State of T.N

Vs

McDowell and Company Ltd., Madras

Civil Appeals No. 3172 of 1988

(CJI A. M. Ahmadi, S. C. Sen, Sujata V. Manohar JJ)

04.03.1997

JUDGMENT

SEN, J. –

1. This appeal arises from a judgment of the High Court at Madras on a sales tax revision case. McDowell and Company Ltd. is primarily a distributor of liquor for United Breweries Limited (hereinafter referred to as "U. B."). It was customary for the bills issued to the assessee by U. B., the principal, to show the price, the tax payable thereon and the deposits for bottles in which the liquor was sold separately. The assessee in its turn, similarly charged its customers. The rate of deposit at which the assessee was charged by U. B. and the rate at which the assessee charged its customers were the same. The same procedure was followed year after year after year. From time to time, the rate of deposit was enhanced due to shortage of empty bottles. In the sale notes, it was specifically stated : "Empty bottle deposit is refundable against the return of the bottles at the Brewery. The freight on return of empties and breakages will be on your (Purchaser's) account." In the copies of the bills issued as against the assessee, the price of liquor was separately shown and the sales tax was added to it. Thereafter, with reference to the number of bottles supplied, a separate charge was made as deposits at the rate of 40 paise per bottle or Rs. 4.80 per dozen of bottles. The question that came up for consideration was whether these deposits were liable to be treated as part of the assessee's sales turnover for the purpose of levy of sales tax. The assessing authority was of the view that there was a sale of the bottles by U.B. to the purchaser and the deposit amount had to be included in the turnover and taxed. The Tribunal, however, took the view that the receipts were only deposits and not price realised on the sale of the bottles. The deposit amount could not be taxed in any way as the price of bottles.

2. Before the High Court, the contention of the State was that the transactions were liable to be treated as sales. The deposits were merely shown in the accounts separately. That did not mean that these deposits were not sale proceeds. The way they were shown in the accounts could not be determinative of the nature of the amount received. The rights of the parties crystallised at the time when the sale of liquor took place. The purchaser not only paid for the liquor but also for the bottles. The amounts received on account of sale of the bottles though described in the account as deposits, were nothing but sale price of the bottles.

3. Another point which was highlighted on behalf of the State was that the assessee had debited the amounts paid for the bottles in its purchase account. It was, therefore, contended that there was no doubt in the mind of the assessee that it was purchasing the bottles.

4. The High Court, however, did not upheld the contention of the State. It was of the view that the

bottles were handed over to the assessee subject to their being returned. As a safeguard against the contingency of the bottles being damaged or not being returned for any reason, a deposit was collected which was refunded as soon as the bottles were returned. According to the High Court, this was a clear case where the deposit retained the character of deposit and did not acquire the character of sale price of the goods. It was pointed out that even in the case of soft drinks, in all retail outlets, the trade practice was to collect small amounts against the return of the bottles. If the bottles were not returned, the amounts were forfeited. But if the bottles were returned, the amount was refunded to the consumer. In all such cases, it cannot be said that there was a sale of the bottles in the first instance, and thereafter, when the bottles were returned, a resale took place.

5. We are of the view that the High Court in the facts of this case, has come to a correct decision. The bottles were supplied initially by U.B. to the assessee who was a distributor. The finding of the fact by the Tribunal is that the assessee had to deposit certain amounts for taking delivery of the liquor in bottles. The clear understanding was that when the bottles were returned, U.B. would refund the amount of the deposits. The assessee, in its turn, collected deposits at the same rate from its customers when it sold liquor in bottles. When the bottles were returned, the assessee refunded the amount of deposit collected by it to its customers. If any customer did not return the bottles due to breakage or for any other reason, the assessee did not refund the deposit amount.

6. When the assessee received back the bottles from its customers, it used to return the bottles to its principal and get back its deposit. If there was any shortage in returning of the bottles, the deposit to that extent was retained by U.B., the principal. In this case, the assessee was just a middleman. No question of sale of bottles could arise. When it collected the bottles, it paid a deposit to its principal. When in its turn, it supplied the bottles to its customers, it obtained a deposit from its customers as instructed by its principal. If the customers returned all the bottles, the assessee would refund the entire amount of deposit received by it from its customers. Thereafter, the assessee would return all the bottles to its principal. The principal would then refund the deposit amount to the assessee. In the facts of this case, no question of any sale of bottles arises.

7. If the State's contention is accepted that sale of bottles took place when the bottles with beer were supplied by the manufacturer to the wholesaler and again by the wholesaler to the consumers, then it will have to be held that sale of bottles also took place when the consumers, then it will have to be held that sale of bottles also took place when the consumers returned the bottles to the dealers. Therefore, the consumers will be liable to pay sales tax when they return the bottles by taking back the deposits. This proposition was countered by arguing that there was a single-point tax on sale of bottles. If that be so, then the charge of tax, if any, would fall on the first sale by the principal, i.e., United Breweries Limited. The assessee was a middleman and could not be made liable to pay sales tax on account of "sale" of the bottles to the retailers or the consumers in any event.

8. This appeal is without any merit and is dismissed. No order as to costs.

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9. In view of our above decision in Civil Appeal No. 3172 of 1988, these appeals are also dismissed with no order as to costs.