

Black Diamond Beverages & Anr.

Vs

The Commercial Tax Officer

(S.P. Bharucha, M. Jaggannadha Rao JJ)

16.09.1997

JUDGMENT

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M.JAGANNADHA RAO,J.

1. The West Bengal Taxation Tribunal, by order dated 26.9.1991 dismissed the applications R.No.354 of 1990, 130 of 1991, 415 of 1989 and 431 of 1989 and Civil Appeals 1083 of 1992 to 1086 of 1992 are filed against the dismissal of the said applications.
2. The issue involved in these appeals is whether the freight and handing charges, hereinafter described as "freight charges" or "delivery charges", are to be treated as included within the words "money consideration" in Section 2 (d) of the West Bengal Sales tax Act, 1954 (hereinafter called the 1954 Act) which defines "sale price".
3. According to the appellants, 'freight charges' cannot be included in the meaning of the word 'money transaction' in the definition of 'sale price' in Section 2(d) inasmuch as it was not the intention of the legislature to treat the said charges as part of the "money consideration". It is the case of the appellants that the material on record and the conduct of the parties and in particular, the Cash Memo No. 97751 exhibited in the case which shows that delivery charges were separately collected as distinct from the cost of goods, was evidence that they were not part of the 'sale price'. It is also the case of the appellants that Section 2 (d) of the 1954 Act specifically includes in the definition of 'sale price' any sum charged for containers or other materials for the packing of the notified commodities and in the absence of a similar inclusion of 'freight charges' such charges must, by implication be treated as outside the 'sale price'. Learned counsel also submitted that under Section 2 (h) of Bengal Finance (Sales Tax) Act 1941 - which applies to non-specified goods-the definition of 'sale price' specifically excluded 'delivery charges' if separately charges and the 1954 Act must have, of necessity, contained a specific clause including 'freight charges' within the meaning of 'sale price'. Otherwise these charges would not be part of 'sale price'. Learned counsel for the appellant placed strong reliance on the decision of this Court in Hyderabad Asbestos Cement Products Ltd. Vs. State of Andhra Pradesh (1969) 24 STC 487.
4. On the other hand, the learned counsel for the respondent pointed out that the majority of the Tax Tribunal has held that, on facts, the obligation of paying the 'freight charges' was on the appellant - Seller and therefore the same must be treated as included in the 'sale price' under Section 2 (d). Learned counsel relied upon the decision of this Court in Hindustan Sugar Mills Ltd. Vs. State of Rajasthan 1978 (4) SCC 271 = 43 STC 13, to contend that the first part of Section 2 (p) defining 'sale price' in the Rajasthan Sales Tax Act 1954 was in pari materia with the first part of the definition of 'sale price' in the 1954 Act and therefore 'sale price' meant the amount payable to a

dealer as consideration for the sale of goods and the test was what the consideration was for the sale. As stated in that Judgment, it was immaterial to inquire how the consideration was made up, whether it included excise duty or sales tax on freight. The question is what is the amount payable by the purchaser to the dealer as consideration for the sale and not what is the net consideration retainable by the dealer. Learned counsel also relied upon *T.V.L. Ramco Cement Distributing Co. Ltd. Vs. State of Tamil Nadu* 1993 (1) SCC 192.

5. The 1954 Act generally provides for levy of a single point tax at the first stage on commodities notified under Section 25 of that Act. On the other hand, the 1941 Act is general statute providing for multi-point levy of sales tax on commodities not covered by the 1954 Act. Sub-clause (d) of Section 2 of the 1954 Act reads as follows:

"S.2 (d) 'Sale-price' used in relation to a dealer means the amount of the money consideration for the sale of the notified commodities manufactured, made or processed by him in West Bengal, or brought by him into West Bengal from any place outside West Bengal for the purpose of sale in West Bengal, less any sum allowed as cash discount according to trade practice, but includes any sum charged for containers or other materials for the packaging of notified commodities".

6. We shall first deal with the contention of the appellants' counsel based upon the non-inclusion of 'freight charges' in the definition of sale price in Section 2(d) of the 1954 Act.

