

CASE NO.:
Appeal (civil) 3750 of 1999

PETITIONER:
State of Andhra Pradesh

RESPONDENT:
M/s A.P. Paper Mills Ltd.

DATE OF JUDGMENT: 03/01/2005

BENCH:
S.N. Variava, Dr. AR. Lakshmanan & S.H. Kapadia

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

The short question involved in this appeal is whether the transportation charges and agent's commission paid by the respondent \026 M/s A.P. Paper Mills Ltd. to the agent together with the cost of raw materials constitute "turnover" under Section 2(s) and is liable to sales tax under Section 6-A of the Andhra Pradesh Sales Tax Act, 1957 (6/1957).

The respondent is a public limited company engaged in the activity of manufacturing paper. The respondent is a registered dealer under the A.P. Sales Tax Act, 1957 (hereinafter called as "the Act") and is an assessee on the rolls of the Commercial Tax Officer, Aryapuram, Rajahmundry.

The respondent purchased hard wood (raw material) from unregistered dealers through persons called agents. The hard wood is used for the manufacture of pulp. The agents are engaged in the business of purchase of raw material from the unregistered dealers and supplying the same in the factory of the respondent on contract rates which included the cost of raw materials, transportation charges and the agent's commission. The respondent filed their returns under the provisions of the Act. The Commercial Tax Officer found out that the respondent was paying sales tax under Section 6-A of the Act only on the cost of raw materials purchased from the unregistered dealers leaving out the transportation charges and the commission paid to the agents which amounted to Rs.48,50,735/-.

The Commercial Tax Officer made an assessment including the transportation charges and the agent's commission paid in the taxable turnover under Section 6-A of the Act after issuing a show cause notice. The amount of tax determined to be paid was Rs.2,42,537/- . The Commercial Tax Officer held that the respondent is liable to pay tax on the total amount of purchase price as per the definition of total turnover under Section 2(s) of the Act which also included the transportation charges and the agent's commission for procuring the raw materials. The respondent filed an appeal before the Appellate Deputy Commissioner against the order of the Commercial Tax Officer dated 22.3.1993. The appellate Authority held that the respondent did not transport the raw materials after purchase but the agent was made responsible for purchase of raw materials and transportation of the same to the respondent's factory for a total consideration which included the cost of raw materials, transportation charges and agent's commission. The appellate Authority held that the entire consideration paid by the respondent as the purchase value of the raw materials liable to tax under Section 6-A of the Act.

The respondent filed a second appeal before the Sales Tax Appellate Tribunal which allowed the appeal directing the Commercial Tax Officer to delete the additions made towards transportation charges and agent's commission from the gross and the net turnovers. The Tribunal held that the purchases made by the agents from unregistered dealers are the purchases made by the respondent and any expenses incurred subsequent to the purchase of raw materials would not be included in sale consideration flowing from the agent to the respondent. Aggrieved by the order of the

Tribunal dated 13.5.1998, the appellant filed a Tax Revision case in the High Court of Andhra Pradesh. The High Court, without going into the merits of the case, dismissed the revision on the summary ground that the transportation charges and agent's commission were incurred subsequent to the purchase of the raw materials and the said charges, therefore, do not represent the sale consideration which had passed from the buyer to the seller is a finding of fact.

Aggrieved by the order passed in the revision by the High Court of Andhra Pradesh, the above appeal by way of special leave petition was filed by the State of Andhra Pradesh.

We have heard Mr. Debojit Borkakati, learned counsel appearing for the appellant and Mr. P.N. Gupta, learned counsel appearing for the respondent.

It was argued by the learned counsel appearing for the appellant that the High Court is in error in not seeing that the agents appointed by the respondent are engaged in the business of purchase of raw materials from the unregistered dealers and supplying the same in the factory on contract rates which included the cost of raw materials, transport charges and the agent's commission. It was further submitted that the High Court is not correct in holding that the transportation charges and the agent's commission are incurred by the respondent subsequent to the purchase of raw materials and such charges do not represent the sale consideration. Learned counsel appearing for the appellant invited our attention to Section 2(s) and Section 6A of the Act and also relied on the judgment of this Court in the case of E.I.D. Parry (I) Ltd. vs.

