# M/s. V.S. Engineering (P) Ltd. Vs State of Andhra Pradesh

**Court:** Andhra Pradesh High Court

**Date of Decision:** Oct. 11, 2013

**Citation:** (2014) 68 VST 87

**Hon'ble Judges:** G. Rohini, J; Challa Kodanda Ram, J

**Bench:** Division Bench

**Advocate:** M. Sudhir Kumar, for the Appellant; P. Balaji Varma, Learned Special Standing Counsel for Commercial Taxes, for the Respondent

## Judgement

Challa Kodanda Ram, J.
These four Tax Revision Cases are filed by the petitioner M/s. V.S. Engineering (P) Limited, Hyderabad, u/s

22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short ""the Act""), questioning the common order dated 27.07.2004, passed by the

Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (in short ""the Tribunal"") in T.A. Nos. 1023, 1024, 1040 and 1041 of 2002.

1. In all these revision cases though five questions of law have been raised for consideration of this Court, at the time of hearing the learned senior

counsel Sri S. Ravi appearing on behalf of Sri Sudheer Kumar, would submit that only question No. 4 alone may be answered and that he is not

pressing the question Nos. 1, 2, 3 and 5. Accordingly, we proceed to consider the question No. 4, which reads as under:

Whether the Tribunal is correct in finding that the value of free issue materials used in the manufacture of sleepers and included in the assessable

value would form part of turnover of the manufacturer u/s 2(1)(s) of the Act.

The revision petitioner is an industry engaged in manufacture of railway sleepers and ballast, and is a dealer registered under the Act. During the

relevant orders, petitioner had manufactured mono block pre-stressed concrete sleepers for broad gauge as per the drawings and specifications

issued by the South Central Railways. Petitioner was supplied free of cost fastenings, malleable cast iron inserts and HTS wire (strands), to be

incorporated in the concrete sleepers. Both Assessing Officer as well as all the authorities including the Tribunal had rejected the claim of the

petitioner that their activity of manufacture and supply of the mono block concrete sleepers to the South Central Railways, is a Works Contract

and had held that the petitionerÃ¯Â¿Â½s supply is sales of mono block concrete sleepers. The authorities also held that the petitioner is liable to pay tax

on the value of the free issue material viz., fastenings, malleable cast iron inserts and HTS wire (strands), which were incorporated and became

part of the sleepers.

2. There is no dispute about the factum of these items were issued free cost by the railways. The Tribunal had rejected the contention of the

petitioner that these free issue items cannot form part of the sale price, and rejected stating ""What is given by the Indian Railways is, even if it is

accepted for argument sake that inserts and wires are given free of cost, or not, it makes no difference for the purpose of determination of sale

value of the sleepers because what is received by the appellant is HTS wire and inserts and what are given back are not inserts and wire but

cement concrete railway sleepers which are different commercial commodities"".

3. In the above circumstances, the above referred question of law is raised by the petitioner for our consideration.

4. The learned senior counsel appearing for the petitioner would submit that for the purpose of levy of tax, the gross turnover of the dealer cannot

be the basis in arriving at the sale price, the cost of free issue material that was included in the invoice had to be deducted. He would further submit

that the cost of free issue material was added in invoice only for the purpose of complying with the Excise Laws, but for the purpose of sales tax,

the net sale price alone has to be taken into consideration. The learned senior counsel further would submit that the issue is no more res integra and

placed reliance on the judgment of the Supreme Court reported in Morriroku UT India (P) Limited Vs. State of Uttar Pradesh and others (2004)

4 SCC 548 whereunder it was held as follows:

19. Before analyzing Section 3 of the 1948 Act, it is important to keep in mind that in income tax cases, tax is exigible on ""real income"" which

means the actual income received by or which accrues to the assessee. In case of sales-tax, tax is exigible on real price received or receivable by

the dealer in respect of a sale. A dealer is entitled to frame his price-structure in a manner conducive to the type of his business or with a view to

withstand the competition. In a given case, cost may be more than the price. The dealer may base his price-structure to give an incentive to his

clients, agents, distributors etc., particularly if he is a manufacturer. In such cases, his price- structure has to be scrutinized by the Department

under the sales-tax law to find out the real sale-price receivable by him. There may be cases where he is required to give a discount on account of

defect in quality or delay. The important thing to be noted is that ""price"" is the amount of consideration which a seller charges the buyer for parting

with the title to the goods. It comprises of the amount which the dealer himself has to pay for the purchase of the goods, the expenditure, which he

is to incur for transporting the goods from the place of purchase to the place of sale, the duties, if any, levied on the particular goods bought by

him, the octroi duty, which he may have had to pay and his own margin of profit after meeting handling charges including interest on the capital

invested. The cost price of the goods actually paid by him under various heads of accounts would no doubt constitute the consideration for which

he would part with his title to the goods. The entire amount of consideration, including the sales tax component, which the purchaser pays, would

constitute the price of goods. To this extent, there is no difficulty. The difficulty comes in when by law or by legal fiction the Department seeks to

introduce a notional concept as an element of the ""real price"". This is particularly important when there is no rule to that effect in the sales-tax law.

