

Madras Cements Limited Vs. the State of Madras

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Court : Chennai

Decided On : Jul-27-1971

Reported in : [1973]31STC221(Mad)

Judge : Ramaprasada Rao, J.

Appeal No. : Writ Petition Nos. 2161 to 2163 of 1967 and 862 of 1968

Appellant : Madras Cements Limited

Respondent : The State of Madras

Advocate for Def. : K. Venkataswami, First Assistant Government Pleader

Advocate for Pet/Ap. : P.R. Ranganathan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ramaprasada Rao, J.

1. In these four writ petitions, a common question arises. The first three writ petitions are for the issue of writs of prohibition and the last one, though originally filed for the issue of a writ of prohibition, was later converted into one for the issue of writ of certiorari, since by then the order of assessment was passed and that

order is under challenge (Writ Petition No. 862 of 1968).

2. The assessing officer gave a notice at or about the time of making a final order of assessment in each of the assessment years in question, viz., 1962-63, 1963-64, 1964-65 and 1966-67, calling upon the petitioners to state as to why the cost of the packing material used in the course of the petitioner's business be not included in the assessable turnover and such cost of packing material not having been included earlier, why steps should not be taken to revise the said assessments. The petitioners objected to the said proposal on the ground; that the cost of packing material and the incidental labour cost connected with it are specifically excluded from being included in the assessable turnover under the rules then in force prior to 9th March, 1964, as well as under Rule 6(cc) of the Tamil Nadu General Sales Tax Rules, 1959. Reliance was placed upon a decision of this court in *Dalmia Cement (Bharat) Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 355. But apprehending that the proposal made by the taxing officer would be implemented, the petitioners have come up with these petitions for the issue of rules of prohibition as already stated. The last case, however, is one in which a final order has been passed and hence the petitioners are seeking the relief of writ of certiorari to quash the same.

3. The point that is urged before me is that under the rules which were in vogue prior to the present Rule 6 under the Tamil Nadu General Sales Tax Rules, 1959, such packing charges were excludable if they were distinctly shown in the bills relating to the transactions between the dealer and the purchaser. There is not much of a difference in the purport of the old and the new rule. It is, therefore, sufficient to note the new rule, which runs as follows :

6. The tax or taxes under Section 3,4 or 5 shall be levied on the taxable turnover of the dealer. In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer:-(cc) all amounts falling under the head, charges for packing, that is to say, cost of packing materials and cost of labour, whether or not such amounts are specified and charged for by the dealer separately.

4. The petitioners are dealers in cement. It is common knowledge that cement can be distributed in its naked form as well, but can also be the subject-matter of sale wherein the dealer is obliged to pack the same and charge for it. In the former case, the question will not arise. But in the latter case, where the intention is clear that the packing of the cement was done pursuant to the contract between the parties and that such packing was undertaken at the instance of the buyer, then it follows that the turnover relating to such packing charges which could be reckoned from the bills of sale themselves are necessarily, to be excluded from the assessable turnover. That, in the instant cases, the value of such packing charges were shown separately in the sale bills is not in dispute. On this basis and on the strength of the decision in *Daltnia Cement (Bharat) Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 355. Mr. Ranganathan, the learned counsel for the petitioners, says that the assessing authority has no jurisdiction to proceed in the manner suggested in the impugned notice and, therefore, a rule has to be issued at the threshold itself to prevent a further processing of the intended proposal. The learned Government Pleader, however, would stress upon the factual detail that cement does not ordinarily leave the factory premises without being bagged in gunny bags and this service being a pre-sale service and which is an essential prerequisite in the trade, such charges, even though prima facie relatable to and dealt with as packing charges, yet are not to be excluded from tax assessable turnover as the Supreme Court in *Dyer Meakin Breweries Ltd. v. State of Kerala* : (1970)3SCC253 has expressed so.

5. The second contention is that these gunny bags have been purchased from outside the State by issuing 'C forms for the purpose and as such, out-of-State purchase of gunny bags cannot be said to be for the purpose of manufacture of cement; the normal inference would be that such purchase should be for resale. In this view of the matter also, it is stated that the amount representing the sales of gunny bags, but shown as charges for packing material, should not be excluded from the assessable turnover.