Asstt. Commr. of Commercial Taxes & Anr., (2000) 2 SCC 321 & in the case of D.C. Johar & Sons (P) Ltd. vs. Sales Tax Officer, Ernakulam & Anr., 1971(Vol.27) STC 120. Learned counsel appearing for the respondent reiterated the contentions urged before the lower authorities and submitted that transportation charges and commission paid to the agent would not form part of the turnover under Section 6A of the Act. He further submitted that the finding of fact has been recorded by the Tribunal on the basis of the related material on records and that the Tribunal being final forum on question of finding of fact, the High Court has rightly not interfered with the said finding of fact and this Court will not interfere with such finding.

We have gone through the orders passed by the authorities and also of the High Court.

The definition of the term "turnover" as contained in Section 2(s) is as under:-
"2(s) "turnover" means \026

(i) the total amount set out in the bill of sale excluding the amount collected towards the tax or the tax due under the Act whichever is less;"

The definition of "total turnover" under Section 2(r) reads thus:

"2(r) "total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax; including the turnover of purchases or sales in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;"

Section 6A which deals with levy of tax on turnover relating to purchase of certain goods reads as follows:

"6A. Levy of tax on turnover relating to purchase of certain goods
Every dealer, who in the course of business-

(i) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable under section 5 or under section 6, as the case may be, or

(ii) purchases any goods (the sale or purchase of which is liable to

tax under this Act) from a person other than a registered dealer, and

(a) consumes such goods in the manufacture of other goods for sale or consumes them otherwise, or

(b) disposes of such goods in any manner other than by way of sale in the State, or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods under section 5 or section 6; "

It is an admitted fact that the respondent purchased the hard wood from unregistered dealers through agents and that the respondent appointed certain agents who have opened depots for buying hard wood and transporting the same to the factory premises of the respondent and that the agents were paid a total amount which included the cost of raw material, transportation charges and commission. The assessing Authority is right in levying the tax on the total amount paid to the agents for purchasing hard wood from unregistered dealers. It was contended by the learned counsel for the respondent that the respondents are entitled to claim exemption on transportation charges and commission on the ground that they would not form part of the turnover under Section 6A of the Act. This contention was rejected by the assessing authority, rightly so, in our opinion, on the ground that the respondents were liable to pay tax on the total amount of purchase price of hard wood. We have already extracted the definition of "turnover" under Section 2(s) of the Act. The expenses for procuring hard wood, in our opinion, would become part of the total turnover. The assessing authority dismissed the appeal on the ground that the respondent did not transport hard wood after purchase that the agent was made responsible for transportation etc. and that, therefore, total consideration paid for the purchase of the goods would form the turnover. The said submission, in our opinion, has no force.

The Tribunal, in its order, has relied on the statement of the agent extracted at page 2 of the assessment order. It is useful to reproduce the said statement which reads as under:

"I am willing to supply casuraina oil ets from local cultivators and transport the same to your depots as per your approved rate and conditions. Further in the application the rate of raw material supply was split up into three components namely:- (1) cost of raw material (2) Transport charges (3) Commission."

The finding of the Tribunal and the High Court that the transport and commission were charges incurred subsequent to the purchase of the hard wood and such charges do not represent the sale consideration is against the admitted fact on the side of the respondent who have clearly made the statement that the agents were paid a total amount which included the cost of raw material, transportation charges and commission. When the facts are not in dispute, the Tribunal and the High Court have erred in rendering a finding against the revenue.

