DEPUTY COMMISSIONER OF SALES TAX (LAW), BOARD OF REVENUE (TAXES), ERNAKULAM

v.

MOTOR INDUSTRIES CO., ERNAKULAM

February 18, 1983

[P. N. BHAGWATI AND E. S. VENKATARAMIAH, JJ.]

Kerala General Sales Tax Rules, 1963—rs .9(a) and 9(b)(i)—When an additional discount allowed may be deducted from taxable turnover under r. 9(a)—Deduction in respect of 'returned goods' under r. 9(b)(i) can only be made from turnover of assessment year in which returned goods were sold.

The respondent was an assessee under the Kerala General Sales Tax Act, 1963. In determining the taxable turnover for the assessment year 1973-74, it claimed exemptions in respect of a 'service discount' under r. 9(a) and an amount of Rs. 982.83 in respect of 'sales returns' under r. 9(b)(i) of the Kerala General Sales Tax Rules, 1963. The Assistant Commissioner disallowed the claim on both the counts stating that while the 'service discount' had not been allowed as a discount in accordance with the terms of the sale but as an over-riding commission and incentive to promote trade, the 'sales returns' related to the sales completed in the assessment year 1972-73. In appeal, the Deputy Commissioner allowed the assessee's claim in respect of 'service discount' in full and that in respect of 'sales returns' to the extent of Rs. 552.70. The Department's appeal before the Appellate Tribunal and the revision filed by it before the High Court were dismissed.

The appellant contended that the 'service discount' could not strictly be termed as discount as it was *in lieu* of services rendered by the respondent's main distributors by way of popularisation of the sales and consumption of the products sold by the assessee and that it was either in the nature of a set-off on account of reciprocal promises or it amounted to consideration for an agreement styled as "trading in"; and that the deduction claimed in respect of 'sales returns' could not be allowed from the taxable turnover for the year 1973-74 as any deduction under r. 9(b)(i) could only be made from the total turnover of the assessment year in which the goods were actually sold.

Dismissing the appeal in so far as it concerned the 'service discount', and *allowing* the same in respect of 'sales returns',

HELD: Rule 9 (a) says that all amounts allowed as discount either in accordance with regular practice or in accordance with agreement would be deductible from the total turnover provided they are duly supported by the entries in the accounts of the assessee. Ordinarily, any concession shown in

the price of goods for any commercial reason would be a trade discount which can legitimately be claimed as a deduction under r. 9(a). Such a concession is usually allowed with the object of improving prospects of one's own business. It is common experience that when goods are marketed through reputed concerns, the demand for such goods increases and correspondingly the business of the manufacturer or the wholesale dealer would become more and more prosperous. Hence any concession in price shown in such circumstances by way of an additional incentive with a view to promote one's own trade does qualify for deduction as a trade discount. It cannot be termed as a service charge. [389A-D]

In the instant case, the 'service discount' in respect of which the deduction was claimed was the additional trade discount allowed by the assessee to its main distributors over and above the normal trade discount in consideration of the extra benefit derived by the assessee by reason of the marketing of its goods through them. It is not disputed that there were such agreements between the assessee and the purchasers and the accounts of the assessee truly reflected the actual discount allowed to the purchasers. Apart from buying the products of the assessee, no other service was rendered by the dealers to the assessee. The additional discount or 'service discount' is no other than the discount referred to in r.9 (a). [388 E-H; 389 D-E]

(b) 'Trade-in' contracts are those where goods are transferred by the seller for consideration partly in money and partly in exchange of some other goods to be sold by the buyer to the seller. In such cases there may be one contract of sale only of the principal goods coupled with a subsidiary agreement that if the buyer delivers to the seller the other goods, an agreed allowance will be made. There may also be cases where the buyer may become entitled to an extra allowance for some service unconnected with the sale of the goods in question being rendered to the seller. In such cases the allowance in the price of the goods sold given by the seller to the buyer either by way of consideration for the goods supplied by the buyer to the seller or for services rendered by the buyer to the seller would not be a trade discount as such which would qualify for deduction in the determination of the taxable turnover. [389 F-H; 390 A]

