

SUREME COURT OF INDIA

Hyderabad Asbestos Cement Products Ltd.

Vs.

State of Andhra Pradesh

(Shah, Ramaswami and Grover JJ.)

19.02.1969

JUDGMENT

J.C. SHAH, J.

1. The appellant, a public limited company carrying on the business of manufacturing and selling asbestos cement sheets and other products, has its factory at Sanatnagar, Hyderabad, in the State of Andhra Pradesh, and is registered as a "dealer" under the Andhra Pradesh General Sales Tax Act (6 of 1957). For the year 1959-60 the Commercial Tax Officer, in assessing the turnover of the company, allowed a deduction of Rs. 57,970.37 in respect of railway freight on articles supplied to outstation customers. The Deputy Commissioner of Commercial Taxes later revised the assessment, and directed that the railway freight paid in respect of the goods sold be included in the turnover. In appeal the Appellate Tribunal set aside the order passed by the Deputy Commissioner of Commercial Taxes. But the order passed by the Tribunal was set aside by the High Court of Andhra Pradesh and the order passed by the Deputy Commissioner was restored. A writ petition moved by the company challenging the assessment was also dismissed.

2. To meet competition from other manufacturers, the company maintained a uniform catalogue rate all over the country in respect of its manufactures. The company sent goods to outstation customers by railway under railway receipts with freight to pay. The company made out an invoice 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 railway 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.

3. The Deputy Commissioner of Commercial Taxes held that since in the invoices the company had not shown the freight separately, the company was liable to pay sales tax on the price inclusive of freight, The Tribunal were of the opinion that the freight was borne by the purchasers and the price received by the company was only the catalogue rate minus the freight and that formed part of the turnover for the purpose of levying sales tax. In the view of the High Court the terms of the contract between the company and the purchasers, and the form of the invoice established that goods were sold at catalogue rate and that in paying the freight at the destination after the goods were received, the purchasers acted on behalf of the company.

4. The relevant provisions of the Andhra Pradesh General Sales Tax Act (6 of 1957) may be noticed. The expression "total turnover" is defined in Section 2(r) as meaning "the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax." The expression "turnover" is defined in Section 2(s) as:

'turnover' means the total amount set out in the bill of sale (or if there is no bill of sale, the total amount charged) as the consideration for the sale or purchase of goods (whether such consideration be cash, deferred payment or any other thing of value) including any sums charged by the dealer for anything done in respect of goods sold at the time of or before the delivery of the goods and any other sums charged by the dealer, whatever be the description, name or object thereof:

Provided....

5. By Section 5 tax is payable on the total turnover; and "total turnover" is the aggregate of the consideration received for sale or purchase of the goods inclusive of any sums charged by the dealer for anything done in respect of the goods sold at the time of or before the delivery of the goods.

6. Clauses (4) and (16) of the terms of contract, on which reliance was placed by the High Court, read as follows:

(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 therefor 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 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 railway receipt shall be deducted from the invoice of the company.

7. If Clause (4) stood alone the price charged by the company may be deemed to be the catalogue rate less the discount payable to the purchasers. But by Clause (16) the purchasers clearly undertook 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. We are unable to agree with the High Court that "the term relating to the price in the contract between the company and the stockist envisaged by this clause [clause (16)] implies an obligation on the part of the company to pay the railway freight". In our judgment, under the terms of the contract there is 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 goods is the invoice amount less the freight.

8. Strong reliance was placed by the State upon the following sample invoice:

Invoice No. 3 dated 2-1-1960.

M/s. Asbestos Cement Products Limited, Hyderabad (Dn.).

M/s. Sirpur Paper Mills Limited, Sirpur, Kagaj Nagar.

Order No. LD/B. LBC/377 of 28-12-1959.

Freight to pay/paid Rs. 274.40 R.R. 21543 of 3-1-1960 through the Central Bank of India Limited, Hyderabad.

Description of Goods :

Charminar Corrugated A.C. Sheets Rs. 5,167.49 Less 10 per cent, discount Rs. 516.75

Rs. 4,650.74 Sales tax on Rs. 4,650.74 plus

Rs. 93.02 = Rs. 4,743,76 Rs. 94.88

Rs. 4,745.62

Less railage Rs. 274.40

Rs. 4,471.22

Bank charges Rs. 8.49

Total ... Rs. 4,479.71

9. Railway freight being Rs. 274.40 was added to the value of the goods and sales tax was collected by the company from the purchasers. That indicated, according to counsel for the respondent, that the true effect of the agreement between the parties was that the price was inclusive of the railway freight. But the form in which the invoice is made out is not determinative of the contract between the company and its customers. If, apprehending that it may have to pay sales tax on the freight, the company collected sales tax on the freight, the true nature of the contract between the company and the purchasers cannot on that account be altered. The company may be liable to refund the amount of excess sales tax to its purchasers. But that is a matter between the company and the purchasers and the State cannot seek to levy tax on railway freight if it is not made a part of the price.

10. The appeals are allowed and the order passed by the High Court is set aside. The order of the Tribunal is restored. There will be no order as to costs throughout.

