

(1973) 04 MAD CK 0006

In the Madras High Court

Case No : T.C. No. 184 of 1969 (Revision No. 115)

The State of Madras

APPELLANT

Vs

Jeewanlal (1929) Ltd.

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1973) 32 STC 649

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader, for the Appellant; C. Venkataraman, of C.S. Chandrasekhara Sastri, C. Venkataraman and C. Natarajan, for the Respondent

Judgement

Ramanujam, J.—There are two items of turnovers, which are in dispute in this case. The first item, Rs. 66,492.09 relating to the assessment

year 1964-65, is claimed by the assessee as sales discount liable to be deducted from the taxable turnover. The second item relates to a sum of

Rs. 14,089.61 representing the turnover of canteen sales, which, according to the assessee, cannot be taxed under the Tamil Nadu General Sales

Tax Act.

2. So far as the first item is concerned, the assessee's claim for exemption on the ground that it represented the sales discount did not find favour

with the assessing authority as well as the Appellate Assistant Commissioner. But the said claim was accepted by the Tribunal on the ground that

the said sum is liable to be exempted as sales discount under Clause (iii) of explanation (2) to Section 2(r) of the Tamil Nadu General Sales Tax

Act read with Rule 5-A(a) of the Tamil Nadu General Sales Tax Rules. Before us,

the revenue questions the correctness of the said view taken by the Tribunal.

3. According to the revenue, the said sum will not fall under Clause (iii) of explanation (2) to Section 2(r) of the Act and, therefore, the assessee is

not entitled to claim deduction in relation thereto. It is pointed out by the learned Government Pleader that the assessee is in the habit of giving two

discounts, one at the rate of 12 per cent on the invoice value at the time of the preparation of the invoice and the other, an extra discount at 5 to 9

per cent of the aggregate invoice value at the end of the month and that the disputed sum of Rs. 66,492.09 represents the amounts given as the

extra discount at the end of the month. According to the revenue, Clause (iii) of explanation (2) to Section 2(r) of the Tamil Nadu General Sales

Tax Act and Rule 5-A(a) of the Tamil Nadu General Sales Tax Rules contemplate the discount being given only at the time of the sale of the goods

and that the extra discount given at the end of the month without reference to any particular sale cannot attract the said exemption provisions.

4. Explanation (2) to Section 2(r) of the Act, in so far as it is relevant, is set out below :

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

(iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers

shall not be included in the turnover...

5. Rule 5-A(a) provides:

In pursuance of explanation (2) to Section 2(r) of the Act, the amounts specified in the following clauses shall not, subject to the conditions

specified therein, be included in the total turnover of a dealer :-

(a) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance

with the terms of a contract or agreement entered into in a particular case and provided also that the accounts show that the purchaser has paid

only the sum originally charged less the discount.

6. Clause (iii) of explanation (2) to Section 2(r) read along with the above rule makes it clear that all amounts allowed either as cash discount or

other discount on the price payable in respect of any sale in accordance with the regular practice of the dealer or in accordance with the terms of

any contract entered into between the seller and the purchaser will not form part of the total turnover of the dealer. The contention of the learned

Government Pleader that it is only the discount that is given at the time of the sale that will come within the category of discount contemplated by

the above statutory provisions, ignores, in our view, the effect of the words "any cash or other discount". If the section has referred only to a cash

discount, then the contention of the learned counsel may have some force. But when the statute uses the words "any cash or other discount", the

benefit of exemption cannot be denied to an assessee merely because the discount is not given either in cash or at the time the invoice is prepared.

The learned Government Pleader also particularly refers to the proviso found in Rule 5-A(a). But, in our view, that proviso is intended to see that

as per the accounts of the assessee, it is only the price as discounted that is ultimately paid by the purchaser and not more. We are not able to read

the above statutory provisions in a restricted manner so as to cover only those discounts which are given either at the time of the preparation of the

invoice or with reference to a particular sale.

7. It is well-known that a scheme of discount adopted by commercial circles is normally of two types-cash discount and trade discount-and a

discount normally denotes a deduction from the amount due as price of goods in consideration of its being paid promptly or in advance. Trade

discount is the one allowed to a customer if he places an order for a certain amount or quantity or more. Such a discount is given to encourage a

buyer to buy more at a time or within a period of time. When the Legislature has specifically used the words "cash or other discount", it must be

taken that it was aware of the normal trade practice in commercial circles of giving cash or other discounts.

8. A similar provision giving deduction in respect of cash or other discounts came up for consideration before the Allahabad High Court in *Baidya*

Nath Ayurved Bhawan (P.) Ltd. v. Commissioner of Sales Tax, U.P. [1970] 26 S.T.C. 171. In that case, the court was concerned with Clause

(ii) of the second explanation to Section 2(i) of the U.P. Sales Tax Act, 1948. The said Clause (ii) runs as follows :

any cash or other discount on the price allowed in respect of any sale...shall not be included in the turnover.