7. It is clear that the definition of 'sale price' in Section 2 (d) uses the words 'means' and 'includes'. The first part of the definition defines the meaning of the word 'sale price' and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which 'includes' certain other things in the definition. This is a well-settled principle of construction. Craies n Statute Law (7th Egn. 1.214) says:

"An interpretation clause which extends the meaning of a word does not take away its ordinary meaning..... Lord Selborne said in *Robinson Vs. Barton Eccles Local Board* (1883) 8 App. Case 798 (801): "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act.... to be applied to something to which it would not ordinarily be applicable". Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning.

8. In view of the above principle of construction, the first part of the definition of sale price in Section 2 (d) of the 1954 Act must be given its own meaning and the respondent's counsel is therefore right in urging that the first part of Section 2 (d) which is similar to the first part of Section 2 (p) in the Rajasthan Sales Tax Act, 1954, must be given the same meaning given to similar words in *Hindustan Sugar Mills Ltd Vs. State of Rajasthan* (1978 (4) SCC 271. What the said meaning is we shall consider separately. If, therefore, by virtue of *Hindustan Sugar Mills Case*, the first part is to be interpreted as bringing within its natural meaning the 'freight charges' then the contention for the appellants that like 'packing charges' these 'freight charges' must have also been specifically included in Section 2 (d) cannot be accepted.

9. The other contention of the learned counsel for the appellant that Section 2 (h) of the 1941 Act expressly excluded 'freight charges' and for that reason the 1954 Act must have contained an express

provision including 'freight charges' is equally untenable. Now the first part of Section 2 (h) defining 'sale price' in the 1941 Act, as well as the first part of Section 2 (d) of the 1954 Act and the first part of Section 2 (p) of the Rajasthan Act, 1954, (interpreted in Hindustan Sugar Mills case) are similar. In view, the exclusionary words in Section 2 (h) of the 1941 Act were only intended to exclude certain specific things which were otherwise within the first part or such exclusion could also be *ex abundante cautela*. The non-inclusion of 'freight charges' expressly in the 1954 Act has no impact on the natural meaning of the first part of Section 2 (d) just as the exclusion of 'packing charges' in Section 2 (d) does not have any impact on the first part of the same Section 2(d). The first part of the definition remains to have its natural meaning unaffected by what other things are expressly included in the second part; and is also unaffected by what is not expressly included. Therefore, neither the inclusion of 'packing charges' in Section 2 (d) of the 1954 Act nor the exclusion of 'freight charges' from Section 2(h) of the 1941 Act and the absence of any such express inclusion of freight charges in the 1954 Act does not, in our view, alter or affect whatever meaning is to be attributed to the first part of the 1954 Act which is similar to the first part of Section 2 (p) on the Rajasthan Act, 1954.

10. If, therefore, the first limb of Section 2 (d) of the Act is similar to Section 2 (p) of the Rajasthan Act, 1954, the question then is as to what was actually decided in Hindustan Sugar Mills' Case? In that case, this Court held that this part of the definition of 'sale price' meant the amount payable to a dealer as consideration for the sale of any goods. It was pointed out that the test was as to what was the consideration passing from the purchaser to the dealer for the sale of goods? It was immaterial to inquire as to how the amount of consideration was made up, whether it included excise duty or sales or freight. "The only relevant question to ask is as to what is the amount payable by the purchaser to the dealer as consideration for the sale and not as to what is the net consideration retainable by the dealer". It was further held that the concept of real price or actual price retainable by the dealer was irrelevant. Reference in that connection was made by this Court to what Goddard L.J. stated in *Love Vs. Norman Wright (Builders) Ltd.* 1944 (1) All.E.R. 618. This Court then observed that if the dealer transported goods from his factory to his place of business and sold them at a price which was arrived at after taking into account "freight and handling charges" incurred by him in transporting the goods, then the said charges would obviously be part of the 'sale price' because it would be payable by the purchaser to the dealer as part of the consideration for the sale of goods. It was also observed that the same would be the position even if the 'freight and handling charges' were shown separately in the bill and added to the price of the goods, for the character of the payment would be same. If on the facts, the freight and handling charges' represented the expenditure incurred by the dealer in making the goods available to the purchaser at the place of sale, then those charges would contribute an addition to the cost of the goods to the dealer and would clearly be a component of the price charged from the purchaser. This Court held that the amount of 'freight and handling charges' would be payable by the purchaser not under any statutory or other liability but as part of the consideration for the sale of the goods and would form part of 'sale price'. That is the ratio of Hindustan Sugar Mills Case. In the discussion by this Court in the above case reference was made to the freight expenses of a dealer who transported goods from the factory to his place of business. But this does not mean that this Court did not intend that freight expenses upto the point of delivery were not to be included in 'sale price'. As rightly pointed out by the Tribunal (in para 32 (b) of the order), this Court had also referred in Hindustan Sugar Mills' Case (at page 29 of STC) to the freight charges "at the place of sale". Which would clearly be referable to the freight charges upto the point of delivery.

