

(1979) 10 MAD CK 0037

In the Madras High Court

Case No : T.C. Revision Petition No's. 262 and 263 of 1976

The State of Tamil Nadu

APPELLANT

Vs

McDowell and Company Ltd.

RESPONDENT

Date of Decision : 31-10-1979

Acts Referred:

Citation : (1980) 46 STC 85

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : The Government Pleader, for the Appellant; R. Gangadharan, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—These two revision petitions have been filed against a common order of the Sales Tax Appellate Tribunal, Madras, dated 22nd September, 1975. The assessee is primarily a distributor of liquor for United Breweries Ltd. It has been customary for the bills issued by the principals (United Breweries) to the assessee to show the price, tax thereon and the deposit separately. The assessee also similarly charged its customers. The rate of deposit at which the assessee is charged by his principal and the rate at which the assessee charged its customers—are the same. The same procedure has been followed for a long number of years. From time to time, there has been an increase in the rates of deposits due to extreme shortage of empty bottles. In the circular dated 18th August, 1971, the following passage occurs:

1. Price : United Breweries Export Rs. 22.15 per dozen qts. f. o. r. Bangalore....
2. Empty bottles deposit of Rs. 4.80 per dozen and sales tax will be extra....

Empty bottle deposit is refundable against return of bottles at the brewery. The freight on return of empties and breakages will be on your (purchaser's) account.

2. In the copies of the bills issued as against the assessee the price of the liquor

is separately shown and sales tax is added to it and thereafter with reference to the number of bottles supplied, there is a separate mention of the amount as deposit, at the rate of 40 paise per bottle or Rs. 4.80 per dozen.

3. The question which arose for consideration by the assessing authority was whether these deposits were liable to be taken into account as part of the assessable turnover. The assessing authority held that there was sale in favour of the purchaser to the extent of the deposits and, therefore, brought the said amount to tax. The Appellate Assistant Commissioner also confirmed the assessments. The Tribunal, however, held that these receipts were only deposits and not price realised on sale and that, therefore, the amounts could not be taxed. In coming to the conclusion, the Tribunal elaborately examined the nature of the transactions between the parties.

4. In the present revision petitions, the contention urged on behalf of the State is that the transactions are liable to be treated as sales. The deposits were merely shown in the account as separate and were not actually sales of the goods, in that, the containers, namely, bottles, which were supplied, were to be returned and the assessee would have to pay back the amount on surrender of the bottles but still at the time when the transaction took place, according to the learned Government Pleader, the amount represented only the sale price. He drew our attention to the decision in *Madura Coats Ltd. v. State of Kerala* [1978] 41 S.T.C. 333.

5. In that case, the assessee-company received yarn from Madura Mills in wound round cones. When the cones were passed on to the assessee a debit note was made by the mills and at the time of return of the cones a credit note was made. The notes were with reference to the cost of the cones. The Kerala High Court held that the property in the cones passed on to the assessee when the cones were purchased and that, therefore, the goods were actually taxable. Subsequent to this decision, the Kerala High Court had occasion to examine a similar claim in the assessee's own case in *T. R. C. No. 4 of 1977, etc. [Deputy Commissioner of Sales Tax (Law) v. McDowell & Co. Ltd.]* [1980] 46 S.T.C. 79 in a judgment dated 7th April, 1978. In the said judgment, the learned Judges, one of whom was a party to the decision in *Madura Coats Ltd. v. State of Kerala* [1978] 41 S.T.C. 333, followed a decision of the Allahabad High Court in *Dyer Meakin Breweries v. Commissioner of Sales Tax* [1972] 29 S.T.C. 69. In that case before the Allahabad High Court also, deposits taken in respect of the probable cost of the containers in which the liquor was sold by the Dyer Meakin Breweries were considered to be assessable by the sales tax authorities. The High Court held that the conditions on which the deposits were taken showed that they were not sales of goods and that they were merely charges received at the time of the bailment and repaid at the time of the return of the containers. The Kerala High Court also held that the deposits received could not be taken to be sales.

6. The decision of the Kerala High Court in *Madura Coats Ltd. v. State of Kerala* [1978] 41 S.T.C. 333 would stand on a different footing. In that case, the

transaction appeared as if the yarn including the container was charged for. Thereafter, as and when the container was returned, there was a repayment. In such a case, it is possible to take the view that at the time of the original sale there was a sale of the goods along with the container. We would, however, observe that, even in the said decision, Clause (vi) provided that the customer will be given credit for cost of cones, stiffeners, etc., at rates agreed between the parties as and when returned. The expression "as and when" would go to show that there was an expectation on the part of the mills of the return of the containers. However, having regard to the nature of the entries made and the conduct of the parties, apparently, the view that the containers had also been billed for was taken. We are not concerned with such a case.

7. One aspect brought to our notice was that, in the present case, the assessee debited the amount paid for bottles to the purchase account and it was, therefore, contended that there has been payment by the assessee as purchaser of bottles and, therefore, there must be sales thereof. However, the way in which the accounts are maintained is not conclusive and what is necessary is to look into the transactions that took place between the parties. The provisions of the Central Sales Tax Act, which were the subject of consideration by the Kerala High Court in the unreported decision [1980] 46 S.T.C. 79 mentioned above, are substantially the same. We find no reason why a different view should be taken from what commended itself to the Judges of the Kerala High Court in the assessee's own case.

8. In this case, the bottles were handed over to the parties subject to their being returned. As a safeguard against the contingency of the bottles not being returned, the assessee collected deposits which were refunded as soon as the bottles were returned. Therefore, this is a clear indication that the deposit retains only the character of deposits and not sale price of the goods. In fact, even in the case of soft drinks in all shops, this trade practice of collecting small amounts as and by way of caution deposit, so that the party who takes the bottles returns the bottles, is adopted. In all such cases, it cannot be contended that there is a sale of the bottles as such. There is no sale of bottles when liquor is sold. Even when the bottles are not returned and the deposits forfeited, there is no sale. We, therefore, agree with the Tribunal and hold that the deposits cannot be classified as sale price and taxed.

9. The result is both the revision petitions fail and are dismissed with costs. Counsel's fee Rs. 250 (one set).