

**(1962) 01 KAR CK 0003**

**In the Karnataka High Court**

**Case No :** Civil Revision Petition No. 1086 of 1960

V. Vedavyasacharya

APPELLANT

Vs

The State of Mysore

RESPONDENT

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**Date of Decision :** 23-01-1962

**Acts Referred:**

Mysore Sales Tax Act, 1948 — Section 3

Mysore Sales Tax Rules, 1948 — Rule 2, 2 (1) (g), 2 (1) (i)

**Citation :** (1962) 13 STC 465

**Hon'ble Judges :** K.S. Hegde, J;Iqbal Husain, J

**Bench :** Division Bench

**Advocate :** V. Krishnamurthy, for the Appellant; D.M. Chandrasekhar, Government Pleader, for the Respondent

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## **Judgement**

Hegde, J.—Just two points come up for consideration in this revision petition. They are (1) whether the petitioner who is a "dealer" under the Mysore Sales Tax Act, 1948, is entitled to deduct from his gross turnover the transport charges paid by him and included in his invoices; and (2) whether he is entitled to deduct from his gross turnover the royalty paid by him to the State Government.

2. The petitioner is a dealer in iron ore. He sold goods to several customers. He also undertook to deliver those goods at the places mentioned by his customers as per terms of the contract entered into by him with his customers. The price for the ore sold was separately fixed. The purchaser had to bear the transport charges though the petitioner had to arrange for the transport of the ore sold. In the invoices given to the customers the price of the iron ore was separately mentioned. Similarly, the transport charges were separately mentioned. In other words, the price fixed for the iron ore was not inclusive of the transport charges. In those circumstances, we have to decide whether the transport charges also will have to be taken into consideration in determining the net turnover of the petitioner ?

3. Sales tax is levied on the petitioner u/s 3 of the Mysore Sales Tax Act, 1948,

read with rule 2 of the rules mentioned in Schedule II. Rule 2(1), which is the only sub-rule with which we are concerned, reads :

"The tax or taxes u/s 3 or 5 or the notification or notifications u/s 6(1) shall be levied on the net turnover of a dealer. In determining the net turnover the amounts specified in clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer."

4. Clause (g) under that sub-rule says :

"All amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of the goods sold :-

(i) freight;

(ii) charges for packing and delivery and other such like services."

5. Clause (i) reads :

"The excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him."

6. From the facts mentioned by us earlier, about which there is no dispute in this Court, it is clear that the transport charge which, for our purpose, is equivalent to freight and which is separately specified and charged for by the dealer is liable to be deducted from the gross turnover. We are unable to agree with the Sales Tax Appellate Tribunal that in the instant case the freight charges were a constituent part of the price fixed.

7. The meaning of rule 2(1)(g) is quite plain and therefore there is no need to take any assistance from decided cases. If assistance is necessary from decided cases, we may usefully refer to the decision in *Nabhi Brothers v. Commissioner of Sales Tax, Orissa* [1960] 11 S.T.C. 605. and also from the observations of the Supreme Court in *Tungabhadra Industries, Ltd., Kurnool v. Commercial Tax Officer, Kurnool* [1960] 11 S.T.C. 827. wherein the claim of the petitioner to exclude the freight charges was disallowed with the following observations :-

"In the specimen bill which the learned counsel for the appellants has placed before us, after setting out the quantity sold by weight (23,760 lbs.) the price is specified as 15 annas 9 pies per lb. and the total amount of the price is determined at Rs. 23,388-12-0. From this the railway freight of Rs. 1,439-12-0 is deducted and the balance is shown as the sum on which sales tax has been computed. From the contents of this invoice it would be seen that the appellant has charged a price inclusive of the railway freight and would therefore be outside the terms of rule 5(1)(g) (Rules framed under the Madras General Sales Tax Act) which requires that in order to enable a dealer to claim the deduction it should be charged for separately and not included in the price of goods sold. The conditions of the rule not having been complied with, the appellant was not entitled to the deduction in respect of freight."

8. No doubt, the Supreme Court was considering a converse case. But the observations of their Lordships clearly indicate as to how the rule has to be interpreted. We have no doubt in our mind that under rule 2(1)(g) (in Schedule II) of the Rules framed under the Mysore Sales Tax Act, 1948, the petitioner is entitled to deduct the freight charges.

9. Now, coming to the next contention of the petitioner that he is entitled to deduct the royalty paid by him, there is no substance in the same. Clause (i) of rule 2(1) refers to excise duty paid to the Central Government. In the first place, the royalty paid cannot be considered as excise duty. "Excise duty" is a term of law having its own legal import. Further, the royalty has not been admittedly paid to the Central Government. Therefore, the petitioner cannot claim any deduction under clause (i) of rule 2(1).

10. In the result, the petition is partly allowed and the case sent back to the Sales Tax Appellate Tribunal for determining the tax due in the light of the findings given by us. No costs.

11. Petition allowed.