

(1973) 09 KAR CK 0011
In the Karnataka High Court
Case No : S.T.R.P. No's. 32 and 35 of 1972

The State of Mysore

APPELLANT

Vs

Panyam Cements and Mineral Industries Ltd.

RESPONDENT

Date of Decision : 24-09-1973

Acts Referred:

Cement Control Order, 1961 — Section 6 (2) (a)
Mysore Sales Tax Act, 1957 — Section 23 (1)

Citation : (1974) 33 STC 407

Hon'ble Judges : G.K. Govinda Bhat, C.J; M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : M.P. Chandrakantaraj Urs, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Govinda Bhat, C.J.—These are two revision petitions preferred by the State u/s 23(1) of the Mysore Sales Tax Act, 1957, against the order of the Mysore Sales Tax Appellate Tribunal dated 5th July, 1972, in S.T.A. Nos. 244 and 320 of 1971.

2. The respondent in these revision petitions was an assessee under the Act for the quarter ended on 31st March, 1968, and the year ended 31st March, 1969. The assessee is a manufacturer of cement. The cement manufactured is distributed by the State Trading Corporation, and the sale is controlled by the Cement Control Order, 1961. The price at which the State Trading Corporation may sell cement is fixed under clause 6(2)(a) of the Cement Control Order and that price is for destination. The assessee as the agent of the State Trading Corporation sold cement during the relevant period to different parties at the controlled price which included the freight charges. What the assessee did was to require the purchaser to pay the freight charges which the assessee was required to pay. In the invoice of sale, the price was computed in accordance with the price fixed under the Cement Control Order, for, and since under the internal arrangement between the parties the purchaser paid the freight on behalf of the assessee, the said amount of freight was deducted, and for the balance amount

the invoice was issued. A typical invoice in order to illustrate the point may be set out, and it reads thus :

----- Rs. P. "To value of 19
M.T. 100 Kg. "PYRAMID" Brand Portland Cement packed in 382 DW Heavy Cess
gunny bags Rs. 125.53 per tonne for 2,397.62 Less Stockists commission at 125
per M.T. 23.88 ----- 2,373.74 Plus Central excise duty at Rs. 28.32 per tonne
540.91 ----- 2,914.65 Plus Mysore sales tax collected at the rate of 6.50 per
rupee on Rs. 2,914.65 189.45 ----- 3,104.10 Ex. (inclusive of packing
charges) 371.50 ----- 3,475.60 Plus Packing charges at Rs. 19.45 per
tonne ... Less : Freight rebate at Rs. per Ql. on + % surcharge thereon/Freight
paid (on C.I.'s a/c by you) 330.00 ----- 3,145.60 ----- (Rupees three
thousand one hundred forty-five and paise sixty only)."

3. The assessing authority while computing the turnover of the assessee of the relevant period, computed the turnovers calculating the price of cement at the for rates fixed under the Cement Control Order and without giving deduction for the freight which was paid by the purchaser at the destination. That order of the assessing authority was affirmed on appeals by the Deputy Commissioner of Commercial Taxes. But, on appeals preferred to the Mysore Sales Tax Appellate Tribunal by the assessee, the orders of the authorities below were reversed and it was ordered that the freight paid by the purchasers at the destination ought to be deducted from the turnovers. The Sales Tax Appellate Authority for the view it has taken, relied on the decision of this court in *B. T. Narayana Shenoy v. State of Mysore* [1969] 24 S.T.C. 411, wherein it was held :

"That whatever be the place of contract, so long as in the invoices prepared by the petitioner freight was shown as an independent item and charged as such and it did not form part of the sale price specified in the invoices, the deduction claimed was allowable under rule 6(4)(f)(i)."

4. Sri K. Srinivasan, the learned counsel for the respondent-assessee, fairly conceded that the claim for deduction of the freight charges does not fall under rule 6(4)(f)(i). The above decision of this court in *B. T. Narayana Shenoy v. The State of Mysore* [1969] 23 S.T.C. 411 , relied on by the Tribunal, has no relevance to the question in issue. The Tribunal further relied on the decision of the Supreme Court in *Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh*, Sri Srinivasan submitted that although the *Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh*, is not one under which the price of the goods was controlled by the Cement Control Order, the principles laid down by the said decision govern the instant cases in view of clause (16) of the contract in the said case. That was a case where the assessee sold asbestos sheets, the price of which was not controlled by any statute or statutory order. The assessee in the said case maintained a uniform catalogue rate all over the country in respect of its goods. It sent its goods to outstation customers under railways receipts with freight to pay. It made out an invoice to pay at the

catalogue rate, and the customer paid the amount of the invoice less the freight for releasing the railway receipt and took delivery of the goods on payment of the railways freight. The result was that the net price received by the company was the catalogue rate less the railway freight charged in respect of the goods transported to the destination. Clauses (4) and (16) of the terms of contract on which reliance was placed read as follow :

"(4) The price of the said productions supplied to the stockists shall be the current general gross list price charged by the company, free on rail, less such discount as may be fixed by the company from time to time; but the terms and the times of delivery and the payments therefore shall be in the absolute discretion of the company who may vary the same from time to time.

(16) The conditions of any railway receipt shall be binding on the stockists and the date of delivery shall mean the date of the railway receipt and in the case of the consignments sold free on rail destination, the railway freight shall be nevertheless payable by the stockists at the destinations and the amount of freight shown on the railways receipt shall be deducted from the invoice of the company."

The Supreme Court observed that if clause (4) stood alone the price charged by the company may be deemed to be the catalogue price less the discount payable to the purchasers. But by clause (16) the purchasers clearly undertake to pay railway freight which was deducted from the invoice made out by the company. By clause (16) the company received the catalogue rate less the railway freight as price of the goods sold. The court was unable to agree with the High court that the term relating to the price in the contract between the company and the stockists envisaged by this clause implies an obligation on the part of the company to pay the railway freight. It was held that under the terms of the contract there was no obligation on the company to pay the freight, and under the terms of the contract the price received by the company for sale of the goods is the invoice amount less the freight.

5. In the instant case, the facts are distinguishable. Under the Cement Control Order, the price fixed is for and, therefore, there is an obligation on the seller to pay the freight. It is a matter of arrangement between the parties that instead of the seller in the first instance paying the freight and despatching the goods, the purchaser at the receiving end pays the freight on behalf of the vendor and takes delivery. When the price is fixed by a statutory order and that price is inclusive of freight, it cannot be predicated as to what percentage of that price constitutes the freight and, in that view, it cannot be contended that the turnover of the goods is the price fixed by the Cement Control Order less the freight. The view which we take is supported by the decision of the Madhya Pradesh High Court in *Birla Jute Manufacturing Co. Ltd. v. Commissioner of Sales Tax, Madhya Pradesh* [1972] 29 S.T.C. 639 : 1972 Tax. L.R. 2290.

6. In the result, for the reasons stated above, these revision petitions are

allowed, the order of the Sales Tax Appellate Tribunal is reversed, and the order of the authorities below are restored. In the circumstances, there will be no order as to costs.

7. Petitions allowed.