

(1982) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 59 and 60 of 1978 and 47, 48 and 49 of 1980

Shaw Wallace and Co. Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-11-1982

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 2(1)

Citation : (1983) 54 STC 58

Hon'ble Judges : Punnayya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—In these five tax revision cases, a common question is urged by Mr. S. Dasaratharama Reddi, the learned counsel for the assessee-petitioner. Though more than one question is raised in these tax revision cases, ultimately only one question is argued by the learned counsel, i.e., whether the freight charges separately mentioned in the sale invoice is includible in the turnover of the assessee or not ?

2. The relevant facts are : The assessee is a firm manufacturing fertilizers. It has got its sales depots at several places in the State. In the sale invoices made out by these depots, freight charges are included and collected from the purchasers. The contention of the assessee before the first assessing authority was that the freight charges are liable to be deducted under rule 6(g) of the Andhra Pradesh General Sales Tax Rules (hereinafter referred to as A.P.G.S.T. Rules.) In other words the contention was that inasmuch as they constitute post-sale charges, they are liable to be deducted under the said rule. This was negatived by the first assessing authority, as also by the first appellate authority. The matter then came up before the Sales Tax Appellate Tribunal. Under its judgment dated 9th December, 1977, the Tribunal disposed of only two appeals, viz., in respect of the assessment years 1971-72 and 1972-73. When the three appeals relating to the

three subsequent assessment years 1973-74, 1974-75 and 1975-76 came up before the Tribunal at a later point of time, it followed its earlier decision and negated the assessee's claim. The Tribunal in the first instance held that the freight charges cannot be deducted under rule 6(g) of the A.P.G.S.T. Rules, and secondly that these expenses cannot be held to be post-sale charges, for the reason that the "appellants have not produced any evidence before us to show either by way of contract or agreement that they were post-sale expenses and the transport was arranged by the seller in pursuance of an understanding with the buyer".

3. So far as the decision of the Tribunal on the first point is concerned, viz., the applicability of rule 6(g), the learned counsel for the assessee does not dispute its correctness. He only stressed the second contention, which was urged as alternate contention before the Tribunal.

4. The learned counsel for the assessee has placed before us one of the invoices. It shows that the net price of the fertilizer sold is Rs. 2,193.00. Thereupon sales tax is added at 3 per cent and tax on tax at 3 per cent and further quarter per cent tax as "turnover tax". The amount under these three heads is Rs. 65.79, 1.97 and 5.66 respectively. Thereafter freight charges in a sum of Rs. 139.50 are added at the rate of Rs. 46.50 per tonne and the total of all these amounts is Rs. 2,405.92 as per the invoice. We must observe that besides the sale invoice, the assessee had not placed before the authorities any other material, in the nature of contract or agreement or any other material, to establish his contention. It is only on the basis of the invoice, Mr. Dasaratharama Reddi argues that the freight charges must be treated as post-sale charges.

5. We are of the opinion that this contention cannot be accepted. So far as the principle is concerned, there can be little quarrel about it. The test in such cases is, whether particular charges are incurred prior to the sale or subsequent to the sale ? In other words, the enquiry ought to be at what point has the sale taken place. Any expenses incurred by the assessee before the sale must be borne by him and any expenses incurred after the point of sale must be borne by the customer. Of course again there may be cases, as in the case of Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh, , where there is a specific stipulation between the parties that the amount representing freight would not be payable as part of the consideration for the sale of goods, but by way of reimbursement of the freight, which was payable by the purchaser, but in fact disbursed by the dealer. This position is made clear by the decision of the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, . (The judgment of the Supreme Court begins at page 23.) The Supreme Court held that the sale price as defined in the Rajasthan Sales Tax Act, includes excise duty as well as sales tax, and then proceeded to deal with several types of cases, where the freight charges were included in the sale price. The first illustration given by the Supreme Court is the case where a dealer transports goods from his factory to his place of business and sells them at a price, which is arrived at after

