

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 Petition, *inter alia*, questioning the order

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

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

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

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

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 I N D I A
R E C O R D O F P R O C E E D I N G S

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]