

SUPREME COURT OF INDIA

Tisco General Office Recreation Club

Vs.

State of Bihar

(B.N. Kirpal and S. V. Patil JJ.)

09.08.2001

ORDER

1. The appellant is a dealer under the provisions of the Bihar Sales Tax Act. It runs a canteen and a library for the benefit of the officers and employees of Tata Iron and Steel Company Limited (hereinafter referred to as "TISCO"). It appears that the appellant had agreed to sell food items to the officers and employees of TISCO in a canteen which was run by it. The prices of the food items so sold were fixed by the managing committee from time to time in consultation with the canteen, hotel and restaurant workers union, Jamshedpur. It is an admitted fact that the prices so fixed were below the cost price which resulted in a deficit.

2. The difference between the income earned and the expenditure incurred by the dealer used to be made good every month by TISCO. The sales tax authorities treated this subsidy given to the dealer as a part of the sale price and added it to the turnover and levied sales tax. Having been unsuccessful before the sales tax authorities and the High Court, this appeal by special leave has been filed.

3. It appears to us that the stand of the respondents is not warranted by law. Sales tax is chargeable on the sale of goods by a dealer. The charge is on the gross turnover and according to Section 2(j) of the Bihar Finance Act, 1981 'gross turnover' means for the purpose of levy of sales tax in respect of sale of goods the aggregate amount of sale price which is received and receivable by a dealer. 'Sale price' is defined under Section 2(u) to mean the amount payable to a dealer as valuable consideration in respect of the sale or supply of goods.

4. From the facts enumerated hereinabove, it is clear that what is sold by the dealer are the items of food and in respect of the said items, the sale prices are fixed by reason of agreement between the managing committee of the dealer and the workers union. It is no doubt true that the prices which are fixed are less than the cost price but then the valuable consideration in respect of the supply of items of food in the canteen are the prices so fixed.

5. For running the canteen, different types of expenses are incurred and at the end of the month when the income and expenditure account is prepared, the excess of expenditure over the income is made good by giving subsidy to the dealer. The subsidy so given cannot be

said to be directly relatable to any item of food or goods sold. It is not possible to accept that the subsidies can possibly be regarded as valuable consideration in respect of sale or supply of goods.

6. Learned senior counsel for the appellant drew our attention to two decisions of the High Court entitled *Fertiliser Corporation of India Limited v. Commercial Tax Officer (of a) Punjagatta Division Hyderabad and Ors.*¹ and *Rashtriya Chemicals & Fertilisers Ltd. v. State of U.P. and Ors.*² wherein it has been held that the subsidies given would not form part of the sale price. Mr. Ashok Mathur, on the other hand refers to decision of this Court in *EID Parry (I) Ltd. v. Asstt. Commnr. of Commercial Taxes and Anr.* . This decision can be of little assistance because it deals with the concept of determining the purchase or levy of purchase tax. The expenses which are incurred are relatable to the purchase of a taxable item, may or may not be regarded as part of the purchase price but as far as the present case is concerned, lump sum payment which, in the very nature of things, is ex-gratia cannot be regarded as being part of the sale price and consequently form part of the gross turnover of the dealer. There was no statutory obligation of TISCO to pay any amount to the dealer. It is only as a measure of staff welfare that ex-gratia payment was made from time to time which, in our opinion, cannot be regarded as part of the sale price of the meals sold by the canteen to the employees.

7. For the aforesaid reasons, this appeal is allowed and the decisions of the High Court and the authorities below are set aside. There will be no order as to costs.

¹83 STC 129

²101 STC 487