
(2001) 04 KL CK 0018
In the High Court Of Kerala
Case No : T.R.C. No. 123 of 2001

Kalpana Lamps and Components Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-04-2001

Acts Referred:

Kerala General Sales Tax Rules, 1963 — Rule 9

Citation : (2001) 2 ILR (Ker) 458 : (2006) 143 STC 666

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : K. Latha, for the Appellant; V.V. Asokan, Government Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—This T.R.C. is filed against the order in T.A No.1081/99. The relevant assessment year is 1989-90. The facts of the case are as follows:

2. The petitioner is a dealer in electrical goods at Ernakulam. The question raised in the case relates to the applicability of the discount in accordance with the regular practice under R.9(a) of the Kerala General Sales Tax Rules, 1963. The Assessing Authority while completing the assessment for the year 1989-90, disallowed the claim of deduction of special discount under R.9(a) of the Kerala General Sales Tax Rules. The Deputy Commissioner affirmed the same. The Tribunal after hearing the parties, dismissed the appeal. It is against that this revision is filed. In paragraph 4 of the order of the Tribunal, the Tribunal, the Tribunal stated as follows: "it can be seen that one of the conditions to be satisfied in order to be eligible for the deduction under R.9(a) is that the discount if allowed in accordance with the regular practice of the dealer or is in accordance with the terms of the contract or agreement entered into in a particular case. The appellant's learned representative admits that there is no contract or agreement. He has not been able to explain with proper evidence the circumstances under which special discount has been allowed by the appellant. The appellant has claimed trade discount and cash discount amounting to

Rs.34,068.89. This claim has been allowed by the assessing officer. The appellant has further claimed eduction of Rs.1,31,586.09 as special discount in the books of account. A list was filed claiming a further amount of Rs. 36,872.56 as special discount. Thus, the aggregate claim of special discount worked out to Rs.1,68,458.62. It was this special discount that was not allowed by the assessing officer. As stated earlier, the assessing officer had allowed trade discount and cash discount amount of Rs. 34,068.89". The Tribunal further held as follows: "At the time of hearing, the appellant's learned representative produced before us the books of accounts to show that credit notes had been issued for special discount and the purchasers' account has been credit with the special discount. But as stated earlier, he has not been able to explain the circumstances under which special discount has been granted to the customers. It is for the appellant to establish that the special discount is regular trade practice. It is to be noted that trade discount and cash discount has been allowed as deduction. The appellant has not been able to explain the circumstances under which special discount has been allowed to their customers."

3. Learned counsel for the petitioner brought to our notice a decision of the Supreme Court reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes,) Ernakulam v. Motor Industries Co. (53 STC 48) In the above case, the Supreme Court observed as follows:

"Under clause (a) of R.9 of the Rules all amounts allowed as discount where such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of contract or agreement entered into in a particular case have to be deducted from the total turnover in determining the taxable turnover provided the accounts of the assessee show that the purchaser has paid only the sum originally charged less the discount. In the instant case the 'service discount' in respect of which the deduction was claimed by the assessee was the additional trade discount allowed by it its main distributors (purchasers), namely, the T.V.S. group of companies, which constitute a prestigious group of commercial concerns over and above the normal trade discount in consideration of the extra benefit derived by the assessee by reason of the marketing of its goods through them. This additional trade discount is allowed in accordance with the discount is allowed in accordance with the trade agreement subject to periodical variation depending upon the cost structure and changes in market conditions. It is not disputed that there were such agreements between the assessee and the purchasers and the accounts of the assessee truly reflected the actual discount allowed to the purchasers. What is however urged by the department is that the said additional discount allowed by the assessee could not strictly be termed as discount as it was in lieu of services rendered by its main distributors....."

The Supreme Court further held thus: "We find it difficult to accept the submission made on behalf of the department. Rs.9(a) says that all amounts allowed as discount either in accoradmance with regular practice or in

accordance with agreement would be deductible from the total turnover provided they are duly supported by the entries in the accounts of the assessee. Ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can legitimately be claimed as a deduction under clause (a) of R. 9 of the Rules."

4. According to us, in the present case, the Appellate Tribunal dismissed the appeal merely on the ground that the circumstances under which the special discount has been granted to the customer. Learned counsel for the petitioner submits that the petitioner was not able to convince the Tribunal because no opportunity was given by both the Authorities, viz., the Assessing Authority. They rejected the case of the petitioner merely on the ground that the books of accounts were not produced. Hence, the petitioner prayed for an opportunity to explain the circumstances under which the special discount was granted.

5. Before parting with the case, we may state that so far as the special discount is concerned, all that the Authorities have to look into whether as a matter of fact, the petitioner received only the sum originally charged less the discount. It is the look out of the traders to see that the trade increases and it is for that purpose the trade discount is given. Hence, a person may not be able to clearly prove as to why the special discount was given. But if there has been a consistent practice of giving special discount, that has to be accepted by the Assessing Authority.

6. In the above view of the matter, we set aside the order of the Tribunal and the matter is remanded to the Tribunal for fresh consideration in accordance with law and above directions. T.R.C. is disposed of.