

(1976) 03 MAD CK 0017

In the Madras High Court

Case No : T.C. No. 246 of 1971 (Revision No. 145 of 1971)

State of Tamil Nadu

APPELLANT

Vs

Poly-Ene General Industries

RESPONDENT

Date of Decision : 11-03-1976

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1976) ILR (Mad) 255 : (1977) 39 STC 254

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : K. Govindarajan, for the Additional Government Pleader No. I, for the Appellant; S.V. Subramaniam, for Subbaraya Aiyar, Padmanabhan and Ramaswami, for the Respondent

Judgement

Sethuraman, J.—The assessee, manufacturers of polythene tabular film, bags, sheets, etc., had reported a total and taxable turnover of Rs.

13,93,916.72 for the assessment year 1967-68. The assessing authority determined the total and taxable turnover at Rs. 14,60,108.34 and Rs.

14,09,260.92 respectively. Included in the said turnover was Rs. 43,742.91, which represented rebates allowed by the assessee to its purchasers.

2. In order to appreciate the circumstances under which this rebate has been given, a sample of the correspondence between the assessee and its

purchasers has been placed before us. For instance, in the letter dated 13th November, 1967, addressed to M/s. National Tobacco Co. of India

Ltd., the assessee acknowledged an enquiry from the said company and quoted for the polythene liners 48""X30""X53"" X 500G. These liners are

used by the tobacco manufacturers for the purpose of packing tobacco so as to keep the tobacco free from the effects of humidity, etc. The price

quoted is Rs. 7.25 per liner ex factory with sales tax at 3 per cent against C form or otherwise at 10 per cent. It is unnecessary to refer to the other

terms except to the "remarks" in the said letter, which run as follows:

On receipt of your order, we shall apply for an import licence for the requisite quantity of raw material. If this is issued and import has been made,

we shall allow you a rebate of about 50 paise per liner.

3. The National Tobacco Co. accepted this offer by its letter dated 17th November, 1967 and placed an order for 3,900 polythene liners. It

enclosed a cheque for Rs. 7,000 as advance and at the end of the letter noted as follows:

We note that a refund of 50 paise per liner will be given to us on receipt of import licence for raw materials against this order.

4. The assessee claimed that this amount represented cash discount allowed by it to its buyers and that it was therefore an allowable deduction u/s

2(h) of the Central Sales Tax Act. The assessing as well as the appellate authorities rejected this claim. When the matter came before the Tribunal,

the Tribunal while holding that the disputed turnover did not represent cash discount, nevertheless allowed the claim of the assessee on the ground

that the price to that extent had been reduced and that the said amount did not form part of the price at all.

5. Aggrieved by this order, the State has come on revision contending that the order of the Tribunal was incorrect in so far as it held that the

amount did not form part of the sale price. For the assessee the submission was that the rebate did not form part of the price and that in any event

the amount represented only cash discount so that it was allowable as deduction u/s 2(h).

6. The meaning of the word "discount" has been the subject-matter of consideration in cases decided by this and other High Courts. In Baidya

Nath Ayurved Bhawan (P.) Ltd. v. Commissioner of Sales Tax [1970] 26 S.T.C. 171. the assessee, a manufacturer of medicines, had announced

in its price-list payment to its customers and agents purchasing its medicines of an "annuity" at a certain rate on the sale price. No "annuity" was

allowed for purchases below a certain sum in a year, but subject to a maximum, it gradually increased according to the total purchases in a year.

The assessee claimed that the "annuity" paid was a cash discount and was,

therefore, an allowable deduction in computing the turnovers both under the Central Act and under the U.P. Sales Tax Act. The relevant provision of the U.P. Act has been quoted at page 174 of the Reports and it runs as follows:

any cash or other discount on the price allowed in respect of any sale...shall not be included in the turnover.

7. In the same page, the learned Judges held:

The provision does not require the discount to be paid out immediately the price is paid. The motive of the dealer in giving a discount to a customer

has not been defined. The legislature considered it immaterial as to what impels a dealer to pay a discount to a customer. Whatever be the reason

motivating a dealer to pay a discount, it would be deductible provided it is paid on the sale price. It is thus immaterial whether a dealer pays

something to a customer as an inducement for prompt payment of the sale price or with a view to push up his own sales or with a view to get the

better of his competitors in the trade. In our opinion, the Additional Judge (Revisions), Sales Tax, was in error in emphasising that the assessee was

paying the annuity as a kind of reward to the customers to make heavy purchases. He was also in error in holding that, since the annuity was paid

