
(1991) 10 MAD CK 0050

In the Madras High Court

Case No : Tax Case No. 1244 of 1982 (Appeal No. 84 of 1982)

Seshasayee Industries Limited

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1991) 10 MAD CK 0050

Hon'ble Judges : A.S. Anand, C.J.;Kanakaraj, J

Bench : Division Bench

Advocate : N. Varadarajan, for the Appellant; V.M.G. Varadarajan, Government Advocate (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The assessees, M/s. Seshasayee Industries Limited, Vadalur, have filed this appeal against an order of the Joint

Commissioner of Commercial Taxes, dated February 22, 1982, passed in exercise of the suo motu powers of revision.

2. For the assessment year 1976-77, the assessees reported a total and taxable turnover of Rs. 4,82,50,889.47 and Rs. 4,49,75,338.50

respectively, under the Central Sales Tax Act, 1956 (hereinafter called "the Act"). The assessees claimed exemption of Rs. 32,75,550.97. The

accounts of the assessees were called for by the assessing authority and on checking the same, various defects were noticed. After noticing the

defects, the assessing authority determined the total and taxable turnover at Rs. 4,82,70,134.54 and Rs. 4,51,39,090.48 respectively. This

included a sum of Rs. 1,49,295.02 relating to "transit insurance charges" collected by the assessees. Aggrieved, the assessees preferred an appeal

before the Appellate Assistant Commissioner disputing the inclusion of Rs.

1,49,295.02, representing the "transit insurance charges", in the taxable turnover. The Appellate Assistant Commissioner agreed with the assesseees and found that insurance charges had been collected separately in accordance with the terms of the contract and agreement between the buyer and the seller and that the said amount did not form part of the taxable turnover. The Appellate Assistant Commissioner accordingly deleted this amount from the taxable turnover and allowed the appeal. The Joint Commissioner was not satisfied and proposed to revise, in exercise of the suo motu powers of revision, the order of the Appellate Assistant Commissioner. Notice was issued to the assesseees and their objections were invited. After considering the objections and hearing the parties, the Joint Commissioner confirmed the proposal. It was found by the Joint Commissioner that the "transit insurance charges" had been taken into consideration by the assesseees while arriving at the sale price and, therefore, they formed part of a consideration of the sales. The assesseees have questioned that order through this appeal.

3. The only question, therefore, with which we are concerned in this appeal is, whether the transit insurance charges collected by the assesseees in respect of the goods could be included in the taxable turnover of the assesseees, under the Act ?

4. With a view to answer the question posed above, it is appropriate that we take note of the definition of "sale price" as occurring in section 2(h) of the Act. The said definition reads as follows :

"Sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to

the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of

or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;

5. A plain reading of the section shows that "sale price" comprises the amounts payable to a dealer as consideration for the sale of any goods,

inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than the

cost of freight or delivery or the cost of installation in cases where such cost is separately charged and also excluding any sum allowed as cash

discount, according to the practice normally prevailing in the trade. Thus, the expenses incurred towards cost of "freight or delivery" have been expressly excluded from the definition of "sale price" u/s 2(h) of the Act. There is no specific exclusion relating to "cost of insurance charges". The appellate authority noticed that the assessee had incurred the expenses for transit insurance and that in certain cases the sale price was inclusive of insurance charges and the insurance charges had not been reflected separately. In those cases, the insurance charges had been merged with the sale price of the goods and the assessee had remitted the sales tax on the overall sale prices (including the insurance charges). Reference was made by the Appellate Assistant Commissioner to various transactions where the insurance charges had been merged in the sale price of the goods and sales tax remitted on the overall sale price. The appellate authority also noticed that where "transit insurance" was undertaken at the request of the buyers, and the charges for the transit insurance were separately shown in the invoices and claimed from the buyers on the basis of the actual amount spent on insurance charges, the sale price could not be deemed to have included the transit insurance charges. The appellate authority referred to the fact that the assessee furnished certificates to the purchasers to the effect that the amount of insurance charges collected from the purchasers had been paid over to the insurance companies on their behalf. The disputed amount of Rs. 1,49,295.02 relates to collection of such insurance charges, which was separately collected by the assessee, according to the terms and contracts of the agreement between the buyers and sellers and are the actual charges which were received from the buyers. This amount was held really not to form part of the taxable turnover and hence, liable to be granted exemption from tax. The Joint Commissioner, however, noticed that though insurance charges had been collected separately from the customers, only to the extent of the charges paid to the insurance companies, the same was done as per the terms and conditions of the contracts and, therefore, there was an implied contract or agreement between the parties to collect insurance charges also as part of the sale price of the goods. The mere showing of freight charges and insurance charges separately was inconsequential.

