

M/S. Hyderabad Asbestos Cement Products Ltd., Hyderabad

Vs

State of Andhra Pradesh

Civil Appeals Nos. 2959-61 of 1985

(R. S. Pathak, Ranganath Misra JJ)

18.02.1987

JUDGMENT

RANGANATH MISRA, J. -

1. Special leave has been granted limited to the question as to whether insurance charges is a part of "turnover" under Section 2(s) of the Andhra Pradesh General Sales Tax Act, 1957 for purposes of levy of sales tax. The tax authorities relying upon the definition of "turnover" held that insurance charges were includible for computing tax. The Appellate Tribunal came to the same conclusion and said :

It is only when the buyer desires that the risk during transit should be covered and the seller recovers insurance charges from the buyers such charges do not form part of the purchase price. Although insurance charges incurred to cover risk in transit cannot be considered as something done in respect of goods as observed by their Lordships of the Madras High Court in the decision reported in State of Madras v. Baliga Lighting Equipment P. Ltd. (23 STC 154), in the instant case it is not the case of the appellants that the buyers had desired that the transit risk should be covered on their behalf. On the contrary, we noticed that the price charged by the appellants is FOR destination price. The domain over the goods while the goods are in transit in such a case clearly vested and (sic) with the appellants, as under the terms of the contract the delivery is to be effected at the other end. In the circumstances transit insurance will form cost of the price of the goods sold. In our opinion such amounts have rightly been assessed to tax.

2. The High Court in revision dealing with the aspect stated :

The insurance charges, it is seen, are to be paid by the buyer, but are collected by company before the goods are to be put on rail. The issue is whether insurance is done at the behest of the buyer ? Before the Commercial Tax Officer, the company represented the insurance premium was paid at the instance of the purchaser. The contention was rejected. In the appellate order it is recorded that the company collected at a uniform rate and observed :

[I]t is not the case of the appellants that the buyers had desired that the transit risk should be covered on their behalf of the contrary

The Company it was held did not charge insurance at the behest of the buyer. Before

the Tribunal in the second appeal, as a fact it is found, the insurance premium was not paid at the behest of the purchaser

The counsel for the company asserted that the facts recovered in the first appeal and the appellate tribunal are not correct ...

To sum up, the amount collected by the company towards insurance charges was a sum charged by the company as part of the price. Therefore, there was no error in treating such amounts as part of the turnover.

3. The relevant portion of the definition of 'turnover' in Section 2(1)(s) is :

(i) the total amount set out in the bill of sale;

#(ii) * * * *##

(iii) if there is no bill of sale, the total amount charged as the consideration for the sale or purchase of goods by the dealer either directly or through another, on his own account or on account of others, whether such consideration be cash, deferred payment or any other thing of value and shall include -

(c) any other sum charged by the dealer, whatever be the description, name or object thereof; and

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4. Inclusion of insurance charges for purposes of sales tax in three years being 1973-74, 1974-75 and 1975-76 is in issue in these appeals and the amounts involved are Rs. 22,716.92, Rs. 55,993.55 and Rs. 32,431.77 respectively. As a fact it has been found that the insurance charges were claimed in the bills of sale. That being the position, under clause (i) the amount becomes a part of the 'turnover' and it is not necessary to rely upon (iii)(c) of the definition to bring the insurance charges within the meaning of 'turnover'. In fact the said sub-clause (c) is a part of (iii) which deals with a case where there is not bill of sale. The vires of the definition is not in issue and since the bill of sale included insurance charges and the assessee-appellant recovered the amount as part of the consideration for the transaction of sale there is not force in the challenge raised by the appellant against the demand. The Explanation attached to the definition of 'turnover' indicates what has to be excluded from it. After the exclusion what remains is clearly taxable.

5. At the hearing reference has been made by learned counsel for the appellant to certain authorities but we do not consider it necessary to refer to them particularly when the position is clear on the basis of the definition contained in the Act.

6. The appeals fail and are dismissed. Parties are directed to bear their own costs.

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