

**(1981) 10 MAD CK 0012**

**In the Madras High Court**

**Case No :** Tax Case No. 778 of 1977 (Revision No. 194 of 1977)

R. Balakrishna Brick Works

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 22-10-1981

**Acts Referred:**

Tamil Nadu General Sales Tax Rules, 1959 — Rule 6

**Citation :** (1982) 49 STC 251

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

**Bench :** Division Bench

**Advocate :** T.S. Ramu, for the Appellant; Additional Government Pleader, for the Respondent

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## **Judgement**

Balasubrahmanyam, J.—The assessee in this case carries on the business of manufacture and supply of bricks from his kiln. For the

assessment year 1974-75 the assessee was assessed to sales tax. The turnover determined by the assessing authority included transport charges

which were separately charged by the assessee as against his customers. It was claimed by the assessee that he was entitled to a deduction in respect

of such charges, in accordance with rule 6 of the Tamil Nadu General Sales Tax Rules, 1959. The assessing authority did not accept this

contention, but included the amount of transport charges as part of the taxable turnover.

2. When the matter was taken up in appeal before the Tribunal, that body came to the same conclusion as the assessing authority. The assessee

has brought the present revision, being aggrieved by the decision of the Tribunal.

3. The Tribunal's order gives the reasons why the assessee was not considered entitled to a deduction in respect of the transport charges. The

relevant finding of the Tribunal can be extracted from its order as follows :

In the instant case before us, though the transport charges had been charged for separately, it is found that the contract is for delivery of the bricks

at the site of the buyer for a price including transport charges. The Brick Control Order refers to merely transport charge at a fixed rate but when

the contract is for the supply of the brick at the buyer's site, the transport charges incurred therein, though charged for separately, are to be taken

as pre-sale charges liable to tax.

4. The reasoning of the Tribunal seems to be that since the contract between the assessee and the customer was for delivery at the work-spot of

the customer, the assessee was not entitled to a deduction under rule 6(c), notwithstanding that the transport charges are charged for separately.

We do not see any rational basis for this conclusion. The question of separately charging for transport will not arise at all in a case where the

contract between the parties is for delivery of the bricks at the site of the kiln. The question of transport charges will crop up only in a case where

the contract between the parties involves delivery of the bricks at the work-spot of the customer. It is only in that context that the application of

rule 6(c) becomes pertinent. The rule, indeed, is meant only for such cases. The clear intent of rule 6(c) is that wherever transport charges are part

of the overall consideration, but are separately charged for by the dealer, without including them in the price of the goods sold, the dealer would be

entitled to a deduction in respect of such charges in the computation of his taxable turnover. There is, therefore, no meaning in the suggestion that

the contract in this particular case was for delivery, not at the kiln-site at the work-spot of the customer. The Tribunal has altogether misunderstood

and misapplied the provisions of rule 6 of the Rules.

5. A decision of a Bench of this Court in *State of Tamil Nadu v. Parry and Company* [1976] 38 STC 122 was relied on by the Tribunal in support

of its conclusion. The determination of this Court in that case was that the assessee was not entitled to deduction in respect of transport charges.

The decision, however, can be explained by the factual finding on which it was based. The learned Judges in their judgment made mention of the

fact that apart from the bargain not being for charging sale price separately and transport charges separately, the bills also did not show how the

freight was charged and from where the goods were supplied. The bills showed only charges at a uniform rate of Rs. 73.04 per metric tonne and it

was not related to the actual freight paid with reference to particular consignments. In these circumstances, the learned Judges held that the

assessee in that case was not entitled to a deduction under rule 6. In the course of their judgment they observed that the mere act of bifurcating the

total consideration into so much for sale price and so much for transport charges would not meet with the requirements of rule 6. With this

observation we respectfully agree. As we earlier observed, the conclusion in the case decided by the learned Judges was principally based on the

inference that the separation of the figure of transport charges was done merely as a matter of bill-making routine, bifurcating into two sub-heads,

what was really a single consideration for the sale, there being actually no separate charging of freight, as such, in any of the transactions.

6. The facts in the present case, however, are different. As the Tribunal itself has clearly found in its order, the assessee in this case separately

charged for freight in every transaction. The only reason which the Tribunal advanced for negating the claim for deduction was that the contract of

sale, as such, was not for delivery of the bricks at the dealer's site, but for delivery at the work-spot of the customer or other place designated by

the customer. This, as we said, is not based on a proper understanding of the provisions of rule 6.

7. In the result, this revision is allowed and the order passed by the Tribunal is set aside. There will be a direction to delete the transport charges

from the taxable turnover. The assessee will have his costs from the State. Counsel's fee Rs. 250.

8. Petition allowed.