(1997) 02 KAR CK 0042

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 73 of 1995

M/s. Sarda Vegetable Oil Limited, Bellary — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 6
Karnataka Sales Tax Rules, 1957 — Rule 6(4)(F)

Citation : (1999) 47 KarLJ 338

Hon'ble Judges : B. S. Sreenivasa Rao, J;S. Rajendra Babu, J

Judgement

S. Rajendra Babu, J.-The question that arises for consideration in this case is whether the freight charges could be included in the sale price while purchasing paddy husk used by the assessee by way of fuel. In the course of the assessment order, it is noticed that the assessee had purchased paddy husk and paid freight worth Rs. 11,49,187-60 and it is reflected in the ledger and he has failed to pay the tax on the same which is payable on this turnover as freight paid by the purchaser is part of the sale price. Objections were filed to the notice issued on this basis. It was contended by the dealer that the freight on husk which was sought to be considered as taxable turnover has nothing to do with the material cost and is an independent payment made to the transportor without recording any finding as to the place where the same was completed, the Assessing Authority concluded that the price of the husk and the transportation charges should be together considered as sale price. The Appellate Authority also affirmed this view by stating that for the purchase of husk in determining their purchase price of the husk always the freight charges have to be included without making any further discussion in the matter.

2. When the matter was carried to the Tribunal, the Tribunal also held that there is no documentary material adduced to prove that the transportation charges have been paid by the appellant/petitioner independently to the transporters and in this context, relied upon the decision in State of Karnataka v Gwalior Rayons Silk Manufacturing (Weaving) Company Limited, (1984)57 STC 81 (Kar.).

3. The learned Counsel appearing for the petitioner contended that the goods had been transported after the sale was completed at the sellers place and entire transportation charges were incurred by way of a post-sale expenditure and not a pre-sale expenditure, but it could not be included as part of the sale price as held in the decision in Dyer Meakin Breweries Limited v State of Kerala, (1970)26 STC 248 (SC).

4. The learned High Court Government Pleader supported the view taken by the Tribunal and submitted that in the absence of any material adduced by the dealer, it must be held that the expenditure incurred by the dealer and transporting goods is a pre-sale expenditure and therefore forms part of the sale price. In the decision in Gwalior Rayons Silk Manufacturing (Weaving) Company Limited''s case, supra, it has been held that the property in the goods passed to the assessee at the depot where the goods were delivered and not at the place where the goods commenced movement, the transport charges incurred for bringing the goods at the depot form part of the purchase price. But on the other hand, if the sale has been completed at the depot itself, and the transportation charges are incurred, thereafter it becomes a post-sale expenditure. This precise question was considered by this Court in Premier Breweries Limited v State of Karnataka, 1984 Kar. L.J. (Tri. Supp.) 35. As was noticed therein the real question to be considered is as to the place where the sale was completed, whether at the place where the husk was collected or at the customers place where it was delivered subsequently. If the goods were sold at the sellers point, there would be every justification for the assessee to claim deduction and that it was formed part of the sale. The charges therefore could properly be considered as post-sale activities. Thus the orders made by the Assessing Authority, First Appellate Authority and the Tribunal are set aside and the matter stands remitted to the Assessing Authority for fresh consideration in the light of this order and in accordance with law.

5. Petition allowed accordingly. The findings recorded on other questions remain undisturbed.