

(1981) 12 MAD CK 0037

In the Madras High Court

Case No : Tax Case No"s. 308 and 309 of 1979 (Appeal No"s. 11 and 12 of 1979)

S. Vadivel Mudaliar and Sons and Another

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 23-12-1981

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 6

Citation : (1983) 52 STC 189

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

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Balasubrahmanyam, J.—These two tax cases arise under the Tamil Nadu General Sales Tax Act, 1959. Although the assesseees in the two

cases are different, the problem raised in these appeals from the Board's common order is similar. Indeed, the Board had dealt with both these

cases as raising the same issues.

2. The point arises out of a claim for deduction by the assesseees for freight charges which were included in their turnover. Both the assesseees carry

on business in minerals. They sell the minerals to their customers fixing the price ex mine, but undertake to transport the minerals to the particular

destination which is pointed out by the customers concerned. The assesseees claimed that they were entitled to deduct the cost of freight from the

total turnover, in accordance with the provisions of rule 6(c)(i) of the Tamil Nadu General Sales Tax Rules, 1959. This rule provides that freight,

when specified and charged for by the dealer separately, without including the

freight in the price of the goods sold, will have to be deducted from the total turnover of a dealer for the purposes of arriving at the taxable turnover. This claim, however, was not granted by the assessing authority.

But the Appellate Assistant commissioner, on appeal, accepted the assessee's claim on the basis of consideration of the terms of the bargain between the assessees and their customers. The Appellate Assistant Commissioner pointed out that the prices charged for by the assessees were at ex mine rates. He also observed that while the buyers were apparently prepared to meet the cost of transport, the assessees themselves, in point of fact, had met the cost of freight and recovered it from the buyers. It was also observed that the cost of freight was separately charged for by the assessees. Having regard to all these circumstances, the Appellate Assistant Commissioner held that rule 6(c)(i) applied and the assessees were entitled to the deduction which they claimed.

3. These orders of the Appellate Assistant Commissioner, however, were taken up by the Board of Revenue for suo motu revision. After hearing the assessees the Board reversed the decision of the Appellate Assistant Commissioner and restored the orders of assessment in which the freight charges were disallowed.

4. In these appeals by the assessees, the correctness of the common order passed by the Board is challenged. We have perused the order of the Board. We are not in a position to understand what the Board was deriving at and what precisely was the basis of its decision to set aside the order of the Appellate Assistant Commissioner. Without trying to unravel any thread of reasoning from the order, we think, we can decide these appeals by having regard to the findings of facts which the Board itself had recorded in its order. In paragraph 6 the Board observed that there was nothing in the record to show that delivery of the minerals by the assessees was ex mine. The Board also stated that the contacts entered into between the assessees and their buyers showed that though the price was ex mine, the sales were concluded only at the buyers' sites.

5. On the above two findings the question of the deduction claimed by the assessees under rule 6(c)(i) does not brook further argument. We have earlier restated the provisions of rule 6(c)(i). The rule only requires that freight should be charged, but should not be included in the price of the

goods sold. If the freight is charged for separately apart from the price of the goods, then, the assessee would be entitled to a deduction therefore

in the computation of the taxable turnover. The findings of the Board to which we have just made reference, show clearly that the contract between

the parties was to sell minerals at a price ex mine, but for delivery not at the mine site but at the buyer's site. While the Board had observed that

there were no separate agreements between the parties, one for sale of material and the other for transport charges, the Board nowhere in its order

says that the freight was not separately charged for. However, it is implicit in the finding of the Board that the prices and the transport charges were

billed for, and charged for, separately. It follows, therefore, that the rule must be applied to hold that the assessee is entitled to the deduction of

the transport charges.

6. The Board has made a point about the assessee not charging the full amount of freight from the customers, but only an ad hoc sum not having

any relation to the actual freight involved in individual cases. We do not think that the charging of an ad hoc freight rate would make it any the less a

separate charge for freight. It might be that in given cases the charge on account of freight to which the buyers were rendered liable may be either

more or less than the actuals. But so long as the freight was not part of the actual price, and so long as it was not charged for anything other than

freight the fact that the buyer was either undercharged or overcharged for freight will not affect the claim for deduction. In an inquiry where the

ascertainment of correct freight is one of the matters to be determined it would be quite relevant to go into the question as to what precisely is the

amount of freight properly chargeable and what amount of freight was actually charged for in any given transaction. But in a matter of deduction

under rule 6(c)(i) all that the assessee need establish is that whatever he had charged his customer for by way of freight was charged separately

and that it did not form part of the price of the goods with respect to which the freight was charged. It does not matter whether, as between the

dealer and the customer, the freight was either overcharged or undercharged. That is a consideration which is wholly irrelevant for deciding the

question deduction under the rule.

7. For all the above reasons, we hold that the Board was not justified in reversing

the orders of the Appellate Assistant Commissioner. We

accordingly allow the appeals, set aside the order of the Board and restore the orders of the Appellate Assistant Commissioner in both the cases.

The assesseees will be entitled to their costs. Counsel's fee Rs. 250. One set.