**(1997) 08 MAD CK 0052**

**In the Madras High Court**

**Case No :** Tax Case No. 2008 of 1986 (Revision No. 558 of 1986)

State of Tamil Nadu APPELLANT

Vs

Colgate Palmolive (India) Limited RESPONDENT

**Date of Decision :** 18-08-1997

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 2, 8A, 8A(1)

**Citation :** (1997) 08 MAD CK 0052

**Hon'ble Judges :** R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

**Bench :** Division Bench

## Judgement

Jayasimha Babu, J.—The State has come up in revision against the order of the Tribunal, which has held that the assessee is entitled to the

benefit of the formula set out in section 8-A(1)(a) of the Central Sales Tax Act, 1956.

2. The Tribunal and the authorities below have found that the invoice issued by the assessee to its customer includes the statement that the Central

sales tax will be absorbed by the assessee. The invoice does not show a break up of the sale price and the amount collected by way of Central

sales tax.

3. It was submitted by the Government Advocate that the assessee had not established that it was collecting the tax from each buyer and therefore,

it was not entitled to the benefit of section 8-A(1)(a) of the Act and the formula set out therein.

4. The contention for the Revenue is itself sufficient to hold that the assessee is entitled to the benefit claimed. ""Sale price"" is defined in section 2(h)

of the Act as the amount payable to a dealer as consideration for the sale of any goods, less the amount of deductions mentioned in the definition.

Turnover"" is defined in section 2(j) of the Act as the aggregate of the sale prices received and receivable in respect of the goods subject to tax

under this Act.

5. Section 8-A deals with the determination of the turnover. Section 8-A(1)(a) reads as under :

Section 8-A : Determination of turnover. - (1) In determining the turnover of a dealer for the purposes of this Act, the following deductions shall

be made from the aggregate of the sale prices, namely :-

Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in

accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

Explanation. - Where the turnover of the dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part

of the turnover liable to a different rate of tax.

6. In the instant case, the sale price set out in the invoice is known. It does not show any amount separately as the Central sales tax the buyer is

required to pay on the price mentioned in the invoice, to obtain the goods. The note in the invoice that the Central sales tax will be absorbed by the

assessee, makes it clear that the sale price included the amount of the tax, thought not separately shown. By making the statement that the tax

element is included, the assessee was precluded from claiming the amount of the tax from the buyer at any subsequent stage.

7. The assessees are entitled to the benefit of the formula set out in section 8-A(1)(a) unless their case falls within the ambit of the proviso. That

proviso can be invoked by the Revenue when it is shown that the amounts so collected had been otherwise deducted from the aggregate of sale

prices. It is not the case of the Revenue that the turnover reported by the assessee was not the aggregate of the sale prices mentioned in the

invoice, but a lesser figure. If the sale price mentioned in the invoice was the basis for determining the turnover, and that sale price was inclusive of

the tax element, the assessee would be entitled to the benefit of the formula set out in clause (a) of section 8-A(1).

8. Under the Act, the liability for the payment of tax is on the dealer who is the assessee. The Act does not prohibit the assessee from passing on

 

the burden of the tax to the buyers; nor is there any compulsion on the assessee to transfer the burden of tax to the buyer. If the assessee collects a

specified sum from its buyer as the consideration for the sale, and adopts that figure as the basis for computing its turnover, and the amount

received, if any, towards sales tax is neither shown nor deducted from the turnover so computed, the assessee is entitled to the deduction provided

for in clause (a) of section 8-A(1). The object of this provision is to enable the assessee to deduct the amount of tax required to be paid by it, and

to the extent computed under the formula, from its turnover before arriving at the taxable turnover. As it is not the case of the Revenue that the

assessee had deducted the amount of tax from the aggregate of the sale prices, before seeking the benefit of the application of this formula, it must

be held that the assessee is entitled to the benefit of the deduction permitted u/s 8-A(1)(a) of the Act.

9. We do not see any error of law in the order of the Tribunal. The Revision petitions, is, therefore, dismissed. No costs.

10. Petition dismissed.