

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6246 OF 2004

Hyderabad Industries Ltd. .. Appellant(s)
Versus
Commercial Tax officer & Ors. .. Respondent(s)

WITH
CIVIL APPEAL NO. 6247 of 2004

O R D E R

CIVIL APPEAL NO. 6246 OF 2004

1. This appeal is directed against the judgment and order passed by High Court of Madras in Writ Petition No.6169 of 2002, dated 01.04.2004 whereby and whereunder the Division Bench of the High Court by a well-reasoned order has rejected the writ petition filed by the appellant-herein.

2. The appellant has filed the aforesaid Writ

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Charanjeet Kaur
Date: 2014.09.25
11:32:21 IST

Petition, inter alia, questioning the order

Reason:

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passed by the Tamil Nadu Taxation Special Tribunal, Chennai in Tax Case (Revision) No. 147 of 2000, dated 24.01.2001, whereby the Tribunal had allowed the Revenue's appeal against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal(Additional Bench), Chennai in T.A. No. 870 of 1993.

3. The assessment year in question is 1988-1989. Since we are in complete agreement with the view expressed by the Division Bench of the High Court, we do not intend to delve into the facts of the case and also various submissions made by the learned counsels for the parties. In the instant case, suffice it is to appreciate and confirm the correct principle of law.

4. The High Court while rejecting the writ petition, at paragraph 13 of the judgment has observed as under :

"Thus, the buyer pays the
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catalogue price less transport rebate allowed, irrespective of the amount paid for freight charges by the assessee. Fluctuation in freight charges is not the concern of the buyer as he is bound to pay only the catalogue price or F.O.R. price. Thus, the agreed price being inclusive of freight subject to fixed transport rebate allowed, it would be a matter of indifference to the customer as to what is the amount of freight."

5. While enunciating so, the High Court has followed the decision of the Constitution Bench of this Court in the case of Tungabhadra Industries Ltd. Kurnool vs. Commercial Tax officer, Kurnool, 1960 (11) STC 827. Therein, the Constitution Bench of this Court has observed as under:

"One other point which is involved in the appeal relates to the
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claim of the appellant-company to a deduction in respect of the freight-charges included in the price

of the commodity. Under rule 5(I)
(g) of the Turnover and Assessment
Rules, in determining the net
turnover of a dealer, he is entitled
to have deducted from his gross
turnover "all amounts falling under
the following two heads, when
specified and charged for by the
dealer separately, without including
them in the price of the goods sold:

- (i) freight;
- (ii)....."

The appellant claimed exemption on a
sum of Rs.3,88,377-13-3 on the ground
that it represented the freight in
respect of the goods sold by the
appellant, asserting that they had
been charged for separately. The
assessing officer rejected the claim
and this rejection was upheld by the
departmental authorities and by the
High Court in revision. It would be
seen that in order to claim the
benefit of this exemption the freight

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should (i) have been specified and
charged for by the dealer separately,
and (ii) the same should not have
been included in the price of the
goods sold. The learned Judges of
the High Court held that neither of
these conditions was satisfied by the
bills produced by the appellant. We
consider, the decision of the High
Court on this point was correct. In
the specimen bill which the learned
counsel for the appellants has placed
before us, after setting out the
quantity sold by weight (23.760
lb.) the price is specified as 15
annas 9 pies per lb. and the total
amount of the price is determined at
Rs.23,388-12-0. From this the
railway freight of Rs. 1,439-12-0 is
deducted and the balance is shown as
the sum on which sales tax has been
computed. From the contents of this
invoice it would be seen that the
appellant has charged a price
inclusive of the railway freight and
would therefore be outside the terms
of rule 5(I)(g) which requires that
in order to enable a dealer to claim

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the deduction it should be charged
for separately and not included in
the price of goods sold. The
conditions of the rule not having
been complied with, the appellant was
not entitled to the deduction in
respect of freight."

6. In our considered view, the facts of this

case are similar to the facts noticed in the case of Tungabhadra Industries Ltd. Kurnool (supra). Therefore, we are of the view that the Division Bench of the High Court has not committed any error, whatsoever, which calls for our interference. Accordingly, the appeal is dismissed.

Ordered accordingly.

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In view of the observation made in Civil Appeal No. 6246 of 2004, this appeal is also dismissed on the same terms, observations and directions.

.....J.
[H.L. DATTU]

.....J.
[S.A. BOBDE]

NEW DELHI,
SEPTEMBER 18, 2014.
ITEM NO.101

COURT NO.2

SECTION IIIA

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Civil Appeal No. 6246/2004

HYDERABAD INDUSTRIES LTD.

Appellant(s)

VERSUS

COMMERCIAL TAX OFFICER & ORS.
(With office report)

Respondent(s)

WITH
C.A. No. 6247/2004
(With Office Report)

Date : 18/09/2014 These appeals were called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. S. Ganesh, Sr. Adv.

Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Ms. Gauri Rishi, Adv.
for M/s.Khaitan & Co.,Adv.

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
Ms. Neha Aggarwal, Adv.
Mr. Subramonium Prasad,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the
Signed order.

[Charanjeet Kaur]
Court Master

[Vinod Kulvi]
Asstt. Registrar

[Signed order is placed on the file]