

(1971) 09 SC CK 0011
In the Supreme Court Of India
Case No : Civil Appeal No. 2300 of 1968

State of Madras

APPELLANT

Vs

The Cement Allocation Co-ordinating Organisation

RESPONDENT

Date of Decision : 01-09-1971

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3

Citation : (1971) 2 SCC 587 : (1972) 1 SCR 548 : (1972) 29 STC 114 : (1972) 4 UJ 51

Hon'ble Judges : K. S. Hegde, J;A. N. Grover, J

Bench : Division Bench

Advocate : Bishan Narain and A.V. Rangam, for the Appellant; S.T. Desai and B.P. Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Hegde, J.—This appeal by certificate arises from the decision of the High Court of Madras in Writ Petition No. 637 of 1967. The petitioner before the High Court is M/s. Cement Allocation Coordinating Organization, a selling Agent of Dalmia Cement (Bharat) Ltd. That Organization will be hereinafter referred to as the 'assessee'. On February 28, 1967 the Deputy Commercial Tax Officer, Lalgudi wrote to the assessee to show cause why its turnover relating to the price of the packing materials used in packing the Cement sold should not be included in its taxable turnover. The assessee instead of showing cause against that proposal moved the High Court of Madras under Article 226 of the Constitution to direct the assessing authority not to include that turnover in its taxable turnover. The High Court entertained that Writ Petition. It would have been proper if the High Court had directed the assessee to put forward its case before the authorities under the Madras General Sales Tax Act 1959. Now that the High Court had entertained the Writ Petition and gone into the merits of the case, it serves no useful purpose to refuse to go into the merits of case.

2. In its Writ Petition the assessee had definitely averred that it was functioning

as the agent of Dalmia Cement (Bharat) Ltd. and its rights are the same as that of its principal. It was further alleged in the Writ Petition that when cement was sold in packages, the packing charges were separately shown in the bills issued to the buyers. On these grounds the assessee claimed that it is entitled to deduct those charges from its total turnover in view of Rule 6(c) of the Rules framed under the Madras General Sales Tax Act, 1959. The plea of the assessee that it was the Agent of Dalmia Cement (Bharat Ltd. during the relevant period was not denied in the return filed by the State of Tamil Nadu. It was also not denied that the assessee had shown the packing charges separately in the bills issued by it to the purchasers of cement. On the basis of those admitted facts the High Court came to the conclusion that the assessee is entitled to deduct from its total turnover the turnover relating to the packing charges if its principals would have been entitled to deduct the same had they sold the cement in question directly, The operative portion of the High Court reads thus:

The petition is allowed but with no costs. We may, however, add that the order we have made in this petition does not in any way prevent the assessing authority from examining the question, after giving a fresh notice, whether the principal himself would be disentitled to exclusion of the value of the packing materials in determining the chargeable turnover.

3. It is against this order that the State of Madras has come up in appeal to this Court.

4. The charging Section under the Madras General Sales Tax Act, 1959 is Section 3. It brings to all taxable turnover of a dealer as defined in the Act. The expression 'dealer' is defined in Section 2 (g). Because of Section 2(g)(iii) a Commission agent is also considered as a 'dealer' for the purpose of the Madras General Sales Tax Act, 1959. Hence the taxable turnover of a Commission agent is liable to be brought to tax. The only other provision that we need refer is Rule 6 of the Rules framed under the Act. That rule reads:

The tax or taxes u/s 3, 4 or 5 shall be levied on the taxable turnover of the dealer. In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer:

..... (c) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of the goods sold:

(i) freight; and

(ii) charges for packing, that is to say, cost of packing materials and cost of labour and other such like services.

5. The first question that we have to consider is whether an agent of a principal who is also a dealer under the Act is entitled to the same rights as his principal has under the Act. Under the general law the agent merely represents his

principal. Therefore, while functioning within the scope of the agency he can exercise all the rights which his principal could have exercised. In fact, in the case of an ordinary agency, the agent merely acts for his principal. This provision must hold good even under the Madras General Sales Tax Act unless otherwise provided therein. The fact that for the purpose of that Act an agent is considered as a dealer does not alter the legal position in other respects. Excepting to the extent otherwise provided in the Madras General Sales Tax Act the agent must be held to represent his principal while dealing with the goods of his principal; he merely steps into the shoes of his principal. He is entitled to the same exemptions as his principal would have got had he dealt with the concerned goods himself. Agents are considered as dealers under the tax so as to effectively enforce the provisions of the Act. But that provision does not convert an agent into a principal for all purposes under the Act.

6. But the question whether the principal is entitled to the exemption claimed has been left open by the High Court. That question has to be decided after going into the facts of the case. How that question should be decided has been laid down by this Court in *Hyderabad Deccan Cigarette Factory v. The State of Andhra Pradesh* STC 17 p. 624. Therein this Court has ruled that it is for the department to establish that a particular turnover constitutes a part or whole of the taxable turnover. For establishing that fact the department may call upon the assessee to produce before it such material which the assessee has in his possession or under his control. The department before coming to the conclusion that a particular turnover is taxable must take into consideration all the facts and circumstances of the case. On the question whether certain packing charges are exempt from tax, the authorities under the Act before deciding that question have to take into consideration the various aspects mentioned in that judgment. This is what the Court observed therein:

In the instant case, it is not disputed that there were no express contracts of sale of the packing materials between the assessee and its customers. On the facts, could such contracts be inferred? The authority concerned should ask and answer the question whether the parties in the instant case, having regard to the circumstances of the case, intended to sell or buy the packing materials, or whether the subject-matter of the contracts of sale was only the cigarettes and that the packing materials did not form part of the bargain at all, but were used by the seller as a convenient and cheap vehicle of transport. He may also have to consider the question whether, when a trader in cigarettes sold cigarettes priced at a particular figure for a specified number and handed them over to a customer in a cheap card-board container of insignificant value, he intended to sell the cardboard container and the customer intended to buy the same? It is not possible to state as a proposition of law that whenever particular goods were sold in a container the parties did not intend to sell and buy the container also. Many cases may be visualized where the container is comparatively of high value and sometimes even higher than that contained in it. Scent or whisky may be sold in costly containers. Even cigarettes may be sold in silver or gold caskets. It

may be that in such cases the agreement to pay an extra price for the container may be more readily implied. In the present case, if we may say so with respect, all the authorities, including the High Court, dealt with the question as a question of law. without considering the relevant factors which would sustain or negative any such agreement.

7. The determining factor in all such cases is whether the buyer buyer directly or by implication agree to buy and the seller to sell, separately the packing material. In this case we are not called upon to go into that question. We merely indicated the approach as a matter of guidance.

8. The question for decision by us lies within a narrow compass and that question is whether the assessee is entitled to claim exemption in respect of packing charges if his principal could have claimed it had it sold the cement itself. On that question, we agree with the view taken by the High Court.

9. For the reasons mentioned above, this appeal fails and the same is dismissed. No costs.