

(1975) 07 MAD CK 0020

Madras High Court

Case No: T.C. No. 427 of 1970 and Revision No. 284

The Mettur Chemical
and Industrial
Corporation Ltd.

APPELLANT

Vs

The State of Tamil
Nadu

RESPONDENT

Date of Decision: July 31, 1975

Acts Referred:

- Central Sales Tax Act, 1956 - Section 2

Citation: (1976) 37 STC 288

Hon'ble Judges: V. Ramaswami, J; Sethuraman, J

Bench: Division Bench

Advocate: C. Natarajan, for the Appellant; K. Venkataswami, Additional Government Pleader No. I, for the Respondent

Final Decision: Allowed

Judgement

V. Ramaswami, J.

The assessee is a manufacturer of chemicals, soaps, vegetable oils, etc. In respect of the assessment year 1966-67 he claimed exemption under the Central Sales Tax Act of a sum of Rs. 83,016.98 from the taxable turnover on the ground that it represented loading charges incurred by them and which have been separately shown in their bills as such. The assessee failed before the authorities and also the Tribunal in getting this relief. It is seen from the records that the contract was for the sale of these chemicals at particular rates ex-works of the assessee. The acceptance letter in one of the model contracts also showed that in all these cases they expressly stipulated that the loading charges are to be paid extra. There is also no dispute that these loading charges have been shown separately and charged in their invoices. The learned Counsel for the petitioner therefore submits that u/s 2(h) of the Central Sales Tax Act this amount cannot be included in the taxable turnover. That section 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.

2. It is seen from this provision that cost of freight or delivery if they had been separately charged could not be included in the sale price. As we have already seen, neither the contract included the loading charges in the price agreed, nor it was included with the price in the bill. The amount charged for loading was separately shown and charged in the bill. The only point therefore is whether the loading charges would come within the expression "cost of freight or delivery". The learned Counsel for the assessee submitted that this expression would include the totality of the cost of loading, transport and unloading and if the entirety or any part is charged separately by the seller that could not be included in the sale price. We are of the view that the learned Counsel is well-founded in this submission. In a case where the seller agrees to deliver the goods at the consignee's place, the price will include the loading, transport and unloading charges as well and in a case where the seller fixes the price ex-godown the loading and transporting would be the responsibility of the purchaser. Therefore, if in discharge of that responsibility of the purchaser the seller is willing to undertake the duties for a separate agreed charge, that will not form part of the price itself. It will be an expenditure incurred after the sale and not forming part of the sale price itself. We are therefore of the view that the loading charges in this case are not liable to be included in the taxable turnover. It is stated that the bills have not been individually analysed as in the view of the authorities the loading charges will not come within the words "cost of freight and delivery". Now that we have expressed the view that if the loading charges are not part of the price and had been separately shown in the bills, it could be claimed as an exemption within Section 2(h) of the Central Sales Tax Act. The assessing officer will have to go into the facts afresh with reference to each bill. We also make it clear that on the mere use of the words "handling and loading charges" in the bills, the assessee could not be said to have made himself ineligible for the exemption. In each case it will have to be found out what was the charges that were made especially because the words "handling and loading charges" seem to have been indiscriminately used for the purpose of charging loading alone. With this observation, the orders of the Tribunal, the Appellate Assistant Commissioner and the assessing officer are set aside in respect of the disputed turnover and the matter is remitted to the assessing officer to go into the matter afresh. The petitioner will be entitled to his costs in this revision petition. Counsel's fee is fixed at Rs. 250.