taking into account the freight and handling charges incurred by him in transporting the goods. In such a case the amount of freight and handling charges included in the price would obviously be the sale price and it is immaterial whether the freight and handling charges are shown separately in the bill or included in the total sale price. It was observed that in such a case the freight and handling charges are expenses incurred by the dealer in making the goods available at the place of sale. The second example is, where a dealer, instead of transporting the goods from his factory, or his place of business and selling them there, enters into a contract of sale f.o.r. destination railway station. It was observed that in such a case, the seller undertakes the obligation to put the goods on rail and arrange to have them carried to the destination railway station at his expense and that the delivery of the goods to the purchaser is complete only at the destination railway station and till then the risk continues to remain with the dealer. It was observed that the purchaser is concerned only to pay the agreed price for the delivery of the goods at the destination railway station, which price may include the freight and that even if there is any fluctuation in the amount of freight or any risk, it is he look out of the dealer only. In such a case, it was observed, it makes little difference, whether the dealer pays the freight and charges the agreed price to the purchaser or obtains railway receipt on the basis of "freight to pay" and requests the purchaser to pay the freight at the time of taking delivery of the goods from the railway at the destination railway station, giving the purchaser credit for the amount of freight against the agreed price. The court observed that the latter method is only a convenient mode of paying the agreed price. The third situation envisaged by the Supreme Court is, where a contract of sale is not f.o.r. destination railway station, but the price along is so. In such a case the situation would be that the delivery is complete when the goods are put on rail and thereafter they are at the risk of the purchaser. In other words, it was explained that in such a case the railways become the agent of the purchaser and the freight in such a case would be payable by the purchaser. The case in Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh, , in view of clause (4) and (16) of the terms of contract concerned there, was said to fall in this category. The test, in the words of the Supreme Court, is, "was the contract one for delivery at destination railway station or was it a contract in which delivery to the purchaser would be complete as soon as the goods are put on rail at the place of despatch ?"

6. Applying the principle of the said decision to the case before us, the enquiry should be whether the contract was to deliver at the place of the customer or was the delivery complete at the premises of the assessee. Unfortunately in this case, the assessee has not placed any material before the authority to show that the delivery was complete or that the sale was complete, as it is called, at his premises. The only material produced by him is the sale invoice and it clearly includes the freight charges in the total sale price mentioned therein which total sale price was collected from the customer. In such a case it would be more reasonable to presume, as has been done by the sales tax authorities and the

Tribunal, that the sale was complete only when the goods reached the destination indicated by the customer. The sale invoice, in our opinion, does not show in any manner, that the sale was complete or the delivery was complete, at the premises of the assessee, not is there any material to show that the case is one which falls within the principle decided in Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh, .

7. According to the definition of "turnover" in clause (s) of section 2(1) of the A.P.G.S.T. Act, turnover means the total amount set out in the bill of sale as the consideration for the sale or purchase of goods, including any sums charged by the dealer, for anything done in respect of the goods sold at the time of or before the delivery of the goods and any other sums charged by the dealer, whatever may be the description, name or object thereof.

8. It has been held further by the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, that the test is what is the consideration passing from the purchaser to the dealer for the sale of the goods and that it is immaterial to inquire as to how the amount of consideration was arrived at and whether it includes excise duty or sales tax or freight. The only relevant question is as to what is the amount payable by the purchaser to the dealer as consideration for the sale and not as to what is the net consideration receivable by the dealer, the court observed.

9. In the absence of any evidence produced by the assessee to show that the delivery or sale was complete before the transport of the goods, or at the premises of the assessee, and also in the absence of any evidence to show that there is any express stipulation between the parties that the freight charges were to be borne by the purchaser, as in the case of Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh, we see no reason to take a different view from that of the Tribunal.

10. Mr. Dasaratharama Reddi then sought to argue that the definition section 2(1) (s) must be read down in the light of entry 54 in List II of the Seventh Schedule to the Constitution. His contention is that the State Legislature is competent to levy sales tax only upon sale of goods and not on anything else. His argument is that if the freight charges are included in the turnover and tax is levied thereon, the levy of tax on freight charges would not be a levy of sales tax on sale of goods and therefore it was beyond the competence of the State Legislature.

11. However it is well-settled that in a tax revision case, the constitutionality of a statute cannot be gone into. Once the constitutionality of a statute cannot be gone into in these tax revision cases and the definition of "turnover" is taken as it is defined in the Act, there is no scope for the argument that the definition should be read down to exclude freight charges. On the same parity of reasoning excise duty and sales tax cannot also be included in turnover. But the Supreme Court has, in more than one decision, rules that the definition of "sale price" or "turnover" (couched in similar language in other enactments) includes excise

duty, sales tax and freight charges among others. It is therefore not possible for us to curtail or cut down the ambit of definition with reference to entry 54 in List II of the Seventh Schedule to the Constitution. That would, in our opinion, amount to striking down a portion of the definition which we cannot do in these tax revision cases.

12. The tax revision cases therefore fail and are accordingly dismissed, but in the circumstances of the case there shall be no order as to costs. Advocate's fee Rs. 750 consolidated.