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**(1995) 08 MAD CK 0027**

**In the Madras High Court**

**Case No :** Tax Case No. 179 of 1986 (Revision No. 89 of 1986)

State of Tamil Nadu

APPELLANT

Vs

Lloyd Sales Corporation

RESPONDENT

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**Date of Decision :** 08-08-1995

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 2

Tamil Nadu General Sales Tax Act, 1959 — Section 38

**Citation :** (1995) 08 MAD CK 0027

**Hon'ble Judges :** Venkatachalam, J;Abdul Hadi, J

**Bench :** Division Bench

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## **Judgement**

1. Only a very short question is involved in this Tax Case (Revision) No. 179 of 1986 filed by the Revenue u/s 38(1) of the Tamil Nadu General

Sales Tax Act. The question is whether the freight and forwarding charges incurred by the assessee to the extent of Rs. 13,531.85 are includible in

the term ""sale price"" as defined u/s 2(h) of the Central Sales Tax Act and hence taxable under the said Act.

2. One finding of the Tribunal is as follows :

The Revenue has not made out any case to the effect that the freight and forwarding charges formed part of the sale price of the goods.

The term ""sale price"" u/s 2(h) is defined as follows :

Sale price"" means the amount payable to a dealer as consideration for the sale 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.

Thus, it consists mainly of two parts. The first part speaks of the amount payable to a dealer as consideration for the sale of any goods. In other

words if the abovesaid freight and forwarding charges form part of the sale price of the goods sold, those charges are certainly chargeable to tax

and in which case, the question whether they are separately charged and billed or not, is not material. The latter part of the abovesaid definition of

the term ""sale price"", is an inclusive clause which says that the sale price would include any sum charged for anything done by the dealer in respect

of the goods at the time of or before the delivery thereof. In other words, such sum even though, may not be a part of the sale consideration and

therefore coming under the first part of the definition, yet, it would be within the definition of the term ""sale price"" and chargeable to tax, but with

one qualification. That qualification is found in the exclusion clause in the abovesaid inclusive clause which runs as follows :

Other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged"".

Even though a particular item of expenditure incurred by the assessee in relation to the sale of goods comes within the abovesaid inclusive clause,

yet if that item of expenditure represents the cost of freight or cost of delivery, it would not come within the definition if such cost is separately

charged. In the present case, the Tribunal has also found thus :

The appellant invariably showed the freight charges and forwarding charges separately in the bills.

So, we can take it that the said freight and forwarding charges have been separately charged. So, even assuming that the present case comes

within the latter part of the said definition of the term ""sale price"" in view of the abovesaid exclusion clause beginning with the words ""other than"",

the above referred to freight and forwarding charges cannot be charged to tax.

3. No doubt, the Tribunal also finds in another sentence thus :

.....We hold that inasmuch as the price was only ex-works and the freight and forwarding charges were shown separately in the invoice...

This may show that the freight and forwarding charges did not form part of the price. In other words, this observation of the Tribunal may be

inconsistent with the other observation of the Tribunal pointed out above, namely, ""Revenue has not made out any case to the effect that the freight

and forwarding charges formed part of the sale price of the goods"". But even assuming that the abovesaid freight and forwarding charges did not form part of the sale price of the goods, since the goods falls under the latter part of the abovesaid definition and particularly the abovesaid exclusion clause, therein, necessarily the abovesaid freight and forwarding charges should be excluded from the term ""sale price"" and hence not chargeable to tax. The abovesaid legal principles have also been explained in our judgment in the case of State of Tamil Nadu v. Cauvery Cotton Trading Company in T.C. No. 70 of 1989 dated July 10, 1995 [See 1996 101 STC 19 Mad supra]. Therefore, the decision arrived at by the Tribunal cannot be interfered with. Accordingly, this tax case (revision) by the Revenue, is dismissed. No costs.

4. Petition dismissed.