

(1983) 11 KAR CK 0008
In the Karnataka High Court
Case No : S.T.R.P. No. 224 of 1979

The State of Karnataka

APPELLANT

Vs

Dada and Co.

RESPONDENT

Date of Decision : 21-11-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 2 (1) (v)

Citation : (1984) 55 STC 367

Hon'ble Judges : S.R. Rajasekhara Murthy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : S. Rajendra Babu, for the Appellant; R. Nagaraj, for the Respondent

Judgement

Rajasekhara Murthy, J.—This petition is directed against the order dated 30th April, 1979, made by the Appellate Tribunal, Bangalore, in S.T.A. No. 487 of 1977.

2. The only point that arises for consideration in this revision petition is, whether the realisations made by the assessee in its bills as "charity" should be included in his total turnover for purposes of levy of tax under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act").

3. The assessee is a wholesale dealer in foodgrains, pulses, jaggery, etc., both on own account and on commission basis. For the assessment year 1975-76 the assessee claimed exemption in respect of Rs. 18,104.68 being the amount collected from the customers as charity at the rate of 10 ps., per bag or article. The assessee contended that the collections could not be included in the sale price, that it was specifically collected for purposes of charity and they do not form part of his trading receipts. But the assessing officer disallowed this claim on the ground that the said collections were made in the bills before the sale was completed and as part of the price paid and so he brought that sum to tax.

4. Being aggrieved by the assessment order, the assessee filed an appeal before the Deputy Commissioner of Commercial Taxes (Appeals). The Deputy Commissioner allowed the appeal accepting the claim of the assessee. He

excluded the charity collections from the taxable turnover.

5. The State preferred an appeal to the Tribunal challenging the order of the Deputy Commissioner. The Tribunal relying upon the decision of the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., allowed (sic) the appeal. It held that the collections made by way of charity, were not part of the price or trading receipts of the assessee.

6. Before us, it is urged by the learned Government Advocate that the decision of the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., is not applicable to the case on hand. He referred to the definition of "turnover" u/s 2(1)(v), which reads :

""Turnover" means the aggregate amount for which goods are bought or sold, or supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or deferred payment or other valuable consideration."

7. In Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., the Supreme Court while considering whether "dharmada" or "dharmadaya" was part of the trading receipt of the business, for the purpose of the Income Tax Act has observed that it was a charity collection specifically made by the dealer and therefore it did not form part of the income of the assessee. It was found as a fact that such collection was specifically made for the purpose of charity. It was further observed that such realisations made by the assessee was held under an obligation to spend the same for the purpose for which it was collected. The question whether "dharmada" could form part of the turnover under the Sales Tax Act was not considered in that case. On the contrary that question was expressly left open. While dealing with the said question, the Supreme Court observed :

"The two decisions on which reliance was placed by counsel for the revenue, namely, Poosarla Sambamurthi's case [1956] 7 STC 652 and Pandaria Pillai's case [1973] 31 STC 108 are clearly distinguishable and inapplicable to the facts of this case inasmuch as both the decisions were rendered under sales tax legislation where the question that was required to be considered was whether the realisations for "dharmam", (charitable purpose) in the former case or mahimai (religious purpose) in the latter case would fall within the definition of "turnover" as contained in the concerned legislation and it was held that such realisations were includible in the assessee's turnover. We do not wish to express any opinion on the correctness of these decisions. Suffice it to state that the ratio of these decisions cannot apply to the instant case."

8. It is clear from these observations that the nature of the "charity" collections - whether it could form part of the turnover under the sales tax legislation - was left open. Therefore, the Tribunal was not right in relying upon the said decision to hold it cannot form part of the turnover. 9. In Poosarla Sambamurthi v. State of Andhra [1956] 7 STC 652, the Andhra Pradesh High Court while considering

the scope of a similar provision under the Madras General Sales Tax Act held that the consideration for the sale of goods includes sums charged by a dealer for anything done in respect of the goods at the time of or before their delivery and any other sums charged by the dealer and set out in the bill whatever be the description, name or object.

In *N. S. Pandaria Pillai v. State of Madras* [1973] 31 STC 108, the Madras High Court while dealing with a corresponding definition under the Tamil Nadu General Sales Tax Act held that if the mahimai collections made formed part of the aggregate amount for which the goods are sold by the assessee, it will fall within the definition of "turnover" unless there is any specific statutory deduction available either under the Act or under the Rules.

10. In the instant case, as could be seen from the two sample bills which are reproduced below :

Bill No. 18919 dated 16-4-1975 : 2 bags Urid dhal Rs. 610	2 bags Moong dhal Rs. 610	-----	Rs. 1,220	S.T. Rs. 18.30	Charity Rs. 0.40
-----	Rs. 1,238.70	-----	Bill No. 18952 dated 24.4.1975	3 bags Urid dhal Rs. 891.00	S.T. Rs. 13.36
-----	Rs. 906.16	-----	Charity Rs. 0.30	H.C. Rs. 1.50	-----

The charity, sales tax and handling charges are the components which go to make the bill. The total amount for which dhal was sold is Rs. 1,238.70 and Rs. 906.16 respectively. In each bill charity collection at 10 paise per bag of dhal is made towards charity along with the cost of dhal, sales tax and handling charges.

"Turnover" is the aggregate amount for which goods are bought or sold.

"Sale price" is defined under the Act as the amount payable to a dealer in consideration for the sale of any goods.

What is the price that the buyer pays for the goods or the consideration for which the seller parts with the goods or articles ? Can it be said that the price of four bags of dhal sold, is only Rs. 1,220 whereas the bill amount is Rs. 1,238.70 which includes sales tax of Rs. 18.30 and charity of 40 paise in one bill and 30 paise in the other ?

11. It is contended for the assessee that the charity collections are not intended to form part of the price. They are collected only for charitable purposes and not as a consideration for the goods sold, though it may form a separate component of the bill, and that therefore charity collections are not a part of the turnover of the dealer. But while considering the bill as a whole for the purpose of finding out what is the turnover of the dealer, it should only be the total amount mentioned in the bill that is to be taken into account and we need not look into each one of the components of the bill for this purpose. Both from the point of view of the seller as well as the purchaser, it is the aggregate amount mentioned in the bill that is in contemplation of both parties to the transaction, as the price paid, and received in the transaction and not the individual items mentioned in the bill.

12. It is also suggested on behalf of the assessee that the purchaser having voluntarily made this contribution towards charity, it is not correct to treat it as a part of the assessee's trading receipts since it was never intended to be a part of the price and the contribution so made by the purchaser is for the sole purpose of charity. This argument has to be rejected in the view we have taken as to how the bill as a whole should be considered.

13. It therefore follows from the above discussion that the charity collections made by the assessee should necessarily form part of the aggregate amount for which the goods are sold. Such collection made is inextricably connected with the sale and is collected on the occasion of sale and should necessarily form part of the turnover also. It cannot therefore escape from being considered as forming part of turnover of the dealer.

14. In the result, the revision petition is allowed, the orders of the Tribunal and the Deputy Commissioner of Commercial Taxes (Appeals) are set aside and that of the assessing officer is restored.