

Premier Breweries Ltd. Vs. the State of Karnataka

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Court : Karnataka

Decided On : Dec-09-1983

Reported in : [1984]56STC14(Kar)

Judge : Jagannatha Shetty and ;S.R. Rajasekhara Murthy, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 23(1)

Appeal No. : S.T.R.P. No. 101 of 1980

Appellant : Premier Breweries Ltd.

Respondent : The State of Karnataka

Advocate for Def. : S. Rajendra Babu, Government Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Jagannatha Shetty, J.

1. This petition is directed against the order of the Appellate Tribunal dated 15th February, 1980, made in S.T.A. 606 of 1979.

2. The petitioner, who is a registered dealer under the [Karnataka Sales Tax Act, 1957](#), is carrying on brewery business. For the assessment period from 1st January, 1977, the petitioner filed a return claiming exemption of a sum of Rs.

48,839 under rule 6(4)(f) and (ff) of the Karnataka sales tax Rules, 1957, being the packing and forwarding charges at the rate of Rs. 4 per crate. This claim was rejected by the assessing authority on the ground that the said charges were incurred prior to the sales effected. The Deputy Commissioner of Commercial Taxes (Appeals), Bangalore City, also did not give any relief to the petitioner. While dismissing the appeal of the petitioner, he observed that there was no packing involved at the time of sales of liquor bottles. With regard to the claim for deduction of forwarding charges, this is what the Deputy Commissioner observed :

'As per trade practice in vogue the companies are giving delivery to the bars, restaurants and wine stores of goods dealt by them. Hence there is no question of charging freight charges to the local customers. It is a case of f.o.r. delivery.'

The Tribunal, on further appeal, agreed with the view taken by the assessing authority, but added some more reasons. The Tribunal has stated :

'We can infer that the appellant delivers the liquor in crates at the door of the purchaser and the uniform rate charges did not relate to actual freight but inclusively many other charges. These charges were incurred as a matter of necessity to get the bottles sealed and signed as per the requirements of the Karnataka Excise Rules. Unless such sealing and signing was completed the appellant was not at all at liberty to sell them to their customers. Since the packing and forwarding charges collected at a uniform rate of Rs. 4 per crate was intended to cover the expenses involved in the above activities and since these activities were pre-sale activities the charges recovered should be taken as a component of the price for which the liquor was sold.'

The Tribunal then went on to state :

'In the instant case, the bargain between the appellant and his customers was for payment of a particular price subject to delivery at the buyers premises. In these circumstances, we find nothing exceptionable in the action of the authorities below in disallowing the exemption on the packing and forwarding charges claimed by the appellant. Since these charges are not attributable to any packing material exclusively and in fact the cost of packing material is not ascertainable and also in

view of the fact that the charges are mostly incurred towards the various activities like unloading, unpacking, getting the bottles sealed, repacking and so on, we have to conclude that these charges go to increase the cost of liquor sold.'

Being aggrieved by these orders, the petitioner has approached this Court with the revision petition under section 23(1) of the Karnataka Sales Tax Act.

3. Before we examine the contentions urged, it will be useful to refer to the nature of the activities of the petitioner so far as they are found on record. The petitioner-company is not having any manufacturing unit at Bangalore or, as a matter of fact, not even in the State of Karnataka. It manufactures liquor at Palghat, in Kerala State. It had, during the relevant period, sales depot at No. 29, B.K.H. Road, Bangalore. The petitioner got the stock from Palghat and sold at the sales depot. From the letter dated 12th June, 1978, written by the petitioner to the Commercial Tax Officer, it will be noticed that the stocks in bottles were received either in crates, in cartons or in gunny bags and after receipt of the stock, it would be unloaded at the sales depot and packed again either in cartons or in crates. For out station delivery they were packed necessarily in cartons to avoid risk in transport. For local delivery, they were usually packed in crates. Before doing this they had to observe certain formalities by affixing seal on each bottle with the signature of the Excise Inspector. The petitioner had to engage workers for unloading and repacking the crates or cartons. After affixing the seals, the petitioner despatched the goods to the dealers, ordinarily in tempos by paying the hire charges. Unloading work at the dealer's point was also at the petitioner's cost.

4. On these facts, the authorities have rejected the claim for deduction of packing and forwarding charges. This conclusion has the support of the following two reasons :

(1) In the sale of the bottles, there was no fresh packing at the sales depot; and (2) that the freight charges are uniform without reference to the actual handling or forwarding charges to each of the customers.