Even under the definition of turnover in Section 2(i) one has to take into account only the aggregate amount for which goods are bought or sold. It

is this aggregate amount which is taxable u/s 3 read with Section 2(i) of the 1948 Act.

22. U.P. Trade Tax Act, 1948 is a self-contained code for levy of tax on sale or purchase of goods in Uttar Pradesh. Clause (bb) of Section 2

defines the expression ""trade tax"" to mean a tax payable under the Act. Clause (h) of Section 2 defines the expression ""sale"" to include transfer of

the right to use any goods for any purpose for cash or deferred payment or other valuable consideration. In this case we are concerned only with

Section 3 and not with Section 3F of the 1948 Act. Section 3 inter alia provides that every dealer shall for each assessment year pay a tax at the

rates provided u/s 3A, Section 3D or Section 3H on his turnover of sales or purchases or both, as the case may be, which shall be determined in

such manner as may be prescribed. Section 3F provides for tax on transfer of right to use any goods or goods involved in execution of works

contract. The definition of ""sale"" in Section 2(h) is in two parts. The first part covers the normal sale and the second part covers deemed sales. In

the present case, we are concerned with sale of auto components to the buyer. It is a normal sale. The aggregate amount for which these auto

parts/components are sold constitutes the turnover relating to such sales within the meaning of turnover in Section 2(i). Therefore, it is on such

turnover that liability of tax u/s 3 of the 1948 Act has to be determined. Therefore, sales-tax or trade-tax under the 1948 Act is leviable on sale,

whether actual or deemed, and for every sale there has to be a consideration. 23. On the other hand, excise duty is a levy on a taxable event of

manufacture"" and it is calculated on the ""value"" of manufactured goods. Excise duty is not concerned with ownership or sale. The liability under the

excise law is event-based and irrespective of whether the goods are sold or captively consumed. Under the excise law, the liability is there even

when the manufacturer is not the owner of raw material or finished goods (as in the case of job workers). Excise duty, therefore, is independent of

ownership (see: Ujagar Prints Vs. Union of India (UOI), ). Therefore, for sales-tax purposes, what has to be taken into account is the

consideration for transfer of property in goods from the seller to the buyer. For this purpose, tax is to be levied on the agreed consideration for

transfer of property in the goods and in such a case cost of manufacture is irrelevant. As compared to the sales-tax law, the scheme of levy of

excise duty is totally different. For excise duty purposes, transfer of property in goods or ownership is irrelevant. As stated, excise duty is a duty

on manufacture. The provisions relating to measure (Section 4 of 1944 Act read with Excise Valuation Rules, 2000) aim at taking into

consideration all items of costs of manufacture and all expenses which lead to value addition to be taken into account and for that purpose Rule 6

makes a deeming provision by providing for notional additions. Such deeming fictions and notional additions in excise law are totally irrelevant for

sales-tax purposes. Therefore, in any event, these notional additions cannot be read into clause 5.1 and clause 5.2 of the General Agreement for

Purchase of Parts dated 31.7.1997.

5. On the other hand the learned Government Pleader Sri Balaji Varma placed reliance on the judgment of the Division Bench of this Court in

W.P. Nos. 292 of 2007 and batch, dated 03.10.2012.

6. In para 44 of the order of the Tribunal, the fact that by reference to clauses in the agreement, Tribunal had noticed that fastenings, malleable cast

iron inserts and HTS wire (standard) were supplied to the petitioner free of cost. This aspect of the matter is not in dispute. Finally, the cost price

that is being paid to the petitioner does not include the value of the free issue material, and it is also not in dispute that the petitioner had not

collected any sales tax and the railways had not paid any amount on the value representing the free issue material. In that view of the matter, and in

view of the law laid down by the Supreme Court, the sale price for the purpose of Section 5 of the Act, is the actual consideration that is

received/receivable by the dealer alone can be the basis for levy of Sales Tax.

7. So far as the judgment of the Division Bench referred to by the learned Special Government Pleader, is clearly distinguishable. The question

involved in the above batch of cases was ""Whether the dealer was entitled to claim refund of the sales tax amount wrongly paid to the

department?"". That was also a case involving supply of mono block concrete sleepers to the railways and the petitioner therein was involved in the

similar business as that of the petitioner herein. Though the issue whether the sales tax could be levied on the free issue material was directly not in

issue, but a reading of the said judgment would indicate that there appears to be no dispute as to the aspect that the sales tax could be levied only

on the net sale price without including the value of the free issue material. The Division Bench of this Court had rejected the claim for the refund to

the petitioner therein on the ground that the claim is barred by limitation. In the above circumstances, the Tax Revision Cases are allowed

answering the question of law in the negative and against the revenue. There shall be no order as to costs. Miscellaneous petitions, if any, shall

stand closed.