(1973) 01 MAD CK 0020

In the Madras High Court

Case No : Tax Case No. 74 of 1969 (Tax Revision No. 73 of 1969)

Lipton (India) Limited — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 30-01-1973

Acts Referred:

Citation : (1973) 32 STC 194

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

Bench : Division Bench

Advocate : V.K. Thiruvenkatachari, assisted by T.N.C. Rangarajan, for King and Partridge, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The only question that arises in this tax case is as to whether the. assessee is entitled to delete a sum of Rs. 3,94,543.50 from the turnover as determined by the authorities on the ground that the said sum represented the sales tax collections made. The assessee''s claim was rejected by the assessing authority and the said sum was also treated as part of the turnover and brought to charge under the Tamil Nadu General Sales Tax Act. The assessee''s appeal before the Appellate Assistant Commissioner having failed, there was a further appeal to the Tribunal. The Tribunal took the view that factually the assessee has charged an inclusive price for the goods sold by him without separating the sales tax from the contract price and that even otherwise the legal position was clear that the sales tax collected formed part of the turnover as defined under the Act. This view of the Tribunal has been challenged before us. The assessee is a dealer selling tea all over India. It is only a wholesaler and it does not sell tea in retail. It has got various retail dealers to whom the consignments of tea are sold at the wholesale rates fixed already and shown in the price list supplied to those dealers. A printed price list applicable to the wholesale dealings of the assessee, effective from 3rd May, 1964, had been produced before the Tribunal by the assessee. All the dealings between the assessee and his purchaser during the year in question were only based on this price list. This price list shows the net actual price for the tea and also the aggregate of the actual price and the sales tax payable thereon. As the rates of sales tax payable in respect of each State is different, the price list indicates the various aggregate amounts payable for the supplies made to dealers in various States. So far as the supplies made to dealers in Madras State is concerned, the sales tax payable has been shown as 5 per cent. The price list sets out separately the net price as well as the aggregate of the net price and the sales tax payable on that price in respect of various brands of tea. An extract from the price list in relation to two brands called "Connoisseur" and "Green label" is given below :

(a) Madhya Pradesh (Regd.) (Hot tea shops); (b) Punjab Govt. Depts.; (c) Andhra; (d) Madras, Assam, West Bengal; (e) Kerala; (i) Mysore; (g) Maharashtra & Punjab (General); (h) Madhya Pradesh (General), Gujarat (Regd. Dealers); (i) Gujarat (Unregd. Dealer), The above nett prices are exclusive of sales tax, terminal tax, octroi & other local taxes. The inclusive prices indicate which taxes have been incorporated. States selling at exclusive prices?Bihar, Orissa, Rajasthan, U. P., Delhi (Re-typed 4-1-65).

2. In that price list, in respect of the last two items which consist of tea sold in packets, no sales tax is charged and the actual net price for tea alone is shown as the aggregate amount payable by the purchaser. Though the price list sets out the net price as well as the aggregate of the net price and the sales tax payable thereon in respect of the various brands of tea, except the last two items, in the actual bills made out by the assessee, only the aggregate amount referred to in the price list is found. For example, in respect of the first brand of tea, "Connoisseur", the price charged in the bill so far as the supplies effected to Madras for 100 tins of 500 g. will be Rs. 1,837 (which is arrived at by multiplying Rs. 18.37 by 100 times). Admittedly, there is no specific reference to the net price and the sales tax in the bills issued, though the assessee and its purchaser knew fully well as to what is the actual price and the tax collected in respect of the sale covered by each of the bills.

3. For the assessment year 1964-65, the assessing authority aggregated all sums mentioned in the bills and treated such aggregate as the taxable turnover. The assessee''s contention was that though the bills referred to an aggregate amount, what was really charged in respect of each bill was the net contract price plus sales tax and that, therefore, the entirety cannot be taken as the price for the tea sold. The assessing and appellate authorities including the Tribunal did not accept the assessee''s plea on the ground that in the bills, an inclusive price has been charged without making any differentiation between the actual price and the sales tax and that the assessee cannot be permitted to separate the sum mentioned in the bill as the price proper and the sales tax for the purpose of enabling it to have a deduction of the tax paid.

