

**(1981) 07 MAD CK 0061**

**In the Madras High Court**

**Case No :** Tax Case No. 787 of 1977 (Revision No. 200 of 1977)

Mehar Baba Brick Works

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

**Date of Decision :** 30-07-1981

**Acts Referred:**

**Citation :** (1983) 53 STC 141

**Hon'ble Judges :** Sethuraman, J;N.V. Balasubramanian, J

**Bench :** Division Bench

**Advocate :** C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

## Judgement

Sethuraman, J.—This revision petition has been filed against the order of the Sales Tax Appellate Tribunal dated 14th April, 1971, for the assessment year 1969-70.

2. The assessee carries on business in the manufacture and sale of bricks. The total and taxable turnover for the relevant assessment year was fixed at Rs. 2,76,967.37 and Rs. 2,04,892 respectively by an order dated 23rd October, 1970, and on that order, the assessee was also granted exemption from tax in respect of transport charges, that is, charges in transporting of bricks from the brick kiln to the site of the purchasers. The business place of the assessee was inspected by the Intelligence Wing, Group IX, Madras, on 31st October, 1974. It was found from the report of the Intelligence Wing that in all the contracts the delivery of goods were made at the purchasers' site and that the freight charges collected by the dealer represented only the pre-sale charges. A notice for proposed assessment was duly served on the assessee and the assessee's objection was that the purchasers were at liberty to transport bricks in their own lorries or in any hired lorries, that only when they wanted the service of the assessee for removing the goods to the site, the assessee transported the goods either in hired lorry or in their own lorry and collected the transport charges. The assessee did not produced any written agreement between the seller and the

buyer with respect to delivery charges. He therefore revised the turnover by including the transport charges as part of the taxable turnover. The Appellate Assistant Commissioner dismissed the appeal and the assessee appealed to the Tribunal. The Tribunal, after discussing the facts came to the conclusion that it is not possible to interfere with the findings of the sales tax authorities that the transport charges were pre-sale charges. It is this order of the Tribunal which is now subjected to (sic) in the present revision.

3. The learned counsel for the petitioner contended that the assessee had charged the freight charges separately and that there were bills which were subsequently traced, making out the assessee's case. It was also submitted that the charges were not pre-sale charges and therefore had not to be included in the turnover. For the department, the submission was that though the assessee had shown the amount separately in these bills, which had not so far been produced, the amounts were really the sale price of the goods including the transport charges and that, therefore, they were liable to be taxed.

4. Only at the time of hearing, before us, the learned counsel for the petitioner brought to our notice certain sale bills, which according to him, mention the freight charges separately. The assessee had not produced them at any earlier stage and we do not find it possible to admit the same at this stage, especially when the assessee had failed to produce the same at any earlier stage of the proceedings nor had any convincing explanation for not producing them earlier. The learned counsel for the assessee referred us to the Madras Bricks (Control of Price and Supply) Order, 1965, made under the Defence of India Rules, 1952. He relied on clause 5 of the said Order which prohibits the sale of bricks to any person at a price higher than the price fixed in Schedule II in the said order. Schedule II prescribes different prices for different varieties of bricks. We do not find that the order was relied on at any earlier stage of the proceedings. The authorities had thus no opportunity to examine whether such a control order was in force and if so whether the scheduled price was adhered to in the present case.

5. The Tribunal had pointed out that from the method of entries made in the register of sales tax, it could be inferred that the assessee had treated the total amount received as a single sale amount. Even in the reply to the pre assessment notice, the assessee did not controvert the postulates in the notice, and did not state that the delivery of the goods were only at the vendor's site. The notice had pointed out that in all the contracts the delivery of the goods were made only at the parties site and as such expenses would be deemed to have been incurred as pre-sale charges for delivery at the site of the purchase. In the absence of any denial, the Tribunal rightly proceeded on the basis that the statement in the pre-assessment notice was correct and that the assessee had only taken its goods for delivery at the party's site, the price including the transport charges. We do not find any scope for interference with the order of the Appellate Tribunal, and therefore, the revision petition is dismissed. But under the circumstances, there will be no order as to costs.