

(1978) 03 KL CK 0018
In the High Court Of Kerala
Case No : T.R.C. No's. 49 and 50 of 1977

The Aluminium Industries Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-03-1978

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1978) 42 STC 72

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : Menon and Pai, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, C.J.—These two tax revision cases are by the same assessee, viz., the Aluminium Industries Ltd., Kundara and raise the same question in respect of two assessment years. T.R.C. No. 50 of 1977 is for the year 1966-67 and T.R.C. No. 49 of 1977 is for the year 1967-68. The assessees are making aluminium conductors. The course of dealings between them and their customers has been set out by the Appellate Tribunal in paragraph 9 of its order as follows:

...Here, according to the appellants, their customers are contracting with them for the supply of some specified goods for certain consideration. But, due to convenience, the actual consideration is not fixed on the date of sales, as goods are supplied in piecemeal during the course of 1 or 2 years and there is a written agreement by the customers to pay the supplementary bills to meet the increase in price of finished goods consequent on the increase in prices of the raw materials. So, at the time of delivery of the goods, the actual sale price is not fixed by the appellants to their customers, but they are only collecting a tentative figure as the sale price, while the actual sale price is fixed at a later date taking into account any increase in the price of raw materials and other

expenses that are necessary for manufacturing the goods. So, what is collected at the time of delivery of the goods is not actually the sale price, but it is only an advance towards the sale price while the sale price is decided after some time, taking into account the actual cost that is incurred by the appellants in the manufacture of goods and other expenses. When the actual price is found out and if there is any variation, the appellants are demanding the difference by issuing a supplementary bill showing the difference in price and their customers have agreed to pay this difference shown in the supplementary bills. So, as between the appellants and their customers, the sale price that is due to the appellants is the sale price that is ultimately fixed by them taking into account the increase in the price of raw materials, etc. Then, they have admitted that a sum of Rs. 45,14,106.73 is the amount due to them under the price variation for the goods delivered by them. So far as the appellants are concerned this amount will form part of the sale price and when it is forming part of the sale price, it will form part of the turnover liable to tax as it is the aggregate of sale price and liable to be receivable by them in respect of sale of goods in the course of inter-State trade or commerce made during the period under assessment. So, we are of the view that the assessing officer is justified in including these amounts due to them under price variation bills in their taxable turnover for the year under assessment.

We have to go by these facts stated by the Appellate Tribunal in its order, especially as the statement reflects what was stated to the Tribunal by the assessee and also in view of the fact that the contract itself, or other records to evidence the same, have not been produced or made available in the case. It is, therefore, seen that there was a price variation clause in the contract and that at the time of the delivery of the goods the actual price is not fixed, but only a tentative amount is collected as sale price, the amount being finally settled on a later date, after taking into account any increase or fluctuation in the price of the raw materials and other expenses. On these facts, it seems to us there can be little doubt that the amount was rightly assessed as turnover, having regard to the definition of the term in Section 2(j) of the Central Sales Tax Act. The same reads:

2. (j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the Rules made thereunder.

According to the definition, "sale price" is not only what is actually received, but even what is "receivable" by the dealer. We entertain no doubt that by reason of the price variation clause the amount was actually "receivable" by the dealer. It was contended by the assessee that the amount is receivable only when a supplementary bill is raised and served on the customer and only then it can be included as turnover and assessed. We are unable to accept this argument in the

light of the definition of the term "turnover". Besides, the contract itself not being before us, there is no foundation for the argument that the amount consequent on price variation can be collected only when a supplementary bill is raised and served on the customer. It was then contended that on this interpretation the amount consequent on price variation can be assessed as the sale price receivable for the year 1966-67 and again as the amount actually received in 1967-68 or subsequent years. No such double taxation of the same turnover has been shown to have actually resulted, either with respect to the order which is under revision in T.R.C. No. 50 of 1977 or with respect to the one in revision in T.R.C. No. 49 of 1977. We are in the circumstances unable to entertain or accept this argument.

2. We may also point out that the definition of "sale price" in Section 2(h) of the Act again brings out the idea that the amount "payable" to the dealer as consideration for the sale of goods also constitutes "sale price", as much as the amount actually paid. The definition of "sale" in Section 2(g) again shows that the payment for the transaction may be in cash or as deferred payment. Having regard to these elements in the definition of the various terms we are of the opinion that the view taken by the Tribunal is correct.

3. In paragraph 10 of its order, the Tribunal has noticed that according to the assessee a sum of Rs. 45,14,106.73 is the actual amount of price variation due to them during the year of assessment. Out of this, according to the assessee, there is no intimation to the customer that an amount of Rs. 12,35,531.41 is payable and this amount is only a provision for anticipated price variation and its anticipated variation receipt and does not represent actual receipt since the assessee had not drawn or issued any price variation bills for this amount. The Tribunal, in our opinion, rightly pointed out that although the bills might not have been issued, the assessee had included the amount in the balance sheet and, therefore, that will form part of the sale price and the fact that bills had not been issued to the customers is immaterial for the purpose of assessment. The Tribunal observed that what was material was not actual collection of the sale price but the receivability of the amount. We are in agreement with this reasoning and conclusion of the Tribunal. We dismiss these revision cases but in the circumstances without costs.