In the case of E.I.D. Parry (I) Ltd. vs. Asstt. Commr. of Commercial Taxes & Anr. (supra), the question before this Court was as to whether the planting subsidy paid by the appellants to E.I.D. Parry (I) Ltd. to the sugar-cane growers can be said to be a part of the price of sugarcane purchased by it from them and can legitimately be included in the turnover of the appellants. Whether the transport subsidy/charges in excess of 30 Km. paid by the appellant to third party, lorry owners, for transporting sugarcane pursuant to the State Government's direction can be aggregated with the price of sugarcane and included in the turnover of the appellants. It was contended before this Court by the counsel for the appellant that the planting subsidy given by the appellants to the cane-growers was by way of an incentive to the cane-growers for planting a particular variety in the stipulated months preceding the planting season and that the planting subsidy being unrelated to the sale of sugarcane

could not have been treated as a part of the price for which the goods were bought and, therefore, could not have been rightly included in the turnover of the appellants for determining their purchase tax liability. On the other hand, the contention raised on behalf of the sales tax authorities was that the act of giving planting subsidy for growing sugarcane followed by an agreement for sale of the sugarcane by the grower constituted one single transaction and the planting subsidy being an amount paid in relation to the goods purchased had been rightly regarded as a part of the price of sugarcane and included in the turnover of the appellants. As regards the transport subsidy, the contention of the appellants was that the transport charges were in fact paid by the appellants to third party lorry owners for transporting sugarcane beyond the distance of 30 Km in view of the Government's directions and that the transport charges being not the amounts charged by the growers nor being the amounts paid to them were really in the nature of the post-sale expenses and, therefore, could not have been lawfully treated as part of the price and included in the turnover of the appellants. The contention of the sales tax authority, on the other hand, was that under the agreement of sale the cane-growers had to deliver the sugarcane at factory premises and the arrangements made by the appellants for transporting sugarcane by engaging private lorries were for the purpose of enabling the cane-growers to deliver sugarcane speedily and at specified times. It was further submitted that as transportation charges were paid by the appellants with a view to help or assist the sugarcane-growers they were really a part of the price for which sugarcane was bought by the appellants and, were, therefore, rightly included in the taxable turnover of the appellants. After a detailed discussion, this Court came to the conclusion that the total amount of consideration for the purchase of goods would include the price strictly so called and also other amounts which are payable by the purchaser or which represent the expenses required for completing the sale as the seller would ordinarily include all of them in the price at which he would sell his goods. This Court further held that the transport subsidy was a part of the consideration for which sugarcane was sold by the sugarcane growers to the appellants. It is useful to reproduce paragraph 21 of the above judgment which reads as under:

"For the same reasons we hold that the transport subsidy was a part of the consideration for which sugarcane was sold by the sugarcane-growers to the appellants. Though the agreements between the parties provided for delivery by the sugarcane-growers at the factory gate and though the transport charges paid by the appellants were not to the sugarcane-growers but to third-party lorry-owners, they were made for securing regular supply of sugarcane as per the requirements. Though payments were made at the instance of the Government of Tamil Nadu they also became a part of the implied agreement between the appellants and the sugarcane-growers. They were not post-sale expenses. Those amounts were paid to ensure scheduled delivery of sugarcane. The sale of sugarcane became complete only thereafter. Those payments can be regarded either as payments made on behalf of the sugarcane-growers or payments made in modification or variation of the earlier agreements entered into by the sugarcane-growers for selling sugarcane. In either case they could legitimately be regarded as the components of the sale price as the sellers would have otherwise included those amounts in the sale price."

In the case of *D.C. Johar & Sons (P) Ltd. vs. Sales Tax Officer, Ernakulam & Anr.* 1971(Vol.27) STC 120, the appellant-Company made a claim for exemption for freight and packing and delivery charges in respect of which separate bills were made out when selling the goods at Ernakulam. This Court held that the tax levied is not a tax on railway freight; it is a tax on turnover, that is, on the aggregate of sale price received by the dealer in respect of sale of goods.

Earliest decisions on this point is in the case of *Dyer Meankin Breweries Ltd. vs. State of Kerala*, 1970 (Vol.26) STC 248. In this case, the appellant-Company manufactured liquor at various places in U.P. and Haryana, transported the goods from its breweries and distilleries to its place of business in Ernakulam and sold them there. When selling liquor to the customers, the appellant made out separate bills for ex-factory price and for "freight and handling charges". The appellant claimed that the amount charged for "freight and handling charges" incurred by it in transporting the

goods from the breweries and distilleries to the warehouse at Ernakulam had to be deducted under rule 9(f) of the Kerala General Sales Tax Rules, 1963, in determining its taxable turnover.

