(2001) 12 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No''s. 17235 of 2000 and 1308 of 2001

Indian Potash Limited APPELLANT

Vs

Assistant Commissioner (CT) and Others RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (2002) 128 STC 446

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; T. Ayyaswamy, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

R. Jayasimha Babu, J.—The definition of "turnover" in the Tamil Nadu General Sales Tax Act, 1959 lays emphasis on the consideration for the goods which are the subject-matter of sale. Price is not defined in the Act. It is defined in the Sale of Goods Act, 1930 as the money consideration for the sale of goods. The Sales Tax Act of the State does not require that for an amount to be regarded as part of the turnover, the consideration must have been paid by the actual buyer. The definition of "turnover" is in relation to the dealer who receives the consideration and the source from which that consideration is received is not required to be gone into, so long as the receipt of the consideration for the sale is clear and is established.

2. The assessing authority, having sought to tax the petitioner, who is a manufacturer of fertiliser but whose product potash, is not subject to the Fertiliser (Control) Order so far as the pricing is concerned, and who had sold the product in terms of an administered scheme framed by the Central Government which provided for payment of an amount which was described as a concession in the scheme formulated by the Central Government to the manufacturer, subject to the manufacturer agreeing to sell the fertiliser to the farmer at the

price set out in the scheme, the sum total of the two amounts being regarded by the assessing authority as a consideration for the sale, the petitioner filed an original petition, challenging the assessments made on that basis. The Taxation Special Tribunal having upheld the assessment, the assessee is now before us.

3. It was submitted by Mr. C. Natarajan, learned Senior Counsel appearing for the dealer that the matter in issue is squarely covered by the decision rendered by a three-Judge Bench of the Supreme Court in the case of Harsh Dhingra Vs. State of Haryana and Others, : That submission was made even while acknowledging that the fertiliser, the sale of which was the subject-matter of that decision was subject to the Fertiliser (Control) Order unlike the potash sold by the dealer here which is not subject to that Control Order, so far as price is concerned.

4. In that decision, at para 10, it was observed by the court that "It appears to us that it is that sale consideration, whether in cash or otherwise, which is receivable in respect of sales made by a dealer which can possibly form part of the turnover of a dealer". After noticing the fact that the subsidy under the administered scheme considered in that case, was payable at the time of removal of goods from the factory although after the company had certified that the removal is for sale for agricultural purposes, it was observed by the court at para 13 that "the subsidy so given is undoubtedly to see that the ultimate consumer gets fertiliser at a reasonable price and the manufacturer is not unduly burdened by the lower fixation of the price of fertiliser. The payment which is so made by the Government to a manufacturer cannot be regarded as a discharge of any liability or obligation by the Government towards the purchaser of fertiliser. The two payments received by the manufacturer, namely, the subsidy and the price fixed under the Fertiliser (Control) Order are independent of each other. Subsidy does not form part of the bargain between the manufacturer and the purchaser of fertiliser".

5. The court after referring to the decision rendered in the case of State of T.N. and Others Vs. Kothari Sugars and Chemicals Ltd. and Others, : thus :

"Here also there is no statutory basis for the grant of subsidy ; and the amount was received by the appellant pursuant to the administrative decision taken by the Central Government. Furthermore, the subsidy is not traceable to any agreement, direct or indirect, between the manufacturer and the purchaser of fertiliser". The court then referred to the decision of the Constitution Bench of the apex Court in the case of George Oakes (Private) Ltd. v. State of Madras [1961] 12 STC 476 regarding the scope of the term "turnover" and quoted with approval the following passage in that judgment :

"So far as the purchaser is concerned, he pays for the goods what the seller demands, viz., price even though it may include tax. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover."

6. The court then went on to state the effect of that passage in these terms :

"It is clear from the aforesaid observations that it is that amount which flows from the purchaser to the seller which alone would form part of the turnover of the seller. Any sum received de hors the contract of sale from another entity, whether it be Government or anyone else, cannot be regarded as being an amount which would form part of the sale price on which tax is payable." At para 20 of the judgment, reference was made to the case of E.I.D. Parry [2000] 117 STC 457 (SC) . Thereafter, the court emphasised the fact that there was no agreement in the case before it that any part of the price would be paid by the Government and, therefore, the amount received by the manufacturer from the Government would not form part of the sale price. The court observed that "In the present case, however, there is no agreement between the appellant and the purchasers of fertiliser for payment of any amount by the purchasers to the manufacturer in excess of the price fixed under the Fertiliser (Control) Order. Subsidy is paid to the appellant not by or on behalf of the purchasers, but is paid by the government of India for different reasons and under its own scheme and after a budgetary allocation".

