

(1973) 07 GUJ CK 0002
In the Gujarat High Court
Case No : Sales Tax Reference No. 1 of 1972

The State of Gujarat

APPELLANT

Vs

Jayantilal Bhimji and Sons

RESPONDENT

Date of Decision : 05-07-1973

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2, 2(29), 2(36)

Citation : (1974) 15 GLR 513 : (1973) 32 STC 527

Hon'ble Judges : B.K. Mehta, J;A.D. Desai, J

Bench : Division Bench

Advocate : G.N. Desai, Govt. Pleader, instructed by Bhaishanker Kanga and Girdharlal, for the Appellant; S.L. Modi, for the Respondent

Judgement

Desai, J.—The question which arises for consideration in this reference is this, whether certain amounts recovered by a dealer from its customers for expenses of postage telephone call charges and bank charges by separately addition at the end of the bills, are to be considered as valuable consideration in respect of transactions of sale entered into between the dealer and its customers. To state briefly the facts leading to the reference are that the opponent is a dealer carrying on business of reselling foodgrains, oil-seeds, oils, etc., and is also acting as a commission agent. He is registered as a dealer under the Bombay Sales Tax Act, 1959 (hereinafter referred to as the Act). In the said bills issued by the opponent, he has separately charged the price of the goods and certain expenses like packing, octroi, weighment, brokerage, etc., which are incidental to the sale of the goods and has included the expenses of packing, octroi, weighment, brokerage, etc., in the sale price of the goods and has recovered and paid the tax thereon. The opponent also recovered certain amounts of expenses for postage, call-charges and bank charges by separately adding at the end of the bill. These amounts were not included in the turnover of sales by the opponent. The Sales Tax officer added to the turnover of sales, Rs. 19,743 equal to 75 per cent of the total of such charges of Rs. 27,378 for postage, call-charges and bank charges during S.Y. 2024 and levied tax thereon. Against this

assessment order there was an appeal before the Assistant Commissioner who held that such charges formed part of the turnover of sales and confirmed the order passed by the Sales Tax Officer. Against the decision of the Assistant Commissioner, the matter was taken in second appeal to the Tribunal and the Tribunal came to the conclusion that the amounts recovered as postal charges, telephone call charges and bank charges were not to be included in the sale price as they were charges for service rendered by the dealer to his customers in general. Such charges could not be equated to consideration for transfer of property in goods. At the instance of the department, the Tribunal has referred the following question to us :

"Whether, on the facts and in the circumstances of the case, on correct interpretation of clause (29) of section 2 of the Bombay Sales Tax Act, 1959, postage, trunk-call charges and bank charges included in sale bills should not be added to the turnover of sales of the opponent effected during Samvat Year 2024 ?"

2. Now, the sales tax that is charged in this State is recovered on the basis of the turnover of sales of a dealer. Section 2(36) of the Act defines the expression "turnover of sales" and the said definition is as follows :

"2. (36) "turnover of sales" means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period."

3. The turnover is thus the aggregate of the amounts of the sale price. The expression "sale price" is defined in section 2(29) of the Act and the same is as follows :

"2. (29) "sale price" means the amounts of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged."

4. The definition of the "sale price" given in the Act can be divided into 3 parts, namely, (1) amount of valuable consideration paid or payable to a dealer for any sale made; (2) including any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof; and (3) other than the cost of insurance for transit or of installation, when such cost is separately charged. The definition thus given is an exhaustive one, because it defines what the sale price is, includes certain charges as sale price and also provides for exclusion of certain charges from it. In the present case, there is no dispute that the amount recovered as postal charges, telephone call charges and bank charges do not fall in the second part of the definition, that is, the inclusive part of the definition. What is contended is that the amount recovered as postal

