

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19/12/2001

C O R A M :

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HON'BLE MR.JUSTICE A.K.RAJAN

W.P.No.17235 of 2000 and W.P.No.1308 of 2001

Indian Potash Limited,
Ambal Building,
727, Anna Salai,
Chennai-6. ... petitioner in
both the WPs.

-vs-

1. The Assistant Commissioner (CT),
Fast Tract Assessment Circle-I,
Greams Road, Chennai-6.

2. The State of Tamil Nadu, rep.by
Secretary to Government,
Department of Commercial Taxes and
Religious Endowments,
Fort St.George,
Chennai-9.

3. The Tamil Nadu Taxation Special
Tribunal, rep. by the Registrar,
Singaravelar Maligai,
Rajaji Salai, Chennai. ...Respondents in
both the WPs.

PRAYER: These petitions filed under Article 226
of the Constitution of India, praying for the issuance of
Writ of Certiorari as stated therein.

For petitioner :: Mr.C.Natarajan, S.C.

For respondents :: Mr.T.Ayyaswamy,
Spl.G.P.(T)
Spl.G.P.(T)

: ORDER

(Order of the Court was made by R.Jayasimha Babu,J.)

The definition of "turnover" in the Tamil Nadu General Sales Tax Act lays emphasis on the consideration for the goods which are the subject-matter of sale. Price is not defined in the Act. It is defined in the Sale of Goods Act as the money consideration for the sale of goods. The Sales Tax Act of the State does not require that for an amount to be regarded as part of the turnover, the consideration must have been paid by the actual buyer. The definition of "turnover" is in relation to the dealer who receives the consideration and the source from which that consideration is received is not required to be gone into, so long as the receipt of the consideration for the sale is clear and is established. 2. The Assessing Authority, having sought to tax the petitioner, who is a manufacturer of fertilizer but whose product Potash, is not subject to the Fertilizer (Control) Order so far as the pricing is concerned, and who had sold the product in terms of an administered Scheme framed by the Central Government which provided for payment of an amount which was described as a concession in the Scheme formulated by the Central Government to the manufacturer, subject to the manufacturer agreeing to sell the fertilizer to the farmer at the price set out in the Scheme, the sum total of the two amounts being regarded by the Assessing Authority as a consideration for the sale, the petitioner filed an Original Petition, challenging the assessments made on that basis. The Taxation Special Tribunal having upheld the assessment, the Assessee is now before us. 3. It was submitted by Mr.C.Natarajan, learned Senior Counsel appearing for the dealer that the matter in issue is squarely covered by the decision rendered by a three Judges Bench of the Supreme Court in the case of NEYVELI LIGNITE CORPORATION LIMITED -vs- COMMERCIAL TAX OFFICER, CUDDALORE AND ANOTHER reported in (2001) Vol.124 STC 586. That submission was made even while acknowledging that the fertilizer, the sale of which was the subject-matter of that decision was subject to the Fertilizer (Control) Order unlike the Potash sold by the dealer here which is not subject to that Control Order, so far as price is concerned. 4. In that decision, at para 10, it was observed by the Court that "It appears to us that it is that sale consideration, whether in cash or otherwise,