6. Learned counsel for the appellant submitted that wherever the assessee insured the goods and included the insurance charges as part of sale

price, they remitted the sales tax on the inclusive price to the department, but where the insurance charges were collected from the purchasers at

their request to insure the goods in transit and were separately shown in the invoices, the charges could not be said to be included in the sale price

and, therefore, the disputed amount of Rs. 1,49,295.02 was required to be exempted from the taxable turnover. Argued the learned counsel that

the cost of freight or delivery, in certain cases, would include the cost of transit insurance of the goods and where such insurance was undertaken in

accordance with the terms of the contract or agreement between the buyer and the seller, the cost of insurance of the goods had to be excluded

while calculating the sale price. Reliance in support of this submission has been placed on Deputy Commissioner of Sales Tax v. McDowell & Co.

Limited [1980] 46 STC 79 . A Bench of the Kerala High Court, while dealing with the definition of the expression ""turnover"" under the Act,

noticed that the turnover would exclude the cost of freight or delivery in cases where such cost is separately charged. The Bench then, while

dealing with T.R.C. Nos. 55 to 59, 62 and 104 of 1977 [Deputy Commissioner of Sales Tax v. McDowell & Co. Ltd. [1980] 46 STC 79 ,

specifically dealt with the question as to whether the charges for transit insurance should also be excluded or not. The Bench opined thus :

..... We agree with the counsel for the assessee that the cost of freight or delivery should include the cost of insurance of the goods, when general

insurance had become so much of a part of the commercial activity of this country and the risk and insecurity attendant on the delivery of the goods

is so great as to make insurance of the goods an almost necessary part of the bargain in the transactions relating to them. On these grounds, we

uphold the decision of the Tribunal on this aspect of the matter.

7. This judgment was cited before the Joint Commissioner also. The Joint Commissioner, however, did not follow the law laid down therein,

observing that in the case in the Kerala High Court, the question whether insurance charges in respect of the goods during transit have to be

excluded from determination of the sale price or the taxable turnover ""was not an issue before them"". We fail to understand as to how the Joint

Commissioner arrived at this finding. The specific issue in a group of tax revision cases also related to the exclusion of the cost of insurance of the

goods for determining the turnover and, therefore, the Bench had applied its mind to that specific issue. Indeed, it was while considering the

definition of "turnover" and not the definition of "sale price" that the Kerala High Court rendered the finding, but that would not make any difference

for determination of the question before us. The Kerala High Court was influenced by the fact that general insurance had become so much of a part

of commercial activity in the country that the freight charges should be deemed to include the transit insurance charges. We are in agreement with

that view subject, of course, to a rider that the transit insurance charges would be deemed to be included in the freight charges unless there was a

contract or agreement to the contrary. Transit insurance charges, therefore, form a part of the freight charges unless the same are treated, under the

terms of the contract or agreement, as part of the price of the goods.

8. Coming now to the facts of the instant case, it is noticed from a perusal of the record that where the agreements between the assesseees and the

buyers were inclusive of insurance charges, the assesseees have made out relevant invoices which did not exhibit the insurance charges realised

separately. The insurance charges in such cases have apparently merged in the sale price of the goods and even if freight charges were shown

separately, no benefit could be obtained by the assesseees with regard to insurance charges and indeed, in fairness to the assesseees, it must be

recorded that they did not claim any exemption in respect of the insurance charges where the same had been merged in the sale price of the goods.

Sales tax was charged on the consolidated price of the goods and remitted to the department. There is no difficulty with regard to those cases.