charges, telephone call charges and bank charges are included within the first part of the definition and particularly within the words "valuable consideration". The word "valuable" in the expression "valuable consideration" means consideration paid or payable in money. The word "consideration" means the amount agreed between the vendor and the vendee to be paid or payable for the transfer of property in the goods from the vendor to the vendee. Thus what is the consideration in each transaction of sale must depend upon the agreement between the parties to the transaction of sale. Again what is the "consideration" of a transaction of sale must depend upon the facts of each case. To this extent there is no dispute and both the learned Advocates agree to the said proposition of law. The argument of the learned Government Pleader is typical - and is always advanced on behalf of the revenue - namely, that the postal charges, telephone call charges and bank charges were charges along with the price of the goods and, therefore, must definitely form part of the sale price. It was also contended that these amounts do not form part of any deduction allowable by rule 46(1) of the Bombay Sales Tax Rules and, therefore, must form part of the sale price. It was further argued by the learned Government Pleader that the course of conduct of the dealer in the present case also points out that these amounts were recovered by him as the sale price. He submitted that the findings of the Tribunal are : (1) that these charges are added to the invoices or bills, irrespective of whether they are incurred or not by a particular vendee, (2) that the amounts recovered as bank charges are not what had really been expended for the purpose, but something more than that, (3) that the postal charges are recovered at a uniform rate of 50 paise, and (4) that these amounts are not taken from the persons to whom the goods are not sold. He contended that these findings clearly point out that these amounts were recovered by the opponent as consideration for the transfer of property in the goods to the vendee. As already pointed out earlier, whether these charges form part of the sale price or not must depend upon the agreement between the parties to treat these charges as consideration. Admittedly, there is no direct evidence on the point and, therefore, what is relief upon are the circumstances appearing from the record of the case. It is necessary to notice how the bills are prepared in the present case. The bills first mention the commodities sold with the weight thereof and the rate at which each commodity is sold. Then the total of all the prices at which the commodities are sold is stated. The sales tax paid by the dealer is then mentioned. What is the amount in respect of the postal charges, telephone call charges and the bank charges is then stated. Then the total of all these items is made out. There is no dispute that postal charges are recovered at uniform rates. The amounts of telephone call charges and bank charges are recovered at varying rates. It is clear from the bills that the amount recovered as postal charges, bank charges, telephone call charges are stated separately. It was argued by Mr. Daisy that these charges were added in the invoices irrespective of whether they were incurred by a particular dealer or not. He contended that this was the finding of the Tribunal. If we go to the judgment of the Tribunal we find that that is not the finding. The Tribunal has observed in its judgment that the

bills were produced before them in which no telephone charges were added when the sale price was received by T.T. and in certain cases, bank charges included in the bills were refunded. Thus the aforesaid circumstance on which Mr. Desai relied cannot be relied upon for determination of the question whether telephone charges and bank charges formed part of the sale price. The Tribunal has stated that the bank charges are little bit more than what was really expended for. It is also found by the Tribunal that the postal charges have been collected at uniform rates and these amounts are not taken from those to whom the goods are not sold. But these findings of the Tribunal cannot lead to the conclusion that the postal charges, telephone charges or bank charges form part of the sale price. The mere fact that these amounts are included in the bills given by the dealer to the customer cannot lead to the conclusion that they are part of the sale price. If these charges form part of the sale price, there is no reason why they have been separately stated. There is no material on the record to indicate that the dealer would not have sold the goods if these charges were not agreed to be paid by the vendee. The amounts which are charged are for services rendered to customers in general and such service charges cannot be equated for consideration for the transfer of the property in the goods. This is the conclusion of the Tribunal to which it had arrived at and we do not think the said conclusion is in any way erroneous. The aforesaid conclusion is supported by the decision in *Nemkumar Kesrimal v. Commissioner of Sales Tax, Madhya Pradesh* ([1955] 6 S.T.C. 222). The question which arose before the court was whether the amounts charged as dharmada were included in the sale price. The court negated the contention that they were included in the sale price and the reason for the said conclusion was that if the amount was price proper, it would have been included in the price and not separately charged. The court further observed that there is no further material to hold that the seller would have refused to perform the agreement if the dharmada was not paid. The court came to the conclusion that dharmada amounts were paid willingly by the buyer in addition and they were not included in the sale price. In *Srinivasa Timber Depot and Others v. Deputy Commercial Tax Officer and Others* ([1969] 23 S.T.C. 158), the question arose whether charges collected as lot coolie charges from the customers by the dealer formed part of the sale price. The practice of the trade was that the customer who went to the timber depot for purchase of timber took meticulous care in selecting good timber for specified purpose and it would require some labour like lifting up logs of timber, cutting them into sizes and placing them in one lot and so on. For this purpose, according to the trade practice, certain charges were collected under the name of lot coolie charges. The court held that the said charges were recovered for services rendered and cannot be included in the sale price.