which is receivable in respect of sales made by a dealer which can possibly form part of the turnover of a dealer". After noticing the fact that the subsidy under the Administered Scheme considered in that case, was payable at the time of removal of goods from the factory although after the Company had certified that the removal is for sale for agricultural purposes, it was observed by the Court at Para 13 that "the subsidy so given is undoubtedly to see that the ultimate consumer gets fertilizer at a reasonable price and the manufacturer is not unduly burdened by the lower fixation of the price of fertilizer. The payment which is so made by the Government to a manufacturer cannot be regarded as a discharge of any liability or obligation by the Government towards the purchaser of fertilizer. The two payments received by the manufacturer, namely, the subsidy and the price fixed under the Fertilizer (Control) Order are independent of each other. Subsidy does not form part of the bargain between the manufacturer and the purchaser of fertilizer". 5. The Court after referring to the decision rendered in the case of STATE OF TAMIL NADU -vs- KOTHARI SUGARS & CHEMICALS LTD. (1996) 101 STC 197) observed at para 15 thus:- "Here also there is no statutory basis for the grant of subsidy; and the amount was received by the appellant pursuant to the administrative decision taken by the Central Government. Furthermore, the subsidy is not traceable to any agreement, direct or indirect, between the manufacturer and the purchaser of fertilizer". The Court then referred to the decision of the Constitution Bench of the Apex Court in the case of GEORGE OAKES (PRIVATE) LIMITED -vs- STATE OF MADRAS (1961 (12) STC 476) regarding the scope of the term "turnover" and quoted with approval the following passage in that judgment: "So far as the purchaser is concerned, he pays for the goods what the seller demands viz., price even though it may include tax. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover." 6. The Court then went on to state the effect of that passage in these terms: "It is clear from the aforesaid observations that it is that amount which flows from the purchaser to the seller which alone would form part of the turnover of the seller. Any sum received de hors the contract of sale from another entity, whether it be Government or anyone else, cannot be regarded as being an amount which would form part of the sale price on which tax is payable". At para 20 of the judgment, reference was made to the case of E.I.D.PARRY (2000) 117 STC 457). Thereafter, the Court emphasized the fact that there was no agreement in the case before it that any part of the price would be paid by the Government and, therefore, the amount received by the manufacturer from the

Government would not form part of the sale price. The Court observed that "In the present case, however, there is no agreement between the appellant and the purchasers of fertilizer for payment of any amount by the purchasers to the manufacturer in excess of the price fixed under the Fertilizer (Control) Order. Subsidy is paid to the appellant not by or on behalf of the purchasers, but is paid by the Government of India for different reasons and under its own Scheme and after a budgetary allocation". 7. Having regard to the pronouncement of the Apex Court that the price is that which the seller receives from the purchaser and that the subsidy received by the seller from the Government in terms of an Administered Scheme which does not provide that the amount paid by the Government is being paid on behalf of the buyer, the amount of the 'concession' received by the petitioner from the Government cannot be regarded as forming part of the price which alone can be subjected to tax under the Act. 8. Counsel also brought to the notice the decision of the Apex Court *TISCO GENERAL OFFICE RECREATION CLUB -VS- THE STATE OF BIHAR & OTHERS* (JT 2001 (10) SC 101), wherein the Court held that the subsidy given by the management to the canteen does not form part of the gross turn over of the canteen, as though the price fixed for the food items was below cost price, the valuable consideration for the sale of the food item was only the price so fixed. 9. Though the concept of sale was considerably widened by the definition of tax on the sale or purchase of goods incorporated in Clause 29-A of Article 366 of the Constitution, which resulted in the earlier law which had assigned to the term sale under the Sales Tax Laws the same meaning that it bore under the Sale of Goods Act, there has been no change in the other concept of consideration. Consideration is even now understood as only the amount paid or payable by the buyer which would also include the amounts payable by others on behalf of such buyer, but would exclude amounts receivable by the seller for others under a Scheme to which the buyer is not a party. 10. We must, therefore, hold that the order of the Tribunal holding that the amount of concession received by the manufacturers from the Government under the Administered Scheme forms part of the sale consideration, is not in accordance with the law declared by the Apex Court. The impugned order of the Tribunal is set aside, and the original petition filed by the petitioner before the Taxation Tribunal shall stand allowed. 11. The learned counsel for the petitioner points out that the petitioner had paid certain amounts during the pendency of the matter before this Court under the Orders made by this Court. Such amount shall be adjusted against other liabilities, if any, of the manufacturer. If there are no such liabilities, the amount shall be refunded.

Sd/ 19.12.2001

Sd/ ASSISTANT REGISTRAR // True copy //

SUB. ASST. REGISTRAR.

To

1. The Assistant Commissioner (CT),
Fast Tract Assessment Circle-I,
Greams Road, Chennai-6.

2. The State of Tamil Nadu,
rep.by Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George, Chennai-9.

3. The Tamil Nadu Taxation Special Tribunal,
rep. by the Registrar,
Singaravelar Maligai,
Rajaji Salai, Chennai.

JS

R.JAYASIMHA BABU, J.
AND
A.K.RAJAN, J.

W.P.NOS.17235 OF 2000
AND 1308 OF 2001

19.12.2001