

Belgaum Structural Engineering Pvt. Limited Vs. Additional Commissioner of Commercial Taxes, Belgaum Zone

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Court : Karnataka

Decided On : Jul-09-1998

Reported in : [1998]111STC222(Kar)

Judge : Ashok Bhan and ;S.R. Venkatesha Murthy, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 2(1); Karnataka Sales Tax Rules, 1957 - Rule 6(1)

Appeal No. : S.T.A. No. 42 of 1998

Appellant : Belgaum Structural Engineering Pvt. Limited

Respondent : Additional Commissioner of Commercial Taxes, Belgaum Zone

Advocate for Def. : R.I. D'Sa, Government Adv.

Advocate for Pet/Ap. : B.V. Katageri and ;S.S. Angadi, Adv.

Disposition : Appeal allowed

Judgement :

Ashok Bhan, J.

1. Point which falls for determination in this appeal is as to whether the Trade discount/cash discount given by a dealer can be included in his taxable turnover.

2. Appellant is a manufacturer of PVC insulated wires and cables at Belgaum. It had declared the gross turnover (GTO) and taxable turnover (TTO) at Rs. 9,68,273.57 and Rs. 8,68,908 respectively for the assessment year 1994-95. The assessing authority while completing assessment added back to the total turnover a sum of Rs. 3,47,685 which represents the discount allowed to the customer. By adding this to the total turnover the authority arrived at the figure of Rs. 13,25,959 and proposed to levy the turnover tax on the ground that the taxable turnover exceeds Rs. 10,00,000. The disputed tax element is Rs. 10,861.

3. Appellant filed appeal under Section 20 of the [Karnataka Sales Tax Act, 1957](#) (hereinafter referred to as 'the Act') challenging the levy of turnover tax and also inclusion of discount amount while calculating the total turnover. The first appellate authority allowed the appeal in full and set aside the turnover tax levied. First appellate authority came to the conclusion that since the trade discount is allowed on catalogue price, the sale price is the amount determined after deducting trade discount. It held that the sale consideration paid by the customer is the real price which is paid by the customer and accepted by the seller and this price only goes into the books of sellers as well as the purchasers. Taxable turnover was determined excluding the amount of discount given by the dealer.

4. Additional Commissioner of Commercial Tax, Belgaum in exercise of its jurisdiction under Section 22A of the Act issued a notice proposing to revise the order of the appellate authority so far as it concerned the allowing of the deduction of the discount from total turnover for determination of taxable turnover. Appellant filed detailed objections to the proposed action. Respondent rejected the objections of the appellant. Orders of the first appellate authority were set aside and the order passed by the assessing authority was confirmed. Revisional authority came to the conclusion that under Rule 6(4)(a) of the Karnataka Sales Tax Rules, 1957 framed under the Act (for short, 'the Rules'), deduction is allowable only when it is a part of turnover and if it does not form part of turnover there is no necessity to have such provision. Aggrieved against the aforesaid order

of the Additional Commissioner of Commercial Taxes, the present appeal has been filed.

5. Learned counsel for the appellant contended that the trade discount/ cash discount does not form part of the sale price and as such it was not includable in the total turnover. Mr. D'Sa, has put in appearance for the State of Karnataka and supported the judgment under appeal.

6. Cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed and it is granted in consideration of expeditious payment. A trade discount is a deduction from the catalogue price of goods allowed by wholesalers to retailers engaged in the trade. The trade discount or the cash discount does not enter into the composition of the sale price, but exists apart from and outside it and prior to it. Supreme Court while considering the point as to whether the trade discount would be included in the taxable turnover for the purpose of assessment under the Central Sales Tax Act, in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Advani Oerlikon (P.) Ltd. [1980] 45 STC 32 held that trade discount cannot be included in the total taxable turnover. It was held :

'Under the Central Sales Tax Act, the sale price which enters into the computation of the turnover is the consideration for which the goods are sold by the assessee. In a case where trade discount is allowed on the catalogue price, the sale price is the amount determined after deducting the trade discount. The trade discount does not enter into the composition of the sale price, but exists apart from and outside it and prior to it. It is immaterial that the definition of 'sale price' in Section 2(h) of the Act does not expressly provide for the deduction of trade discount from the sale price. Indeed, having regard to the circumstance that the sale price is arrived at after deducting the trade discount, no question arises of deducting from the sale price any sum by way of trade discount.'

7. The word 'sale' has been defined in Section 2(1)(t) of the Act, as every transfer of property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payments or other valuable consideration. The word 'turnover' has been

defined under Section 2(1)(v) of the Act, as aggregate amount for which the goods are bought or sold, supplied or distributed, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration. As per explanation (ii) to this sub-section the amount for which the goods are sold include any sums charged for anything done by the dealer in respect of the goods sold at the time or before the delivery thereof. The word 'total turnover' means 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. Taxable turnover has been defined as :

"Taxable turnover' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale 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.'

Rule 6(1)(a) and 6(1)(b) read as under :

'6. Determination of total and taxable turnover.--(1) The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of :

(a) the total amount paid or payable by the dealer as the consideration for the purchase of any of the goods in respect of which tax is leviable at the point of purchase under one or more of the provisions specified hereunder where such purchase has taken place inside the State :

(i) Clause (b) of Sub-section (3) of Section 5 ;

(ii) Sub-section (4) of Section 5 ;

(iii) Section 6 ;

(iv) Clause (b) of Sub-section (1-c) of Section 5 ;

(b) the total amount paid or payable to the dealer as the consideration for the sale, supply or distribution of any goods other than those coming under Clause (a),

where such sale, supply or distribution has taken place inside the State ;

(c) to (f).....'

A close look at the definition reproduced above would reveal that trade discount allowed by the dealer does not represent the price of the goods sold. Under rule 6(1)(b) the total amount paid or payable to the dealer as the consideration for the sale is to be taken as the taxable turnover. A combined reading of the definition of 'taxable turnover' with Rule 6(1)(b) leaves no manner of doubt that whatever prices were received by the dealer for the sale of goods would go towards the taxable turnover and the trade discount/cash discount given by the dealer to the purchasing dealer and not received by him, shall not be includable in the taxable turnover. The revisional authority was not justified in including the trade discount amount as the turnover for the purpose of Section 6(1)(b) of the Act. Nothing can be treated as turnover which does not represent either sale price or the purchase price. The sale price or the purchase price is nothing but the price paid for goods while purchasing or selling. After invoicing the price of the goods allowing the trade discount, the balance amount is the price received of the goods sold and not the amount before deduction and therefore the trade discount/cash discount cannot be treated as total turnover at all. If the amount of Rs. 3,47,685 which was given as discount is deducted then taxable turnover comes to Rs. 8,68,908 which would be less than Rs. 10,00,000 and therefore turnover tax would not be leviable. It is not disputed that the turnover tax is leviable in case the total taxable turnover is Rs. 10,00,000 or above.

8. For the reasons stated this appeal is accepted. Order of the Additional Commissioner is set aside and the order of the first appellate authority is held to be correct. Appeal is allowed. No costs.