5. Mr. Desai has strongly relied on the Supreme Court decision in *Delhi Cloth and General Mills Co. Ltd., etc. Vs. The Commissioner of Sales Tax, Indore*, . The facts of the case were that the assessee was dealing in vanaspathi. To each of his buyer he issued a receipt in respect of each sale transaction wherein it showed

the price of goods as such and the sales tax payable on the price of those goods. The question which arose before the court was whether the amount charged for sales tax and which was shown separately in the bill formed part of the sale price or not.

6. The court observed that there was no provision in the statute empowering the vendor to recover the sales tax from the vendee. There was no provision under the Act empowering the dealer to recover the same as price. It was further observed that unless the price of the article was controlled, it was open to the buyer and seller to agree the price payable. It was further observed that if a dealer passed the tax burden to his purchaser he could only do so by adding the tax in question to the price of the goods sold. Having observed this the learned Judge said that whatever collection that might be made by the dealer from his customers, the same could only be considered as valuable consideration for the goods sold. This has observation has to be read bearing in mind the facts of the case. The ratio of the case is that the tax burden which the dealer passed on to his customers could be only by way of price. The same could not be by way of services rendered. Thus the ratio laid down in the case is a limited one, and is limited to the recovery of taxes as price. In the present case, the question is whether postal charges, telephone call charges and bank charges can form part of the sale price or not. It is evident that they may fall under the head of service charges, and in order to come to the conclusion that these charges formed part of the consideration, there must be evidence to prove that the parties agreed to that effect. For the aforesaid reasons, the judgment in *Delhi Cloth and General Mills Co. Ltd. Vs. The Commissioner of Sales Tax, Indore*, cannot assist Mr. Desai in his contention. Mr. Desai then relied on the case of *N. S. Pandaria Pillai v. The State of Madras* ([1973] 31 S.T.C. 108(SC)). In that case, a dealer used to collect amounts known as mahimai, that is, a contribution by the purchasers for renovation of a temple and the question was whether mahimai amounts formed part of the sale price. The court came to the conclusion that the amounts recovered by the dealer formed part of the sale price. They came to the said conclusion because no instances were shown to them in which the goods had been sold without charging mahimai. The court, therefore, raised the presumption that the assessee would not have parted with the goods unless the purchaser agreed to pay mahimai. The facts of that case are, therefore, distinguishable. There was evidence in that case to show that the amount was charged as sale price. The decision in *Vimalchand Prakashchand, Sarafa, Ujjain v. Commissioner of Sales Tax, Madhya Pradesh* ([1968] 22 S.T.C. 22) also does not help Mr. Desai, because the court there found that the amounts collected by way of bank commission, charity, insurance etc., were recovered as sale price under agreement between the parties.

7. The result is that we answer the question referred to us that on the facts and in the circumstances of the case, postage, trunk-call charges and bank charges included in the sale bills should not be added to the turnover of the sales of the opponent during the Samvat Year 2024. The applicant to pay the costs of the

opponent. Orders accordingly.

8. Reference answered accordingly.