
(2016) 02 GAU CK 0036
In the Gauhati High Court
Case No : Revision Petition No. 12 of 2015

Sri Basant Kumar Agarwal @ Mittal

APPELLANT

Vs

State of Assam & Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Assam Entry Tax Act, 2008 — Section 2(f)

Citation : (2016) 3 GauLJ 15 : (2016) 3 GauLR 464 : (2016) 5 NEJ 380

Hon'ble Judges : Hrishikesh Roy and Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : O. P. Bhati, Advocate, for the Appellant; S. Chetia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.(Oral) - This is a revision application under Section 81 of the Assam Value Added Tax Act, 2003 (hereinafter referred to "VAT Act"). The challenge here is to the order dated 8.5.2014 (Annexure-E), whereby the appeal of the dealer against the decision of the Commissioner of Taxes, Assam was dismissed by the Assam Board of Revenue.

2. The dealer contends that the component of transport subsidy should be excluded while determining the import value of coal, for the purpose of assessment of Entry Tax. But the Revenue Authorities found that the petitioner paid the transportation charge on coal and therefore this expenditure incurred by the dealer must be included in the turnover, for assessment to tax. Thus, the contention made to the contrary by the dealer for excluding the transportation cost while determining the turnover for the levy of Entry Tax was rejected.

3. We have heard Mr. O. P. Bhati, learned counsel for the petitioner and Mr. S. Chetia, learned standing counsel, representing the respondents.

4. The learned counsel for the petitioner contends that when the dealer gets reimbursement of freight cost under the Transport Subsidy Scheme of 1971, the

said component should be excluded from determining the turnover of the dealer for levying the Entry Tax. In support of his contentions the petitioner relies on *Neyveli Lignite Corporation Ltd. v. Commercial Tax Officer, Cuddalore* and another, reported in (2001) 9 SCC 648, where the Supreme Court held that amount which flows from the purchaser to the seller would alone form the part of the turnover. But in the case cited by Mr. Bhati the Assessing Officer had included the subsidy received from the Government as part of the turnover, in addition to the purchase price at which the goods were bought. In the context of the additional inclusion to purchase price, the Supreme Court opined that the sum received outside the contract of sale, cannot be regarded as part of purchase price on which tax is payable.

5. But in the present case, admittedly the petitioner had paid the freight charge on import of coal and through the impugned assessment, the revenue authorities included the freight charge to the total price, to determine the turnover of the dealer for the purpose of assessment to Tax. In *E.I.D. Parry (I) Ltd v. Assistant Commissioner of Commercial Taxes*, reported in (2000) 2 SCC 321, the Supreme Court opined that transport subsidy was part of the consideration and it can be regarded as the component of the purchase price. In *E.I.D. Parry (I)* (supra) the Apex Court was called upon to consider as to whether the planting subsidy paid to the sugarcane-growers can be said to be a part of the price of the sugarcane purchased by them which can legitimately be included in the turnover of the appellants therein and whether the transport subsidy/charges in excess 30 km paid by the appellants to third party lorry-owner for transporting sugarcane can be aggregated with the price of the sugarcane and included in the turnover of the appellants. In this context, the Apex Court answered at paragraphs 18 and 21 of the judgment, which are reproduced hereunder for ready reference:

"18. What transpires from the above case-law is that the amounts paid by way of consideration by the purchaser to the seller of goods in pursuance of the contract of sale can legitimately be regarded as purchase price while calculating the turnover for the purposes of sales tax legislation. What can legitimately be brought to sales tax or purchase tax is the aggregation of the consideration for the transfer of property. All the payments should have been made pursuant to the contract of sale and not de hors it. Any amount paid as ex gratia payment or as an advance cannot be the component of the purchase price and therefore can not legitimately be included in the turnover of the purchasing dealer. Whether one of the components of the purchase price goes to the coffers of the seller or not will not cease to be so if it is necessary for completing the same. Thus the total amount of consideration for the purchase of goods would include the price strictly so called and also other amounts which are payable by the purchaser or which represent the expenses required for completing the sale as the seller would ordinarily include all of them in the price at which he would sell his goods. But if the sale price is fixed statutorily then the only obligation of the purchaser under the agreement would be to pay that price only and no other amount can be included in the purchase price even if the same is paid by the purchaser to

the seller."

"21. For the same reasons we hold that the transport subsidy was a part of the consideration for which sugarcane was sold by the sugarcane-growers to the appellants. Though the agreements between the parties provided for delivery by the sugarcane growers at the factory gate and though the transport charges paid by the appellants were not to the sugarcane-growers but to third party lorry-owners, they were made for securing regular supply of sugarcane as per the requirements. Though payments were made at the instance of Government of Tamil Nadu they also became a part of the implied agreement between the appellants and the sugarcane-growers. They were not post-sale expenses. Those amounts were paid to ensure scheduled delivery of sugarcane. The sale of sugarcane became complete only thereafter. Those payments can be regarded either as payments made on behalf of the sugarcane-growers or payments made in modification or variation of the earlier agreements entered into by the sugarcane growers for selling sugarcane. In either case they could legitimately be regarded as the components of the sale price as the sellers would have otherwise included those amounts in the sale price."

6. A similar view was taken in *Ponni Sugars (Erode) Ltd. v. Dy. Commercial Tax Officer*, reported in (2005) 13 SCC 102 where the Apex Court opined that transport subsidy form part of the consideration for the purchase and therefore, the same can be included in the turnover for assessment to tax. In this case the question for consideration was as to whether the transport charges are excludible from the taxable turnover for the purpose of purchase tax under the Tamil Nadu General Sales Tax Act, 1959. At paragraph-9 of the judgment reference was made to a Full Bench decision of the Madras High Court which was called upon to decide between conflicting decisions of the High Court on the aspect as to whether transport subsidies were includible in the purchase turnover of the Sugar Mills which were purchasing sugarcane under the Tamil Nadu General Sales Tax Act, 1959. The Apex Court on a final analysis found that the transport subsidy formed part of the consideration for the purchase of sugarcane from the sugarcane-growers. This view can be had from paragraph 15 of the said judgment.

7. The Entry Tax is leviable on the import value of the specified goods under Section 3 of the 2008 Act and when we look at the definition of import value under Section 2(f), it is clear that when freight charge is paid or payable, the same is to be included in the total price for determining the turnover for the purpose of levying Entry Tax.

8. In view of above and having regard to the final pronouncement on the law point by the Apex Court in *E.I.D. Parry (supra)* and *Ponni Sugars (Erode) Ltd. (supra)*, we are of the considered opinion that no question of law arise for consideration in the present revision application as the law is well settled on what should be the purchase price upon which levy of Entry Tax is to be made.

9. Furthermore, the refund of transport subsidy to the petitioner is only by way of an incentive and such refund in our considered opinion will not warrant exclusion of the freight charge paid by the petitioner, to determine the purchase price for the purpose of assessment to tax.

10. In view of the above conclusion, we find no merit in this revision petition and accordingly, the same stands dismissed. No costs.