9. While construing that clause, which is on all fours with the provision of Clause (iii) of explanation (2) to Section 2(r) of the Tamil Nadu General

Sales Tax Act, the court expressed the view that the deductible discount can be in cash or even in kind, provided it is allowed on the sale price,

that the provision did not require the discount to be paid out immediately the price is paid and that the motive of the dealer in giving a discount to a

customer is immaterial. According to the learned Judges, whatever be the reason motivating the dealer to pay the discount, it would be deductible

provided it is paid on the sale price and it is immaterial whether a dealer pays something to a customer as an inducement for prompt payment of the

sale price or with a view to push up his own sales or with a view to get the better of his competitors in the trade. It was observed :

In our opinion, the Additional Judge (Revisions), Sales Tax, was in error in emphasizing that the assessee was paying the annuity as a kind of

reward to the customers to make heavy purchases. He was also in error in holding that, since the annuity was paid not immediately the price is

paid, but at the end of the year, it is not a permissible deduction. The provision does not limit its applicability to only such cases where the discount

is paid at the time of the payment of the price. The only condition before a payment can be excluded from the turnover is that it should be a

payment in cash or kind and that it must be allowed on the price of any sale. The term "any sale" would not, in our opinion, mean an individual sale.

It will include any aggregate of sales. If a particular purchaser buys half a dozen things, the dealer would normally make out a single cash memo

and he would give the discount on the total value of the sales. If the argument for the department is taken to its logical conclusion, such a

consolidated cash discount would not be deductible, simply because the dealer has given the discount not on the sale of each article separately, but

had clubbed together the various sales and paid the discount on all of them.

10. With respect, we entirely agree with the view expressed in that case. We are not at all impressed by the argument of the learned Government

Pleader that the discount, which is allowable under the Act can only relate to a particular sale and cannot be the one based on the aggregate of sale

price during a particular point of time. The dealer may adopt a scheme of discount which suits him. He may adopt a scheme of giving a discount

either on individual sales or on the aggregate sale price during a period of time or both. He may adopt a scheme of paying a discount in respect of

particular purchasers or in relation to purchase of particular goods. Whatever may be the scheme adopted by a dealer, so long as it is found that

the deduction was from the price payable by the customer, such a discount will have the benefit of the above statutory provisions. In that case,

though the discount was called an annuity and the amount of discount was quantified once a year, it was held that it came clearly within the ambit of

Sub-clause (ii) to the explanation.

11. A contention similar to the one, which was advanced before us by the revenue, was also put forward and that was rejected in T. C. No. 124

of 1967 [Deputy Commissioner (C. T.), Madras v. Dunlop Rubber Company (India) Limited Reported at p. 648 supra] with the following

observations:

What is, however, argued for the revenue is that the discount was not allowed with reference to any particular sale or purchase, but as an incentive

for prompt payment of the aggregate of price at the time of settlement. This does not impress us. The only relation between the parties to the

transaction was that of vendor and purchaser and the discount allowed could not but be in relation to the sales. It makes no difference whether it

was allowed in a lump sum or proportionately to each of the sales or purchases. In substance the character of the discount is the same.

12. The learned counsel for the revenue, however, relies on the decision of the Andhra Pradesh High Court in Hyderabad Chemicals and

Fertilizers Ltd. v. State of Andhra Pradesh [1968] 22 S.T.C. 298. We, however, find that the said decision does not throw any light on the

question at issue before us. In that case, the amount in respect of which a deduction was claimed as a discount was actually found to be the

commission payable to the distributor of the manufacturing company and, therefore, the court held that such a discount cannot be claimed as

deduction u/s 2(s)(ii) of the Andhra Pradesh General Sales Tax Act, 1957 and Rule 6(1)(a) of the Rules framed under the said Act.

13. On a due consideration of the matter, we are of the view that the Tribunal

has come to the right conclusion in this case so far as the first item is concerned.

14. As regards the second item, it represents canteen sales. The recent decision of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Co.*

Ltd. [1973] 31 S.T.C. 426 throws considerable light. Before the amendment of the definition of "business" in Section 2(d) by the Tamil Nadu Act

15 of 1964 with effect from 1st September, 1964, it has been consistently held both by this court and the Supreme Court that such canteen sales

are not taxable as sales under the Tamil Nadu General Sales Tax Act on the ground that they are neither sales in the course of business nor have

they been effected with a view to make a profit. But it has been held by the Supreme Court in the above decision that after the amendment of the

definition of "business", the canteen sales will come under the definition of "sale" in the Tamil Nadu General Sales Tax Act and whether the profit

element is there or not, they are liable to be taxed. In view of the abovesaid decision, the canteen sales that took place after 1st September, 1964,

will be clearly taxable subject to the operation of G.O. No. 2238, Revenue, dated 1st September, 1964. The Tribunal has, however, held that the

entire turnover relating to the canteen sales is entitled to exemption. Now that we have held following the above decision of the Supreme Court that

the canteen sales after 1st September, 1964, will become taxable, the actual turnover before and after 1st September, 1964, has to be worked out

and the petitioner's liability to sales tax in relation to the canteen sales after 1st September, 1964, has to be considered afresh in the light of the

observations of the Supreme Court. For that purpose, we remit the matter to the Tribunal.

15. The tax case is partly allowed. The Tribunal is directed to consider afresh item 2 relating to canteen sales in the light of what has been stated

above. There will be no order as to costs.