
(1977) 08 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. No. 359 of 1975

Mukesh Trading Co.

APPELLANT

Vs

The Commissioner, Sales Tax and Another

RESPONDENT

Date of Decision : 03-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) 23 MPLJ 21 : (1978) MPLJ 21 : (1978) 41 STC 330

Hon'ble Judges : R.L. Murab, J; C.M. Lodha, J

Bench : Division Bench

Advocate : K.S. Shrivastava, for the Appellant; R.S. Bayhai, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, J.

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the correctness of the order dated 10th December, 1973, passed by the Assistant Sales Tax Officer, Gwalior and the order dated 7th April, 1975, passed in revision by the Divisional Deputy Commissioner, Sales Tax, Gwalior, upholding the order of the Assistant Sales Tax Officer dated 10th December, 1973.

The petitioner deals in industrial gas. While assessing his turnover for the year 1970-71, i. e., from 1st April, 1970, to 31st March, 1971, the Assistant Sales Tax Officer (who will hereinafter be referred to as the assessing authority) included Rs. 8,223.30 purporting to be the forwarding charges in the sale price and charged sales tax over it. The petitioner had a right to go in appeal against this order u/s 38(1) of the M.P. General Sales Tax Act, 1958 (which will hereinafter be referred to as the Act). He had also the remedy by way of second appeal to the Board of Revenue u/s 38(2) of the Act and, if he was aggrieved by the order passed by the Board, he could have got the case stated to this court u/s 44 of

the Act, but he chose an easy remedy of filing revision before the Divisional Deputy Commissioner u/s 39 of the Act. The Divisional Deputy Commissioner, as already stated above, upheld the order of the assessing authority. Aggrieved by the order of the Divisional Deputy Commissioner upholding the order of the assessing authority, the petitioner has approached this court under Article 226 of the Constitution.

Learned counsel for the petitioner has urged that forwarding charges do not form part of sale price as defined in the Act and, consequently, no sales tax should have been levied on them. In support of his contention, he has relied on Commissioner of Sales Tax, M.P. v. Maratha Syndicate Pvt. Ltd. 1970 R.N. 235, Birla Jute Manufacturing Co. Ltd. v. Commissioner of Sales Tax, M.P. [1972] 29 S.T.C. 639 and Commissioner of Sales Tax, M.P. v. Gill & Company Ltd. 1974 R.N. 1.

In order to determine the question canvassed before us, it may be useful to reproduce here the definition of the term "sale price" contained in Section 2(o) of the Act, which reads as under :

(o) "sale price" means the amount payable to a dealer as valuable consideration for the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof other than the cost of freight or delivery or the cost of installation when such cost is separately charged and the expression "purchase price" shall be construed accordingly ;...

The contention of the learned counsel for the petitioner is that the sum charged by the dealer represents the cost of delivery of the gas cylinder and has been shown separately in the bills and, consequently, it cannot come within the definition of the term "sale price". In support of this argument, learned counsel has placed sole reliance on the fact that forwarding charges have been shown separately in the bills by the dealer and, therefore, in the absence of evidence to the contrary, it must be presumed, according to the learned counsel, that the forwarding charges were being paid by the consumer separately and did not constitute part of the sale price.

We may state here that no evidence whatsoever was placed before the assessing authority nor before the Divisional Deputy Commissioner to show as to what were the terms of sale to the consumers in respect of supply of gas by the dealer.

In Dyer Meakin Breweries Ltd. v. State of Kerala [1970] 26 S.T.C. 248 (S.C.), the appellant-company which manufactured liquor in U.P. and Haryana used to transport the goods from its distilleries to its place of business in Ernakulam and sold them there. When selling liquor to the customers, the dealer made out separate bills for ex factory price and for freight and handling charges. The dealer claimed that the amount charged for freight and handling charges incurred by it in transporting the goods from the distilleries to the warehouse at

Ernakulam should be deducted under Rule 9(f) of the Kerala General Sales Tax Rules, 1963, in determining its taxable turnover. Rule 9(f) of the Kerala General Sales Tax Rules, 1963, provides that in determining the taxable turnover, the amount specified as freight and/or charges for packing and delivery shall be deducted from the total turnover of the dealer. Their Lordships held that the freight and handling charges for packing and delivery could be deducted provided they were found to be incidental to the sale and when they were specified and charged for by the dealer separately (sic) and expenditure incurred for freight and packing and delivery charges prior to the sale. It was observed that Rule 9(f) seeks to exclude only those charges which are incurred by the dealer either expressly or by necessary implication for and on behalf of the purchaser after the sale when the dealer undertakes to transport the goods and to deliver the same or when the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale.

Now, in the present case, it appears that the forwarding charges were incurred by the dealer before sale and to make the goods available to the intending customer at the place of sale. The finding of the assessing authority is that the forwarding charges are a part of the sale price "vikraya rashi ka ansh hai". The Divisional Deputy Commissioner has observed while disposing of the revision that the only evidence which the assessee produced in support of his contention consists of the copy of a bill in which forwarding charges have been shown separately. He has further held that on the basis of the bill alone the forwarding charges cannot be deducted from the sale price. We cannot go behind these findings of fact and must hold that the petitioner has not placed any evidence on the record to show that according to the terms of agreement between him and his consumers the forwarding charges did not form part of sale price and he used to pay the same on behalf of the consumers after sale.

In Commissioner of Sales Tax, Madhya Pradesh v. Anwar Khan Mahboob Co. [1956] 7 S.T.C. 197, the Supreme Court held that if the parties to the sale transaction agree that the cost of freight, or of delivery or of installation should be paid for separately, that cost should not form part of the sale price. If, on the other hand, the parties agree that the sale price should be all-inclusive, i. e., that the purchaser must bear all the costs up to the stage of installation of the goods purchased and on the responsibility of the seller, all those charges should be included in the sale price. Thus, the determining factor is not the terms in which the bill is made but the terms of the actual contract between the parties. This authority, therefore, negates the argument of the learned counsel for the petitioner that the bill in the present case is sufficient for drawing an inference that the forwarding charges did not form part of the price. In our opinion, it was incumbent upon the assessee to have proved the terms of the contract between him and his consumers. As already pointed out above, the assessee failed to do so and the finding to which the assessing authority and the Divisional Deputy

Commissioner have come is that the forwarding charges did constitute part of the sale price.

In our view, the two Supreme Court authorities referred to above conclude the matter so far as the petitioner is concerned. However, we have looked into the authorities relied upon by the learned counsel for the petitioner and find that they do not support the contention raised by him.

There is yet another aspect of the case to which we must advert though in a passing manner. What has been called into question before us is the order of the assessing authority and also the order passed by the Divisional Deputy Commissioner, Sales Tax, in revision. No point of law has been referred to us under the provisions of the Act by the Tribunal. The scope of this petition under Article 226 of the Constitution is limited and unless we find any apparent error of law or jurisdictional error in the impugned orders, the petitioner is not entitled to invoke the extraordinary jurisdiction of this court. As we do not find any such error, we are unable to grant any relief to the petitioner.

In the result, we dismiss the petition with costs. The costs of the opposite party are assessed at Rs. 200, if certified. The security amount may be refunded after deducting the costs.