5. The invoice prepared by the petitioner while selling the liquor contains the following information :

Price per dozen 1. Dozen Primer Henninger Lager Rs. 31.50 157.50 2. Add : KST at 25% 39.38 3. Bottles deposit 45.00 4. Crates deposit 35.00 5. Packing and forwarding charges 20.00 at Rs. 4.00 per crate -----296.88----- Since the petitioner claims deduction of packing and forwarding charges under rule 6(4)(f) and (ff), we may now read these rules :

Rule 6(4)(f) : 'all amounts falling under the head 'freight', when specified and charged for by the dealer separately without including such amounts in the price of the goods sold.'

Rule 6(4)(ff) : 'all amounts falling under the head 'charges for packing materials and cost of labour'.'

6. The claim of the petitioner cannot be allowed or rejected by merely referring to the contents of the sale bills. It has to be examined with reference to the purpose and intent of the rule 6(4)(f) and (ff). The rule does not provide for deduction of every handling and forwarding charges. It only permits deduction in respect of the post-sale expenses. This is the view taken by the Supreme Court in *Dyer Meakin Breweries Ltd. v. State of Kerala* : (1970)3SCC253 . In that case rule 9(f) of the Kerala General Sales Tax Rules, 1963, which is almost analogous to rule 6(4)(f) of the Karnataka Sales Tax Rules, 1957, came up for consideration. The assessee therein claimed by way of deduction, the amount expended by it for freight and handling charges of goods from the factories to the warehouse. The Supreme Court observed at page 249 :

'Rule 9(f) seeks to exclude only those charges which are incurred either expressly or by necessary implication for and on behalf of the purchaser, after the sale, when the dealer undertake to transport the goods and to deliver the same or where the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale.'

In *Hindustan Sugar Mills Ltd. v. State of Rajasthan* : [1979]1SCR276 the Supreme Court, while examining the question similar to the one with which we are

concerned, observed at page 29 :

'We may then take a case where a dealer transports goods from his factory to his place of business and sells them at a price which is arrived at after taking into account 'freight and handling charges' incurred by him in transporting the goods. The amount of 'freight and handling charges' included in the price 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 the goods. The same would be the legal position even if the 'freight and handling charges' are shown separately in the bill and added to the price of the goods, for the character of the payment would remain the same. Since 'freight and handling charges' represent expenditure incurred by the dealer in making the goods available to the purchaser at the place of sale, they would constitute an addition to the cost of the goods to the dealer and would clearly be a component of the price charged to the purchaser. 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 it would, therefore, form part of 'sale price' within the meaning of the first part of the definition.'

There can, therefore, be no doubt or dispute as to the scope of rule 6(4)(f) and (ff). Freight and handling charges, if it becomes part of the price for which the goods are sold, then it is not liable to be excluded under rule 6(4)(f) and (ff). If on the other hand, it is incurred as incidents of sale or incurred after the sale, then rule 6(4)(f) and (ff) would come to the relief of the assessee. The only problem, however, is of application of the said rule to a given case.

7. Mr. Sarangan, the learned counsel for the petitioner, contended that regard being had to the facts found, there is no basis to hold that the collection of Rs. 4 per crate related to the pre-sale activities. The learned counsel also submitted that the uniform rate charged without reference to the actual expenses incurred for handling and forwarding the goods is not a circumstance which must be weighed against the petitioner. It is a trade practice and that by itself is not conclusive one way or the other.

8. We may straight away say that merely because the rate of charge recovered was uniform irrespective of the distance of transportation cannot be an indication to hold that it has no relation to the expenses incurred. To keep the price of the goods uniform at every point of sale, the petitioner might have collected the uniform rate of packing and freight charges taking into consideration of the total sale and the distance to be covered in each day. Equalised freight irrespective of the distance is not uncommon in trade practice.

9. The real question that remains to be considered is as to the place where the sale was completed, whether at the depot or at the customer's place and whether Rs. 4 per crate was collected as incidents of sale. If the goods were sold at the sales depot, there may be every justification for the petitioner to claim deduction of that charge under rule 6(4)(f) and (ff) since it was the petitioner who paid the packing and freight charges. That charges could properly be considered as post-sale activities. If on the other hand, the sale was effected at the place of the customer, the relief may be difficult unless it was collected as incident of sale.

10. In the result, and for the reasons stated above, this petition is allowed. The orders of the authorities below are set aside and the matter stands remitted to the assessing authority to dispose of the matter in the light of the observations made and in accordance with law, after affording opportunity to the petitioner to produce evidence, if any.

11. The parties may appear before the assessing authority on 12th January, 1984, to receive further orders.