

KERALA HIGH COURT

Parvathi Mills Ltd

Vs.

State of Kerala

Tax Revision Case No. 15 of 1961

(Mr. M.S. Menon , C.J. and Mathew P. Muricken, J.)

30.08.1962

JUDGMENT

Mr. M.S. Menon , C.J

1. The assessee, Parvathi Mills (Private) Limited, Quilon, is the petitioner in this revision petition. The petition is directed against the order of the Sales Tax Appellate Tribunal, Trivandrum, in Tribunal Appeal No. 313 of 1960.

2. The period concerned is 1st July, 1957, to 13th December, 1957. The sole point for determination is whether a sum of Rs. 1,38,901-75 paid by the assessee as excise duty to the Central Government will form part of its assessable turnover under the Central Sales Tax Act, 1956. The petition formulates the questions for decision as follows :-

"(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 1,38,901-75 representing the excise duty paid to the Central Government and separately charged in the sale bills issued to the buyers, forms part of the assessable turnover under the Central Sales Tax Act ?

"(2) Whether the excise duty paid to the Central Government and charged separately in the sale bills issued to the buyers is an allowable deduction under Rule 7(1) of the General Sales Tax Rules read with Section 9(3) of the Central Sales Tax Act ?

3. It is the turnover of the petitioner that is liable to tax at the rates prescribed in Section 8 of the Act. The expression "turnover" is defined in Section 2(j) as meaning "the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in the prescribed manner." The expression "sale price" is defined in Section 2(h). The definition reads as follows :-

"Sale price' means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

4. It is impossible to say that the excise duty collected by the petitioner from his customers is not part of the consideration for the sale of the goods, and if it is part of the consideration for the sale of the goods, it should be assessable to sales tax under the Act.

5. In *Mariappa Nadar and Ors. v. The State of Madras*¹ the identical question arose for consideration. The Madras High Court said :

"Any amount which the buyer was called upon to pay, except such amounts as might be specified in the definition of 'sale price' as being excludable therefrom, must form part of the sale price of the dealer. Therefore the excise duty paid by the assessee did form part of the sale price of the goods. The fact that a separate debit note was prepared by the assessee for the excise duty paid by him and the amount was subsequently recovered from the buyer or even that a separate indication of the amount of excise duty paid in respect of the goods was noted in the invoice did not make any difference." (Head-note)

We are in agreement with this view and must answer question No. 1 against the assessee.

6. Rule 7(1) of the General Sales Tax Rules, 1950, provides :

"The tax or taxes under Section 3 or 5 or the notifications under Section 6 shall be levied on the net turnover of a dealer. In determining the net turnover, the amounts specified in Clauses (a) to (k) shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer :-

(i) the excise duty, if any, paid by the dealer to this Government or the Central Government in respect of the goods sold by him.";

and Section 9(3) of the Central Sales Tax Act, 1956, (omitting the proviso thereto) reads :

"The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State ; and the

provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly:"

The contention is that the words "in the same manner" occurring in the sub-section will attract Rule 7(1) of the General Sales Tax Rules, 1950, and

¹[1962] 13 S.T.C. 371

provide an exclusion for the excise duty collected.

7. This is clearly untenable. A similar contention was raised in *Mariappa Nadar and Ors. v. The State of Madras*² The Madras High Court said :

"The phrase 'in the same manner' in Section 9(3) did not make applicable all the incidents of the local sales tax law to the assessment under the Central Sales Tax Act; what was contemplated by that phrase was that the procedure of making an assessment, collection of tax etc. was the same as laid down in the local Sales Tax Act. The application of that procedural provision of the local law did not assimilate other provisions in that law which dealt with the determination of the turnover, which, in so far as the Central Sales Tax Act was concerned, was required to be determined only under the Central Act and the rules framed thereunder." (Headnote).

We are in agreement with this view and it follows that the Second question also should be answered against the assessee.

8. In the light of what is stated above the T. R. C. has to be dismissed and we do so. In the circumstances of the case, however, there will be no order as to costs.

Appeal Dismissed.

²[1962] 13 S.T.C. 371