11. Having referred to the true meaning of the first limb of Section 2 (d) of the 1954 Act, we shall now refer to the tribunal's findings. The majority of the Tribunal found that the venue of the sale

was the place of the buyer and the time of the sale was the point of delivery. The purchase order were placed mostly there, the goods were received by the buyer there. Payment and receipt of the goods was simultaneous. The Tribunal held that collection of delivery charges separately was only notional in nature rather than real. It was stated that the appellant also admitted that defective goods returned by the buyer were taken back and thus defects during transportation were not at buyer's risk. The appellant's case that the sale took place ex factory but delivery was at the buyer's place was not established. The Tribunal pointed out that in fact a single excise gate pass was issued by the appellant to one of its own employees who put the goods in the truck. The goods were dispatched in a lot and there was no appropriation of any particular items to any particular buyer. The fact that the appellant changed over from a private permit for the truck to a 'public carrier' permit did not, according to the Tribunal, mean that the carriage of goods was in respect of goods not belonging to the permit holder or in connection with his trade or business. Finally, the Tribunal (in its majority Judgment) concluded (para 31 of its order):

"We have found from that fact of these cases that the applicants were under an obligation to incur the expenditure towards delivery charge, because they were to make the goods available for sales to the customers at their places". The said finding is supported by ample material and circumstances as noticed by the Tribunal and, in our opinion, clearly brings the case of the appellants within the ratio of the decision in Hindustan Sugar Mills Case.

12. Learned counsel for the appellants placed strong reliance on Hyderabad Asbestos Products Ltd. Vs. State of Andhra Pradesh (1969) 24 STC 487. In our view, that case is clearly distinguishable. The reason as to why in that case Shah J. (as he then was) held that the 'freight charges' were not part of the 'sale price' was fully explained in Hindustan Sugar Mill case itself namely, (see page 31 of STC), that the terms of the contract in that case were in written form and showed that "it was only the price which was f.o.r. destination", and that as against the customers, delivery was complete as soon as the goods were put on rail and payment of freight was obligation of the customers....". By clause 16 of the contract the purchasers undertook to pay the freight, and therefore clause 4 stood modified. It was on those facts that it was held that the payment of 'freight charges' was not the obligation of the purchasers. Hence the appellant cannot rely on Hyderabad Asbestos Products Case. We may also state that learned counsel for the respondent is right in relying upon V.L.Ramco Cement Distribution Co. Vs. State of Tamil Nadu where Hyderabad Asbestos Case was distinguished on facts and Hindustan Sugar Mills Case was applied.

13. Learned counsel for the appellant also relied upon Southern Motors Vs. State of Karnataka (1996) 102 STC 235. That decision too does not help the appellant. In that case this Court held that the High Court erred in interfering with the orders of the Sale Tax Appellate Tribunal when the Tribunal had merely followed the decision of the High Court in the case of the same assessee in previous years, wherein it was found on identical facts that the 'freight charges' were not part of the sale-price.

14. For the aforesaid reasons, these appeals are dismissed with costs.