the time of the purchase, but the bonus

discount is credited only after the end of the year and that credit could be utilised for the purpose of purchasing the goods of the assessee for the subsequent year. In *Baidya Nath Ayurved Bhawan (P.) Ltd. v. Commissioner of Sales Tax* 1970 26 S.T.C. 171 also a somewhat similar question came up for consideration. In that case, the assessee followed a scheme under which customers who purchase medicines for Rs. 200 and above were given an annuity at the rate of 2 1/2 per cent of the sale price. Later, the annuity was gradually increased to the rate of 10 1/2 per cent payable to customers who had made purchases totalling a sum of Rs. 25, 000 or over in a year. The assessee claimed that the said annuity was a cash discount and, therefore, an allowable deduction from the turnover. The revenue held that the annuity was not a discount allowed generally to every customer as deduction. The Allahabad High Court held that the definition of "turnover" in section 2(i) of the Act does not require the discount to be paid out immediately the price is paid and that the motive of the dealer in giving a discount to a customer was not relevant. The learned Judges said :

"The Legislature considered it immaterial as to what impels a dealer to pay a discount to a customer. Whatever be the reason motivating a dealer to pay a discount, it would be deductible provided it is paid on the sale price. It is thus immaterial whether a dealer pays something to a customer as an inducement for prompt payment of the sale price or with a view to push up his own sales or with a view to get the better of his competitors in the trade. In our opinion, the Additional Judge (Revisions), Sales Tax, was in error in emphasizing that the assessee was paying the annuity as a kind of reward to the customers to make heavy purchases. He was also in error in holding that since the annuity was paid not immediately the price is paid, but at the end of the year, it is not a permissible deduction. The provision does not limit its applicability to only such cases where the discount is paid at the time of the payment of the price. The only condition before a payment can be excluded from the turnover is that it should be a payment in cash or kind, and that it must be allowed on the price of any sale. The term "any sale" would not, in our opinion, mean an individual sale. It will include any aggregate of sales."

10. As the annuity has been paid in that case in cash in accordance with the scheme followed by the assessee and the rate of annuity related to the sale price, it was held that it will be a cash discount on the price allowed in respect of sales and, therefore, liable to be excluded from the assessee's turnover. Though the learned counsel for the assessee strongly relies on the above decision, we are not inclined to apply the principle in that case to the case on hand where, admittedly, no cash payment is made, but only a credit note is given to the distributor and they are enabled to purchase goods from the assessee for the said amount in the subsequent year. We are not, therefore, in a position to treat the issue of credit notes with the condition that they can be utilised for purchase of the goods in future, as cash payments. If what is given in this case is not a cash discount then a deduction cannot be allowed in the turnover u/s 2(h) of the Central Sales Tax Act. In a recent decision in T.C. No. 184 of 1969 [State of

Madras v. Jeewanlal 1929 Ltd. 1973 32 S.T.C. 649, this court has expressed that :

"It is well-known that a scheme of discount adopted by commercial circles is normally of two types - cash discount and trade discount - and a discount normally denotes a deduction from the amount due as price of goods in consideration of its being paid promptly or in advance. Trade discount is the one allowed to a customer if he places an order for a certain amount or quantity or more. Such a discount is given to encourage a buyer to buy more at a time or within a period of time. When the Legislature has specifically used the words "cash or other discount", it must be taken that it was aware of the normal trade practice in commercial circles of giving cash or other discounts."

11. In the above case we sustained the claim for deduction on the ground that the discount given at the end of the year based on the total purchases by a customer came within the expression "other discount". In these circumstances, we have to hold that the bonus discount given by the assessee cannot be called a "cash discount" so as to attract the applicability of section 2(h) of the Central Sales Tax Act which merely excludes "cash discount" and not all trade discounts.

12. The tax cases are, therefore, dismissed with costs.

13. Counsel's fee Rs. 150 in each case