However, so far as the disputed amount of Rs. 1,49,295.02 is concerned, it relates to insurance charges which were not only collected separately

but also shown separately in the invoices. These charges were not included in the sale price of the goods. Terms and conditions of the agreements

between the buyers and sellers, some of which have been brought to our notice, expressly show the intention of the parties with regard to the

insurance charges and the nature of the transaction. In the order placed by M/s. Switchgear Manufacturing (P) Limited, on January 15, 1976, the

direction with regard to insurance is in the following terms :

Kindly insure the materials on our behalf up to destination stores. The insurance

charges may please be included in your invoices for payment at actuals.

Again, with regard to the order by M/s. Bharat Isolators Manufacturing Company, dated May 13, 1976, the stipulation between the parties as

regards insurance is in the following terms :

Insurance shall be undertaken by you at an extra cost [i.e., at the rate of 2 per cent. (two per cent)] and include the insurance charges in our bills.

The material may be despatched directly to the destination as per the despatch instruction given from time to time on "freight paid" basis and

include the freight charges in our bills.

It was in view of these express stipulations between the parties that the insurance charges incurred by the assessees were claimed in the invoices

separately, since insurance had been done at the risk, instance and at the cost of the buyers. Indeed, the expression ""sale price"" within the meaning

of section 2(h) of the Act, excludes cost of ""freight or delivery"" and the cost of ""installation"" from the sale price, where such cost is charged

separately and the ""transit insurance"" charges have not been specifically excluded from the expression ""sale price"" under the Act, but, considering

the nature of the transaction and the purpose for which transit insurance is undertaken, it would imply that the expression ""freight charges"" would

take within its ambit and scope the ""transit insurance charges"" also and the same would be excluded from the sale price where they are separately

charged and paid for by the purchasers. Like the freight charges which, according to the terms and conditions of the agreement, are payable by the

purchaser, the cost of transit insurance also is payable by him as a part of the expenses involved in freight or delivery of the goods at the destination

of the purchaser. From a perusal of the terms and conditions for delivery of the goods between the parties, we find that there is nothing to suggest

that the insurance charges form a component of the sale price charged. The insurance charges in respect of the goods sold by the assessees do not

form part of the sale consideration and is not a charge or expense incurred by the assessees in respect of the goods sold either at the time of or

before the delivery of such goods, because transit insurance was effected and charges therefore were paid on behalf of the purchasers and the

same were claimed separately in the invoices. The assessing authority allowed

exemption from tax in respect of the freight charges collected by the assesseees when they had been separately included in the invoices, but no exemption was granted in respect of the transit insurance charges. We do not see any reason why exemption should not have been granted in respect of the transit insurance charges when exemption from tax was allowed in respect of the freight charges. The Appellate Assistant Commissioner, by a correct analysis of various invoices and the agreements between the parties, came to the conclusion that the disputed amount of Rs. 1,49,295.02 related only to insurance charges, which were collected separately, according to the terms and conditions of the agreement between the parties and that the said amount did not form part of the taxable turnover and was entitled to be exempted from tax liability, because transit insurance would be deemed to form part of the freight charges, unless there is a contract to the contrary as also where insurance charges have been included as a component of the sale price. The Joint Commissioner clearly fell in error in holding to the contrary. The opinion of the Joint Commissioner that since the dealers had themselves admitted their liability to pay tax on such insurance charges, which they had included in the sale price and on which sales tax had been collected, it would imply that even in respect of those bills where freight charges and insurance charges were shown separately and not included in the composite sale price, the assesseees would not be entitled to exemption, is not at all sustainable for, by no stretch of imagination can such charges be construed to form a part of the sale price of the goods. In the admitted facts and circumstances of the case, the order of the Joint Commissioner of including the insurance charges amounting to Rs. 1,49,295.02 in the taxable turnover was clearly erroneous and cannot be sustained. We, accordingly, set aside the order of the Joint Commissioner and restore that of the Appellate Assistant Commissioner. We, however, leave the parties to bear their own costs.

9. Appeal allowed.