(1984) 02 KAR CK 0023

In the Karnataka High Court

Case No : S.T.R.P. No. 118 of 1979

The State of Karnataka APPELLANT

Vs

Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. RESPONDENT

Date of Decision : 03-02-1984

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 2 (1) (v), 5, 6

Citation : (1984) 57 STC 81

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

Bench : Division Bench

Advocate : S. Rajendra Babu, for the Appellant; S.P. Bhat, for the Respondent

Judgement

Rajasekhara Murthy, J.—This revision arises out of the order of the Tribunal dated 22nd November, 1978, passed in S.T.A. No. 821 of 1976.

2. The petitioner-company manufactures synthetic fibres. For the purpose of such manufacture, the company purchases firewood in large quantities from several suppliers in South Kanara District and elsewhere. The company has a purchase depot at Mangalore and other places. For the assessment year 1973-74, the petitioner claimed a deduction in a sum of Rs. 1,25,808.08 from the total turnover, as transportation charges paid to the sellers of firewood.

The Commercial Tax Officer, Mangalore, treated this item as part of the price of the firewood and included it in the taxable turnover.

In the appeal preferred against the assessment, the Deputy Commissioner of Commercial Taxes (Appeals), Mangalore, upheld the assessment and dismissed the appeal. In further appeal before the Appellate Tribunal, the Tribunal deleted the turnover in dispute and directed the assessing officer to modify the assessment.

Being aggrieved by the said order, the State has filed this revision petition.

3. The assessee purchased firewood from the five suppliers and paid different

amounts to the sellers towards transportation charges. The assessing officer, on a scrutiny of the bills and documents produced by the assessee, held that the assessee was not entitled to deduction of the said sums from the turnover, since the transportation charges paid by the assessee were part of the price paid for the firewood supplied.

The contention of the assessee before the assessing officer was that the transportation charges were separately charged by the sellers and therefore, the same do not form part of the purchase price. The assessing officer''s finding is that the firewood was delivered at the depots owned by the assessee at different places and therefore, the purchases price of the firewood was inclusive of the transport charges.

4. The Tribunal, while disagreeing with the finding given by the assessing officer, took the view that the transport charges were incurred by the sellers as incidental or subsequent to the sale. It appears, the Tribunal has looked into the terms of the agreement between the parties. We do not have the benefit of that agreement nor a cop of the agreement is on record. We may, however, proceed on the basis of the finding recorded by the Tribunal. The Tribunal has observed that there is a stipulation in the agreement for delivering the firewood at the assessee''s depot. The Tribunal, however, has stated that that by itself is no ground to infer that the sale was completed only upon such delivery. The Tribunal has stated :

"......... If that were the stipulation between the appellant and the sellers, the terms about the supply of firewood from the places of felling trees and the term for payment of transportation charges separately would not have found mention in the agreement of purchase. We are convinced that the transportation of firewood from the forest to the appellant''s depot was incidental or subsequent to the sale and that the cost incurred for transport was not meant to be included in the price of the goods purchased by the appellant. The deduction claimed by the appellant is justly allowable."

5. Mr. Rajendra Babu, the learned counsel for the State, is very critical about the findings recorded by the Tribunal. He urged that eve though freight charges are separately shown in the bills, the purchaser is not entitled to that deduction since he has to part with that amount also to the seller for getting the goods at the depot. The learned counsel also relied upon the definition of the word "turnover" in support of his contention. The definition of "turnover" u/s 2(1)(v) of the Karnataka Sales Tax Act reads :

"(v) ''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;

Explanation. - Subject to such conditions and restrictions, if any, as may be prescribed, in this behalf -

(i) .... (ii) the amount for which goods are sold and include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof;

(iii) .... (iv) ...."

From the above definition, it is clear that the aggregate amount for which goods are bought or sold by a dealer would form part of the turnover. The explanation thereunder makes that concept more clear. It states that the amount for which goods are sold include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.

6. Mr. Bhat, the learned counsel for the assessee, however, contended that we are not concerned with the definition of "turnover", but we are concerned with the "purchase price" as mentioned u/s 6 of the Act.

Section 6 provides for levy of purchase tax on the purchase price of goods at the same rate at which it would have been leviable on the sale price of such goods u/s 5. The "purchase price" or "sale price" has not been defined under the Act. Purchase price in the context in which it is used, however, must be the total price which the purchaser pays to secure the goods.

In the instant case, it was obligatory for the seller to bring the goods and deliver it at the depot of the assessee. So far as the assessee is concerned, the only question to be asked is what was the amount paid to the seller as consideration for purchasing the goods ? The answer to this question is simple. That amount evidently includes the amount of freight charges although it has been separately mentioned in the bills. The seller received the total amount including the freight charges for making the goods available at the depot, which, for all practical purposes, was the place of the sale.

The view that we have taken finds support from the observation of the Supreme Court in Hindusthan Sugar Mills Vs. State of Rajasthan and Others, . While dealing with the scope of the definition of "sale price" under the Rajasthan Sales Tax Act, 1954, Bhagwati, J., observed :

"We may then take a case where a dealer transports goods from his factory to his place of business and sells them at a price which is arrived at after taking into account ''freight and handling charges'' incurred by him in transporting the goods. The amount of ''freight and handling charges'' included in the price would obviously be part of the ''sale price'', because it would be payable by the purchaser to the dealer as part of the consideration for the sale of the goods. The same would be legal position even if the ''freight ad handling charges'' are shown separately in the bill and added to the price of the goods, for the character of the payment would remain the same. Since ''freight and handling charges'' represent expenditure incurred by the dealer in making the goods available to the purchaser at the place of sale, they would constitute an addition to the cost of the goods to the dealer and would clearly be a component of the price charged to the purchaser. The amount of ''freight and handling charges'' would be payable by the purchaser not under ny statutory or other liability but as part of the consideration for the sale or the goods and it would, therefore, form part of ''sale price'' within the meaning of the first part of the definition ......"

7. In the instant case, the assessing officer has recorded a finding that the property in the goods passed to the assessee at the depot where the goods were delivered and not at the place where the goods commenced movement or the trees were felled. If that is the finding, with which we have no reason to disagree, the freight charges shown in the bills must be considered as a component of the purchase price and must be included in the turnover of the assessee.

In the result, we allow the revision petition and set aside the order of the Tribunal and restore the order of assessment. In the circumstances of the case, we make no order as to costs.