4. The contention on behalf of the assessee before us is that the bills rendered

by it should be read along with the price list, already supplied to the purchasers and that if so read, the inclusive sum mentioned in the bill can easily be taken to represent the price proper as also the sales tax payable thereon. The learned counsel for the assessee contends that the Tribunal as well as the lower authorities have erred in completely overlooking the price list, which formed the basis of the bargain between the assessee and his purchasers. The learned counsel does not dispute the fact that in cases such as the last two items mentioned in the price list, where the assessee has charged an inclusive price for the goods sold by him without any indication as to whether he had intended to pass on the sales tax to his purchaser, it can be taken that the inclusive price will come under the definition of the turnover. But, what the learned counsel submits is that in the peculiar facts of this case, where all sales are based on the price list supplied to the purchasers, the purchaser is clearly made aware of the fact as to what portion of the billed amount represents the net price for the tea and what portion represents the sales tax and that the Tribunal is not right in its finding that the amount billed for did not. in fact include the sales tax.

5. We find that the learned counsel is right in this submission that the Tribunal has overlooked the printed price list which the assessee has supplied to the various purchasers and that, all the sales have been effected by the assessee only in pursuance of that price list. In the face of that price list, it is difficult to accept the Tribunal''s finding that the billed amount did not factually include the sales tax at all. We are definitely of the view that though the relevant bills referred to an inclusive amount, it is on the basis of a clear understanding between the assessee and his purchasers that the said amount will represent (1) the sale price proper and (2) the sales tax thereon, the break-up of which has already been set out in the price list supplied to the purchasers. Therefore, on the facts of this case, it appears to us to be clear that the assessee clearly intended to pass on the sales tax to his purchaser, though in the bill, the assessee has not separately shown the sales tax payable by it.

6. The learned counsel for the assessee contends that the true legal position as emerging from the various decisions of this court under the Tamil Nadu General Sales Tax Act and of other courts is that the sales tax collected separately can never form part of the "turnover" as defined in the Act. The learned Government Pleader, on the other hand, contends that the sales tax collections, whether they are shown separately in the bills or not will clearly fall within the definition of the "turnover" in the Act and reference is made to some other decisions of this court. However, we feel it is not necessary for us to go into the various decisions to decide one way or the other the question whether the sales tax collected will form part of the "turnover" as defined in the Act. Even assuming the contention of the revenue that the sales tax collected will always form part of the "turnover" as defined in the Act, the Board of Revenue by way of executive instructions, having directed the exclusion of sales tax collections made as such from the taxable turnover, the assessee, in our view, is entitled to relief. The relevant instruction of the Board of Revenue is set out below:

S. O. 13.?Sales tax collected as such, by a dealer from his customers should not be included in the total turnover of the dealer.

7. In view of the instruction issued by the Board of Revenue, it is not disputed by the revenue that if sales tax has been collected separately apart from the contract price in the bills, the dealer is entitled to have the sales tax excluded from his total turnover. As a matter of fact, the authorities below refused to exclude the sales tax amounts from the total turnover in this case only on the ground that the sales tax had not been separately shown in the bills. But we have already expressed our view that the bills rendered by the assessee have to be read along with the printed price list, which gave the break-up figures of the actual price for the goods and of the sales tax payable thereon. If the sale bills are read along with the price list, it is clear that the assessee had treated the sales tax separately from the actual price of the goods and had intended to pass on the tax to the purchaser. In this view, the assessee should be taken to have substantially complied with the conditions set out in S. O. 13, which provides that if the sales tax collected is separately shown, the dealer will be entitled to the exclusion of that amount.

8. We, therefore, hold that the assessee is entitled to the benefit of the direction given in S. O. 13. The tax case is, therefore, allowed and the order of the Tribunal is set aside and the turnover in dispute will stand excluded from the taxable turnover. There will be no order as to costs.