not immediately the price is paid, but at the end of the year, it is not a permissible deduction. The provision does not limit its applicability to only

such cases where the discount is paid at the time of the payment of the price. The only condition before a payment can be excluded from the

turnover is that it should be a payment in cash or kind and that it must be allowed on the price of any sale. The term "any sale" would not, in our

opinion, mean an individual sale. It will include any aggregate of sales. If a particular purchaser buys half a dozen things, the dealer would normally

make out a single cash memo and he would give the discount on the total value of the sales. If the argument for the department is taken to its logical

conclusion, such a consolidated cash discount would not be deductible, simply because the dealer has given the discount not on the sale of each

article separately, but had clubbed together the various sales and paid the discount on all of them.

8. It was pointed out at page 175 with reference to the Central Sales Tax Act that that Act did not allow payment of discount in kind and that the

permissible discount must be in cash. It was also held that the Central Sales Tax Act limited the allowable discount in another respect, viz., it must

be paid according to the practice normally prevailing in the trade.

9. This court had occasion to consider the question of allowability of discount in the context of Section 2(h) of the Central Sales Tax Act and

contrasted it with the provisions of the Tamil Nadu General Sales Tax Act in *India Pistons Limited v. State of Tamil Nadu* [1974] 33 S.T.C. 472.

In that case under a bonus discount scheme, the assessee, a manufacturer of pistons used in automobiles, gave to its distributors, whose net

purchases exceeded a target figure, a bonus discount called a rebate, which was not received in cash by them nor did it reduce the actual sale

value of the goods already purchased by them. The rebate was, however, credited to the accounts of the distributors at the end of the year and

treated as a reserve which the distributors could draw upon to make future purchases. The question was whether the amount of rebate allowed to

the distributors could be deducted as cash discount u/s 2(h) of the Central Sales Tax Act. It was held that the rebate or bonus discount granted by

the assessee did not directly or indirectly go to reduce the predetermined or prepaid sale price and that, therefore, it could not be taken to be in

reduction of the actual sale price agreed or paid for the goods purchased earlier by the distributors. It was also pointed out that the issue of credit

notes with the condition that they could be utilised for the purchase of the goods in future could not be treated as cash payments. In this decision,

the decision of the Allahabad High Court [1970] 26 S.T.C. 171, already noticed has been followed.

10. In *Orient Paper Mills Ltd. v. State of Orissa* [1975] 35 S.T.C. 84, decided by the Orissa High Court, there is a discussion as to what is trade

discount and what is cash discount. It was pointed out in that case that cash discount referred to in Section 2(h) of the Central Sales Tax Act,

1956, was different from the trade discount allowed by the assessee to the purchasers. As the trade discount was to be deducted from the

catalogue price in accordance with the terms of the agreement and it was only thereafter that the consideration was to be fixed, the trade discount

was not part of the sale price within the meaning of Section 2(h). In this decision, there are quotations from dictionaries and text books as to the

distinction between "trade discount" and "cash discount". It is unnecessary to go into the distinction between trade and cash discount as the present

case is covered by the Central Sales Tax Act which mentions only cash discount. The only question is whether cash discount was allowed by the

assessee to its purchasers. This decision of the Orissa High Court has been followed in Deputy Commissioner v. Advani Oerlikon (P.) Ltd. [1976]

37 S.T.C. 1.

11. The result of the decisions so far considered is to show that cash discount alone is allowable as deduction and that it could be given either

simultaneously with the preparation of the sale bill or subsequently and that the motive for granting such a discount is immaterial. In the present case

though the amount has been shown as rebate, still it is only in the nature of a cash discount. In the correspondence that passed between the

assessee and its purchasers, the purchasers have noted that refund of 50 paise per liner would be given on receipt of import licence. It is

unnecessary to go into the question whether it is a case of rebate, as we consider that it comes within the scope of cash discount provided in the

section. The only point to be further considered is whether it is in accordance with the practice normally followed in the trade. The learned counsel

for the assessee pointed out that this practice has been there for the earlier four years and that it had been allowed as a deduction by the sales tax

authorities in those years. We understand that the assessee is the only manufacturer of this kind of polythene liner and is selling it to several tobacco

manufacturers. In the circumstances, we are satisfied that there is a practice in giving this kind of cash discount. We consider that this amount is

allowable as a deduction on the ground that it is a cash discount though it does form part of the price. The result is that the order of the Tribunal is

sustained though on grounds different from those given by it. The assessee will be entitled to its costs. Counsel's fee Rs. 250.