In the instant case, the service said to have been rendered by the buyers for securing the 'service discount' is an integral part of the transaction of sale itself which incidentally confers on the assessee the benefit of popularisation of the assessee's goods in the market. The discount so allowed is merely a percentage of the price of the goods sold which has nothing to do with any other goods supplied or other service rendered by the buyers to the assessee. The fact that the discount is not allowed at the time of sale but on a later date at the end of the month would not make it any-the-less a trade discount. The High Court rightly upheld the deduction of the 'service discount' claimed in this case.[390A-C]

2. The two important conditions which have to be satisfied for claiming the deduction under r. 9(b)(i) are that the goods in question must have been returned within three months from the date of delivery and that necessary entries are made in the accounts of the assessee. If these conditions are satisfied, the amount allowed to the purchaser for the returned goods would be deductible from the total turnover. Any deduction that can be made under

this rule can only be made from the total turnover of the assessment year in which the goods that are returned within three months of the date of delivery were actually sold. Such deduction cannot be claimed from the total turnover of the succeeding financial year. If the assessment for the relevant year is completed, the department has to comply with the demand for adjustment or refund by making necessary rectification in the order of assessment.

[390 E-H, 391 F-G]

Jay Engineering Works v. *State of Kerala*, 43 S.T.C. 492, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 210 of 1983.

Appeal by Special leave from the Judgment and Order dated the 11th June, 1981 of the Kerala High Court in T.R.C. No. 117 of 1980.

P.A. Francis and *V.J. Francis* for the Appellant.

S. Balakrishnan for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. In this appeal by special leave arising under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'the Act') two questions arise for consideration. They are (i) whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in law in holding that the assessee was entitled to exemption under Rule 9 (a) of the Kerala General Sales Tax Rules, 1963 (hereinafter referred to as 'the Rules') from payment of sales tax on the turnover relating to 'service discount' and (ii) whether the value of goods returned by the purchasers could be deducted under Rule 9 (b) (i) of the Rules from the total turnover of the year of assessment in which the goods were actually returned when they had been sold in the previous assessment year.

The assessee M/s. Motor Industries Co., Ernakulam is a dealer in diesel, fuel injection parts etc. For the assessment year 1973-74 ending March 31, 1974 the assessment had been completed under the Act on the best judgment basis determining the taxable turnover at Rs. 47,42,687.71 by disallowing the claim for exemption of an amount of Rs. 69,707.68 which the assessee had claimed as 'service discount' under Rule 9 (a) of the Rules and a further amount of Rs. 982.83 under Rule 9 (b) (i) of the Rules being the

value of goods returned. The Assistant Commissioner of Sales Tax (Assessment) who was the assessing authority disallowed the claim in respect of 'service discount' on the ground that the amount in respect of which deduction was claimed had not been allowed as a discount in accordance with the terms of sale but had been allowed as an over-riding commission and 'incentive' to promote trade. He disallowed the claim in respect of the value of goods which had been returned on the ground that it related to the sales completed in the previous assessment year i.e. 1972-73. Aggrieved by the order of assessment the assessee filed an appeal before the Deputy Commissioner, Agricultural Income-tax and Sales Tax (Appeal), Ernakulam. In that appeal, the exemption claimed in respect of 'service discount' was allowed. But the claim in respect of 'sales returns' was allowed to the extent of the turnover of Rs. 552.70 being the turnover of goods returned within a period of three months from the date of sale. The appeal filed against that order by the Department before the Appellate Tribunal was dismissed. Against the order of the Tribunal the Department filed a revision petition before the High Court of Kerala which again was dismissed by its judgment dated June 11, 1981. This appeal is preferred with the special leave of this Court against the aforesaid judgment of the High Court.

Under Chapter II of the Act which contains the charging provisions the incidence and levy of tax is on the turnover of any dealer during any assessment year computed in accordance with the Act. Explanation (2) (ii) given in section 2(xxvii) of the Act which defines the expression 'turnover' says that subject to such conditions and restrictions, if any, as may be prescribed in that behalf any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover.

