
(2004) 10 AHC CK 0205

In the Allahabad High Court

Case No : Trade Tax Revision No's. 1272, 1329 and 1332 of 1995

The Commissioner, Trade Tax

APPELLANT

Vs

S/S Bharat Metal Works

RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 11(8), 2
Uttar Pradesh Trade Tax Rules, 1948 — Rule 9

Citation : (2004) 10 AHC CK 0205

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 29.07.1995 relating to the assessment years 1987-88, 88-89 and 89-90.

In all the aforesaid revisions following common question has been raised:

"Whether the Trade Tax Tribunal was legally justified to hold the development charges are not part of taxable turnover despite the fact that section -(i) and 2 (h) of (he U.P. Trade Tax Act indicates otherwise ?"

3. Dealer/opposite party (hereinafter referred to as "Dealer") was carrying on the business of manufacture and sales of caste iron goods. During the year under consideration, apart from the sale price of the goods, dealer had charged a sum of Rs. 12,440/-, Rs.51,430/- and Rs.33,960/- towards development charges for the. assessment years 1987-88, 88-89 and 89-90. It was explained before the assessing authority that in cases where under the contract a separate pattern is required to be developed, a separate charge for the preparation of the pattern was charged as a development charges. The patterns were used for the purpose of casting and they have been retained by the dealer and have not been passed

to the customers.

4. According to the dealer development charges was not the part of the turn over, in as much as no sale of any good was involved. Assessing authority, had not accepted the plea of the dealer and treated the development charges as part of the turn over First appellate authority allowed the appeal. Appeals filed by the Commissioner of Trade Tax were rejected by the Tribunal.

5. Heard learned counsel for the parties.

6. Learned Standing Counsel submitted that the amount charged towards development charges were relating to the manufacturing expenses and was connected to the manufacturing and, therefore, it was the part of the cost of the manufactured goods. Thus, it would be part of the turn over even though separately charged in the bill. Learned counsel for the applicant submitted that the development charges were incurred in the preparation of the pattern and such patterns were not transferred and, therefore, no transfer of good was involved, hence development charges can not be taxed. He submitted that the development charges can not be treated as the part of the turn over being charged separately. In support of this contention he relied upon the decision of the Madras High Court in the case of The State of Tamilnadu Vs. Tvl. Govel Plastic Pvt. Ltd., Madras, .

I have perused the order of Tribunal and the authorities below.

Section 2 (i) of the Act defines the turn over as follows:

"turnover" means the aggregate amount for which goods are supplied or distributed by way of sale of goods by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration:"

Explanation I"? Omitted

Explanation -II - Subject to such conditions and restrictions, if any, as maybe prescribed in this behalf?-

(i) the amount for which goods are sold or purchased shall include the price of the packing material in which they are packed and any sums charged for anything done by the dealer in respect of the goods sold, at the time of or before the delivery thereof, other than cost of freight or delivery or cost of installation or the amount realized as trade tax on sale or purchase of goods, when such cost or amount is separately charged;"

7. Definition of the turn over thus says that the amount for which good was supplied to the buyers is the turn over Dealer was required to incur expenses for the manufacturing of the desired product. Therefore, such expenses are included in the aggregate amount and form part of the turn over. Expenses incurred for the preparation of the pattern, which was charged from the customers in the name of development charges was the part of the manufacturing expenses and

thus, part of the cost of manufacturing goods though separately charged will be a part of turn over. In the case of Dyer Meakin Breweries Ltd. v. State of Kerala 26 STC 248 (SC). Apex Court held that:

"It is common ground that the sale of the liquor took place in Ernakulam. The company arranges to transport liquor for sale from the factories to its warehouse at Ernakular. It was not brought for any individual customer. All the expenditure incurred in prior to the sale and was evidently a component or the price for which the goods were sold. It is true that separate bills were made out for the price of the goods ex-factory and for "freight and handling charges". But, in our judgment, the Tribunal was right in holding that the exemption under clause (f) of Rule 9 applied when the freight and charges for packing and delivery are found to be incidental to the sale and when they are specified and charged for by the dealer separately and expenditure incurred for freight and packing and delivery chores prior to the sale and for transporting the goods from the factories to the warehouse of the company is not admissible under Rule 9 (f). Rule 9 (f) seeks to exclude only those charges which are incurred by the dealer either expressly or by the necessary implication for and on behalf of the purchaser after the sale when the dealer undertakes to transport the goods and to deliver the same or where the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale."

8. The aforesaid decision has been followed by the Apex Court in the case of D.C. Johar & Sons (P) Ltd. v. Sales Tax Officer, Ernakular and Anr., reported in 26 STC 120.

9. Both the aforesaid decisions have been relied upon in the case of TVL. Ramco Cement Distribution Co. Pvt. Ltd., Tamil Nadu Vs. State of Tamil Nadu, .

10. For the reasons stated above, I am of the view that the development charges would be part of the turn over, and the view to the contrary taken by the Tribunal is erroneous. In the case of The State of Tamilnadu Vs. Tvl. Govel Plastic Pvt. Ltd., Madras, , provisions of the Act has not been considered and no reasons have been given for coming to the conclusion that the charges incurred for the preparation of dyes etc. would not be a part of turn over. Respectfully, I do not agree with the said view for the reasons stated above.

11. In the result, all the revisions are allowed. Order of the Tribunal is set aside and the development charges are held as part of the turn over. Tribunal is directed to pass the appropriate order u/s 11 (8) of the Act.