6. As regards the observation of the Supreme Court in *Dyer Meakin Breweries Ltd. v. State of Kerala* : (1970)3SCC253 . I am unable to agree with the learned Government Pleader that the ratio in the said case would effectively override the

principles laid down in *Dalmia Cement (Bharat) Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 355. That case dealt with liquor. Liquor at any stage cannot be handled unless it is packed. Therefore, in those circumstances, the Supreme Court thought of making a distinction between one product and another, according to the nature inhered in it. In a case where the manufactured product has to be necessarily bottled, packed or bagged after the sale, when the dealer undertakes to transport the goods and to deliver the same to the buyer or where the expenditure is incurred as an incident of sale, then it would be excludable, but if such charges, whether it be for packing, bottling or bagging, are a component of the price of the commodity itself and the expenditure is incurred by the dealer as a necessary concomitant of trade prior to the sale and before the goods are made available to the customer, then such expenses would not come within the meaning of charges for packing and delivery. This differentia is obviously clear. In the latter cases dealt with by the principle as above-stated, it would be practically impossible for the dealer to get the commodity outside the factory without packing. That is the case with liquor or any manufactured liquid, as a matter of fact. But in the case of cement, where it is not disputed that it is salable in its naked form, this distinction would sink into insignificance. Here, the rule in *Dalmia Cement (Bharat) Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 355, would obviously apply. Therefore, the learned Judges of this court, considering the earlier rule as well as the later rule in the enactment, expressed the view that the scope of both the rules is the same and stated that in either case, whether it be under the rule in question, viz., Rule 6(f) of the earlier Rules, or the present Rule 6(cc), it would exclude the turnover relating to the packing materials from the taxable turnover, if separately charged. The case that was dealt with in the decision in *Dalmia Cement (Bharat) Ltd. v. Deputy Commercial Tax Officer* [1969] 23 S.T.C. 355, related to the commodity of cement. I respectfully follow the ratio in the said decision and hold that the petitioners are entitled to the relief even at the threshold. This conclusion is also possible factually. It is not disputed that cement at the material point of time was a controlled commodity. The policy prevalent at the time required that the consumers of cement should indent their requirements and apply to the authorised official like the Director of Industries and Commerce in the State and other such officers elsewhere for the purpose of allotment to them of such cement required for

their purposes. If the allotment is made, the letters of allotment are passed on to the State Trading Corporation of India, who would issue delivery orders to the cement manufacturing companies and the consumer would ultimately obtain the same after paying the price therefore. It is not disputed that the manufacturing concerns could not directly sell to any consumer as the entire quantity manufactured by them was required to be delivered by law to the State Trading Corporation. There was thus the control over sale, distribution, supply, as also the price of cement under the appropriate control orders. In this state of affairs, if the manufacturing concern packs the goods in gunny bags to effect delivery of the same to the allottee, then it is a service done after sale. In these circumstances, it should be inferred by necessary implication that these charges were incurred for and on behalf of the purchaser after allotment of the particular commodity and not as an expense which is to be attributable to the price of the commodity itself.

7. The other contention of the learned Government Pleader is that as the purchases of gunny bags were made from outside the State by the issue of 'C' forms and as gunny bags as such are not a product which is used in the manufacture of cement, the presumption is that such gunny bags have been purchased for resale. I am not able to agree with the learned Government Pleader that such a presumption is automatic and would necessarily flow from the hypothesis cited by him. In a trade or manufacture concerning cement, one of the prerequisites of the trade is that the manufacturer should obtain all such things incidental to the sale of his manufactured commodity to his customers. If in the course of such an intention, he secures these gunny bags and if ultimately he uses them as packing material at the behest of the notified customer for the purpose of selling the said cement so bagged to him, it cannot be said that in such a transaction, the amount representing the value of packing materials separately charged would form a component part of the price. As a matter of fact, the Supreme Court in *Dyer Meakin Breweries Ltd. v. State of Kerala* : (1970)3SCC253 uses the expression that the rule, similar to the one which was considered by their Lordships in that case, sought to exclude from the assessable turnover those charges which are incurred by the dealer by necessary implication for and on behalf of the purchaser after the sale of that particular commodity. This is one such instance which shows that these purchases were made by the petitioners for

and on behalf of the would-be purchaser and the charges incurred therefor would necessarily imply that they were to be treated as packing and delivery charges. In this view of the matter also, the assessing authority cannot include the reckoned amount relatable to packing charges as assessable turnover under the provisions of the Act. The contention of the learned Government Pleader is far-fetched. There cannot be an industry without a product being manufactured therein. If for purposes of the industry, which includes the purchase of packing material for packing the ultimately manufactured product, the dealer purchases such packing material from outside the State, it does not necessarily follow that the intention is to resell such goods purchased outside the State.

8. In the result, W.P. Nos. 2161, 2162 and 2163 of 1967 are allowed. In W.P. No. 862 of 1968, the order in so far as it has included the amount of packing charges as assessable turnover is concerned, it would be quashed. No order as to costs in all these petitions.

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