Clause (a) and sub-clause (i) of clause (b) of Rule 9 of the Rules which prescribes the method of computation of the taxable turnover of an assessee read thus :

> "9. Determination of taxable turnover.—In determining the taxable turnover, the amounts specified in the following clauses, shall subject to the conditions specified therein, be deducted from the total turnover of the dealer—

A (a) all amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of a contract or agreement entered into in a particular case and provided also that the accounts show that the purchaser has paid only the sum B originally charged less the discount;

(b) (i) all amounts allowed to purchasers in respect of goods returned by them within a period of 3 months from the date of delivery of the goods to the dealer when the goods are taxable on the amount for which C they had been sold provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser....

D We shall first deal with the claim made in respect of 'service discount'. Under clause (a) of Rule 9 of the Rules all amounts allowed as discount where such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of contract or agreement entered into in a particular case have to be deducted from the total turnover in determining the E taxable turnover provided the accounts of the assessee show that the purchser has paid only the sum originally charged less the discount. In the instant case the 'service discount' in respect of which the deduction was claimed by the assessee was the additional trade discount allowed by it to its main distributors (purchasers) namely F the T.V.S. group of companies which constitute a prestigious group of commercial concerns over and above the normal trade discount in consideration of the extra benefit derived by the assessee by reason of the marketing of its goods through them. This additional trade discount is allowed in accordance with the trade agreement subject to periodical variation depending upon the cost structure G and changes in market conditions. It is not disputed that there were such agreements between the assessee and the purchasers and the accounts of the assessee truly reflected the actual discount allowed to the purchasers. What is however urged by the Department is that the said additional discount allowed by the assessee could not H strictly be termed as discount as it was in lieu of services rendered by its main distributors by way of popularisation of the sales and consumption of the products sold by the assessee. We find it difficult

to accept the submission made on behalf of the Department. Rule 9 (a) says that all amounts allowed as discount either in accordance with regular practice on in accordance with agreement would be deductible from the total turnover provided they are duly supported by the entries in the accounts of the assessee. Ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can legitimately be claimed as a deduction under clause (a) of Rule 9 of the Rules. Such a concession is usually allowed by a manufacturer or a wholesale dealer in favour of another dealer with the object of improving prospects of his own business. It is common experience that when goods are marketed through reputed companies, firms or other individual dealers the demand for such goods increases and correspondingly the business of the manufacturer or the wholesaler would become more and more prosperous and its capacity to withstand competition from other manufacturers or other dealers dealing in similar goods would also improve. Hence any concession in price shown in such circumstances by way of an additional incentive with a view to promote one's own trade does qualify for deduction as a trade discount. It cannot be termed as a service charge as is attempted to be termed in this case. In fact in this case apart from buying the products of the assessee, no other service is being rendered by the T.V.S. group of companies to the assessee. In the circumstances the additional discount or 'service discount' as it is called in this case is no other than the discount referred to in Rule 9 (a) of the Rules.

We are not inclined to accept the submission that the 'service discount in question' is in the nature of a set-off on account of reciprocal promises or amounts to consideration for an agreement styled as 'trading-in'. 'Trade-in' contracts are those where goods are transferred by the seller for consideration partly in money and partly in exchange of some other goods to be sold by the buyer to the seller. In such cases there may be one contract of sale only of the principal goods coupled with a subsidiary agreement that if the buyer delivers to the seller the other goods, an agreed allowance will be made. There may also be cases where the buyer may become entitled to an extra allowance for some service unconnected with the sale of the goods in question being rendered to the seller. In such cases the allowance in the price of the goods sold given by the seller to the buyer either by way of consideration for the goods supplied by the buyer to the seller or for services rendered by the buyer to the seller would not be a trade discount as such which would qualify for

A deduction in the determination of the taxable turnover. In the instant case the service said to have been rendered by the buyers for securing the 'service discount' is an integral part of the transaction of sale itself which incidentally confers on the assessee the benefit of popularisation of the assessee's goods in the market. The discount so allowed is merely a percentage of the price of the goods sold which B has nothing to do with any other goods supplied or other service rendered by the buyers to the assessee. The fact that the discount is not allowed at the time of sale but on a later date at the end of the month would not make it any-the-less a trade discount.