This Court held that all the expenditure incurred by the appellant towards freight and handling charges was incurred prior to the sale and was a component of the price for which the goods were sold and the appellant was not entitled to the deduction claimed.

Hindustan Sugar Mills Ltd. vs. State of Rajasthan & Ors., 1979(Vol.43) STC

13: This case relates to pre-sale charges. The question that arose in the assessment of the assessee to sales tax under the Rajasthan Sales Tax Act, 1954, and the Central Sales Tax Act, 1956, was whether the amount of freight deducted from the free on rail destination railway station price in the invoices made out by the assessee and paid by the purchasers formed part of the "sale price" within the meaning of the definition of that term in section 2(p) of the Rajasthan Act and section 2(h) of the Central Act. The sales tax authorities and the High Court took the view that the amount of freight formed part of the "sale price" and was, therefore, liable to be included in the turnover of the assessee for the purpose of assessment of sale tax. On appeal to this Court, this Court held as under:

"That the scheme of the Control Order was that the freight was payable by the producer and he recovered it from the purchaser as part of the f.o.r. destination railway station price. The provision in the contract that the delivery to the purchaser was complete as soon as the goods were put on rail and payment of the freight was the responsibility of the purchaser was wholly inconsistent with the scheme of the Control Order and must be held to be excluded by it. The Control Order was paramount; it had overriding effect and if it stipulated that the freight was payable by the producer, such stipulation must prevail, notwithstanding any term or condition of the contract to the contrary. Therefore, by reason of the provisions of the Control Order, which governed the transactions of sale of cement entered into by the assessee with the purchasers, the amount of freight formed part of the "sale price" within the meaning of the first part of the definition of that term in section 2(p) of the Rajasthan Act and section 2(h) of the Central Act and was includible in the turnover of the assessee.

Under the first part of the definition of "sale price" in section 2(p) of the Rajasthan Act, the expression meant the amount payable to a dealer as consideration for the sale of any goods and, therefore, the concept of real price or actual price retainable by the dealer is irrelevant. The test is, what is the consideration passing from the purchaser to the dealer for the sale of the goods. It is immaterial to enquire as to how the amount of consideration is made up, whether it includes excise duty or sales tax or freight. The only relevant question to be considered is as to what is the amount payable by the purchaser to the dealer as consideration for sale and not as to what is the net consideration retainable by the dealer."

The decision of the Rajasthan High Court was affirmed by this Court. In a recent decision in the case of Greaves Chitram Limited vs. State of Tamil Nadu, 2003(133) STC, the Madras High Court held that freight is includible if the contract is for delivery at buyer's place. In the above judgment, the Madras High Court held that :

"Though no written contract or agreement between the parties was available, from the purchase orders and invoices, a clue could be obtained to determine the nature and character of the transaction entered into between parties. These documents reveal that the dealer agreed to effect the delivery of the goods at the place of the buyer. What was further agreed to by the dealer was that freight charges would be pre-paid by it. If the contract was one for delivery at the destination railway station, risk continues to be that of the seller-dealer and consequently the freight charges paid are includible in the sale price exigible to tax. If the contract is one in which delivery to the purchaser would be complete, as soon as the goods are put on rail at the place of despatch, the risk is that of the purchaser and the freight charges incurred are not includible in the sale price exigible to tax. Of course, this is not the invariable rule in all

eventualities and circumstances, e.g. goods covered by the control orders like Cement Control Order. The dealer agreed to effect delivery at the place of the buyer and that apart, it had also paid the transport charges besides including the same in the invoice. Therefore the transport charges are includible in sale price."

In Ram Oxygen (P) Ltd. vs. Joint Commissioner (CT), 2004(Vol.134) STC 240, the Tamil Nadu Taxation Special Tribunal took the similar view and held that freight is includible in turn over.

For the aforesaid reasons, the appeal filed by the State of Andhra Pradesh is allowed. The question of law is answered in the affirmative and in favour of the State. The order passed by the Sales Tax Appellate Tribunal as affirmed by the High Court is set aside. There shall be no order as to costs.

JUDIS