(1973) 07 MAD CK 0057

In the Madras High Court

Case No : T.C. No''s. 17 and 18 of 1970 (Revisions No''s. 16 and 17 of 1970)

The State of Tamil Nadu APPELLANT

Vs

Malabar Timber Company and Another RESPONDENT

Date of Decision : 19-07-1973

Acts Referred:

Citation : (1974) 33 STC 428

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

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader Tax, for the Appellant; K.J. Chandran, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—These two cases relate to the assessments made under the Madras General Sales Tax Act, 1959, for the year 1961-62 in respect of two different assessees. The assessees are dealers in timber and, in the course of their assessments, the "lot cooly charges" which they had collected separately without including them in the sale price in the invoices have been taken to be part of the sale price of the timber sold and assessed as such. The assessees questioned the inclusion of the said "lot cooly charges" in the sale price contending that the said charges were collected specifically for being paid to the coolies who sort out the required sizes of timber out of the entire lot of timber lying in the godown and that they have been shown separately in the sale bills as relating to handling charges. The assessing authority as well as the Appellate Assistant Commissioner on appeal, rejected this contention of the assessees. On further appeal, the Sales Tax Appellate Tribunal, however, relying on the decision of this court in Srinivasa Timber Depot v. Deputy Commercial Tax Officer [1969] 23 S.T.C. 158, held that the "lot cooly charges" collected by the assessees were only post-sale service charges and not pre-sale charges as contended by the revenue. Aggrieved against the order of the Tribunal, the revenue has come before us.

2. It is contended on behalf of the revenue that though the said decision of this court in Srinivasa Timber Depot v. Deputy Commercial Tax Officer [1969] 23 S.T.C. 158 held that "lot cooly charges" collected separately without including the same in the sale price have to be taken as service charges and, therefore, could not be included in the aggregate sale price, the said decision requires reconsideration in view of the subsequent decision of the Supreme Court in Dyer Meakin Breweries Limited v. State of Kerala [1970] 26 S.T.C. 248 . This contention was considered by us in T.C. No. 16 of 1970 (The State of Madras v. Srinivasa Timber Depot and Ors. [1974] 33 S.T.C. 423), wherein we have held that the decision in Srinivasa Timber Depot v. Deputy Commercial Tax Officer [1969] 23 S.T.C. 158, does not run counter to the decision of the Supreme Court relied on by the revenue. We therefore hold, following the decision in T.C. No. 16 of 1970 (The State of Madras v. Srinivasa Timber Depot [1974] 33 S.T.C. 423, that the above contention of the revenue has to be rejected.

3. The learned Government Pleader then contends that, in any event, the assessees not having paid to the lot men the entirety of the lot cooly charges collected, the excess of such collections retained by them will have to be taken as part of the sale price and brought to charge, and that the Tribunal''s view that even if there is any excess collection in the hands of the assessees, they are not liable to be taxed thereon, cannot be sustained. It is pointed out that in the decision in Srinivasa Timber Depot v. Deputy Commercial Tax Officer [1969] 23 S.T.C. 158, the question whether the collections by way of lot cooly charges in excess of the actual charges incurred by the assessees can be included in the turnover or not has been left open. It is true, a perusal of the said decision shows that the taxability of the excess collections by way of lot cooly charges which are over and above the actual amounts paid to the lot men was left open. But we are inclined to agree with the view expressed by the Tribunal that having regard to the nature of the lot cooly charges collected by the assessees being service charges which do not form part of the sale price, the mere fact that there is some excess collection in the hands of the assessees will not make them part of the sale price. Lot cooly charges were excluded from the sale price specifically on the ground that they are service charges and, therefore, cannot be taken to be a consideration for the transfer of property in the goods. Therefore, service charges which cannot be treated as consideration for the transfer of property in the goods, cannot be part of the sale consideration even if they remained in the hands of the assessees without payment to the lot men who were engaged for doing that service. We, therefore, hold that even the excess collections cannot be taken to form part of the taxable turnover. The result is the tax cases are dismissed with costs. Counsel''s fee Rs. 150 in each case.