C We are, therefore, of the view that the High Court has rightly upheld the deduction of the 'service discount' claimed in this case by the assessee from the total turnover. The appeal should, therefore, fail in so far as this part of the case in concerned.

But on the second point which arises for consideration in this D case, the case of the Department appears to be well founded. Rule 9 (b) (i) of the Rules provides that all amounts allowed to purchasers in respect of goods returned by them within a period of three months from the date of delivery of the goods to the dealer, when the goods are taxable on the amount for which they have been sold are deductible from the total turnover in determining the taxable turnover E (provided the accounts show the relevant entries). The two important conditions which have to be satisfied for claiming the deduction under Rule 9 (b) (i) are that the goods in question must have been returned within three months from the date of delivery and that necessary entries are made in the accounts of the assessee. If these conditions are satisfied, the amount allowed to the purchaser for the F returned goods would be deductible from the total turnover. The final assessment under the Act is always made in respect of one year i.e. the financial year which commences on April 1 of every calendar year and ends with March 31 of the succeeding calendar year. That is clear from the scheme of section 5 of the Act and Rules 11, 18, 20 and other rules found in the Rules. Any deduction that can be made G under Rule 9 (b) (i) of the Rules can only be made from the total turnover of the assessment year in which the goods that are returned within three months of the date of delivery were actually sold. Such deduction cannot be claimed from the total turnover of the succeeding financial year. The reason is obvious and it can be easily H demonstrated by taking the illustration of a dealer who ceases to be a dealer in the subsequent financial year. In his case unless deduction

is allowed in the financial year in which the goods that are subsequently returned were actually sold, he would have to pay tax on the amount for which the goods in question were sold in the assessment year in which they were sold and he would not be able to claim any deduction in the subsequent year as he has ceased to be a dealer in that year. There may also be difference in the tax liability if the rates of tax are varied in the subsequent assessment year. Further by such deduction the turnover relating to the subsequent financial year which is otherwise taxable under the statute would escape taxation to the extent of the deduction. Such a result cannot be permitted to ensue. It is true that in the case of many sales which have taken place in the months of January, February and March in any financial year, the assessee would become aware of his right to claim the deduction under Rule 9 (b) (i) in his return pertaining to that assessment year during the subsequent financial year if such goods are returned within three months of the date of delivery. It is quite possible that in such cases the assessee would have filed his annual return under Rule 18 of the Rules without any opportunity to claim any deduction where the goods are returned subsequent to the filing of the return but before the expiry of three months from the date of their delivery. This, however, need not present much difficulty as an assessee in that position can always file a revised return and claim the deduction or even if assessment is completed, demand adjustment or refund by preferring the claim in time. The learned counsel for the Department states that such an adjustment or refund can be claimed by an assessee. The above statement made on behalf of the Department is in accordance with the scheme of the Act and the Rules. In order to make the position clear the State Government may take steps to introduce a suitable amendment in the Rules or in the Act. We are, however, of the view that even in the absence of such an amendment, the deduction in respect of 'sales return' has to be allowed in the assessment relating to the financial year in which the sales of the returned goods had taken place and even where assessment for that year is completed, the Department has to comply with the demand for adjustment or refund by making necessary rectification in the order of assessment, provided that other conditions are satisfied, as that is the inevitable consequence of Rule 9 (b) (i) which allows deduction of the value of the goods retuned within three months from the date of their delivery from the total turnover of that assessment year. But in any view of the matter it is not possible to hold that such deduction in respect of returned goods can be claimed in the assessment proceedings for the financial year subsequent to the financial year in which the sales have taken

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place. We do not, therefore, agree with the contrary view expressed by the High Court relying on its decision in *The Jay Engineering Works Ltd.* v. *State of Kerala*(1). The appeal of the Department has to be allowed to the above extent.

In the result the appeal is dismissed in so far as the first question is concerned. The appeal is allowed in so far the second question is concerned. The orders of assessment for the assessment year 1973-74 shall be modified accordingly. As a consequence of this decision, the order of assessment for the year 1972-73 shall be rectified in accordance with this judgment. No costs.

H.L.C. *Appeal party allowed.*

(1) 43 S.T.C. 492.