7. Having regard to the pronouncement of the apex Court that the price is that which the seller receives from the purchaser and that the subsidy received by the seller from the Government in terms of an administered scheme which does not provide that the amount paid by the Government is being paid on behalf of the buyer, the amount of the "concession" received by the petitioner from the Government cannot be regarded as forming part of the price which alone can be subjected to tax under the Act.

8. Counsel also brought to the notice the decision of the apex TISCO General Office Recreation Club Vs. State of Bihar and Others, : wherein the court held that the subsidy given by the management to the canteen does not form part of the gross turnover of the canteen, as though the price fixed for the food items was below cost price, the valuable consideration for the sale of the food item was only the price so fixed.

9. Though the concept of sale was considerably widened by the definition of tax on the sale or purchase of goods incorporated in Clause (29A) of Article 466 of the Constitution, which resulted in the earlier law which had assigned to the term sale under the Sales Tax Laws the same meaning that it bore under the Sale of Goods Act, there has been no change in the other concept of consideration. Consideration is even now understood as only the amount paid or payable by the buyer which would also include the amounts payable by others on behalf of such buyer, but would exclude amounts receivable by the seller from others under a scheme to which the buyer is not a party.

10. We must, therefore, hold that the order of the Tribunal holding that the amount of concession received by the manufacturers from the Government under

the administered scheme forms part of the sale consideration, is not in accordance with the law declared by the apex Court. The impugned order of the Tribunal is set aside, and the original petition filed by the petitioner before the Taxation Tribunal shall stand allowed.

11. The learned counsel for the petitioner points out that the petitioner had paid certain amounts during the pendency of the matter before this Court under the orders made by this Court. Such amount shall be adjusted against other liabilities, if any, of the manufacturer. If there are no such liabilities, the amount shall be refunded.

Appendix I

The decision of the Tamil Nadu Taxation Special Tribunal consisting of V. RANGASAMY, J. (Vice Chairman) and P. MUTHUSWAMY (Judicial Member) in Indian Potash Limited v Assistant Commissioner (CT) and Another (O.P. No. 1216 of 2000 decided on September 22, 2000) runs as follows :

INDIAN POTASH LIMITED

v.

ASSISTANT COMMISSIONER (CT) AND ANOTHER

V. Rengasamy, J. (Vice Chairman)

Petition on being called today upon hearing both sides the Tribunal ordered as follows :

The original petition is to set aside the order of the respondent dated July 31, 2000 for the assessment year 1996-97. The petitioners are importers and dealers in fertilisers. The petitioners have been given subsidy for the sale of fertilisers and the assessing authority has levied tax on the subsidy amount also received by the petitioners from the Government. The petitioners would submit that the concession in the form of subsidy received from the Government is not taxable and therefore the levy of tax is incorrect and the order of assessment has to be set aside. But, this Tribunal has already considered this point in T.P. No. 404 of 1997 (Neyveli Lignite Corporation Ltd. v. Deputy Commercial Tax Officer, Cuddalore [1999] 115 STC 51 with regard to the taxability on the turnover relating to the subsidy granted by the Government and this Tribunal by its order dated August 3, 1998, has held that the subsidy received from the Government is also to be included in the taxable turnover. As the disputed point in this O.P. has already been considered by this Tribunal in favour of the Revenue, there is no need to go into the question once again in this original petition.

The original petition therefore, is dismissed.

And this Tribunal doth further order that this order on being produced be punctually observed and carried into execution by all concerned.

Issued under my hand and the seal of this Tribunal on the 22nd day of

September, 2000.

Appendix II

The decision of the Tamil Nadu Taxation Special Tribunal [J. KANAKARAJ (Chairman)] in Indian Potash Limited v. Assistant Commissioner (CT) (O.P. No. 22 of 2001 and O.M.P. No. 38 of 2001 decided on January 9, 2001) runs as follows :

INDIAN POTASH LIMITED

v.

ASSISTANT COMMISSIONER (CT) AND ANOTHER

J. Kanakaraj, Chairman

Petition on being called upon today hearing the both sides the Tribunal ordered as follows :

The original petition challenges the correctness of the order of the first, respondent in proceedings in TNGST 640098/97-98 dated December 21, 2000. The main dispute relates to the inclusion of the fertiliser subsidy to the tune of Rs. 17,52,22,788 at 4 per cent. We have already rendered a decision in T.P. No. 404 of 1997 dated August 3, 1998 [Neyveli Lignite Corporation Ltd. v. Deputy Commercial Tax Officer, Cuddalore] [1999] 115 STC 51 (TNTST)] upholding such inclusion of fertiliser subsidy in the taxable turnover. Consequently, the original petition and the miscellaneous petition therein are dismissed.

And this Tribunal doth further order that this order on being produced be punctually observed and carried into execution by all concerned.

Issued under my hand and the seal of this Tribunal on the 9th day of January, 2001.

