

A M/S. UNIVERSAL CYLINDERS LIMITED
v.
THE COMMERCIAL TAXES OFFICER
(Civil Appeal No(s). 2431 of 2018 etc.)

B FEBRUARY 23, 2018

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Rajasthan Sales Tax Act, 1994: ss.2(39), 2(44) – Refund of sales tax – Appellant-assessee manufacturer of cylinders for storage of LPG supplied the entire production to Government owned companies – The cost of the cylinders was to be determined by the Ministry of Petroleum and Natural Gas (MOP & NG) under the pricing policy – IOC placed an order for supply stating in the supply order to charge a provisional price of Rs.682 per unit and that pricing formula was under review by the Government and the final prices applicable after 1.7.1999 would be only as per approval of MOP & NG – Accordingly appellant-assessee supplied the cylinders – On 31.10.2000, IOC sent letter to appellant that after review of the prices, cylinders have again been provisionally revised to Rs.645 per unit w.e.f 1.7.1999 – Thereafter oil companies deducted/adjusted excess payment of Rs.37 and proportionate sales tax thereon from the payments due to the assessee – Claim for refund of sales tax on the excess amount of Rs.37 – Entitlement for – Held: s.2(39) defines “sale price” as a price which is either paid or payable to a dealer as consideration for sale – The definition itself makes it clear that any sum by way of any discount or rebate according to the practice normally prevailing in the trade would be deducted and not be included in the sale price – The definition of ‘turnover’ means the aggregate amount received or receivable by a dealer – In the instant case, when the orders were placed with the assessee, the price was not finalized – There was a clear cut stipulation in the purchase order that price of Rs.682/- was only a provisional subject to review and the final price applicable after 01.07.1999 would be the price as approved by the MoP & NG – Therefore, though the assessee may have received Rs.682 per cylinder, it was under a legal obligation only to receive that price which was fixed by the MoP & NG – Assessee had to refund the amount of Rs.37/- per

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cylinder to the oil companies – Therefore, it actually received only Rs.645 per cylinder – The price fixation is not in the hands of the assessee – It is not even in the hands of the oil companies – The price is fixed by the MoP & NG and in such an eventuality, the amount actually payable is the amount to be fixed by the MoP & NG and that is also the amount which the assessee is legally entitled to receive – The assessee is entitled to refund of the amount of sales tax paid on the excess amount.

Allowing the appeals, the Court

HELD: It is undisputed that the assessee had to refund the amount of Rs.37/- per cylinder to the oil companies. Therefore, what it has actually received is only Rs.645/- per cylinder. What was legally receivable by it was the amount to be finally fixed by the MoP & NG i.e. Rs. 645/- per cylinder. In the supply order only a provisional price was fixed. The price fixation is not in the hands of the assessee. It is not even in the hands of the oil companies. The price is fixed by the MoP & NG and in such an eventuality, the amount actually payable is the amount to be fixed by the MoP & NG and that is also the amount which the assessee is legally entitled to receive. The assessee shall be refunded the amount of sales tax paid on the excess amount. The order of the Deputy Commissioner is restored. [Paras 17, 18] [514-B, D]

IFB Industries Limited v. State of Kerala [2012] 4 SCR 802 : 2012 (4) SCC 618; ONGC v. State of Gujarat 2014 SCC Online Guj 15385; Gail India Ltd. v. State of M.P. (2014) 72 VST 161; MRF Ltd. v. Collector of Central Excise, Madras (1997) 5 SCC 104 – referred to.

Case law reference

[2012] 4 SCR 802	referred to	Para 12
(2014) 72 VST 161	referred to	Para 13
(1997) 5 SCC 104	referred to	Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2431 of 2018.

From the Judgment and Order dated 27.02.2015 of the High Court

A of Judicature for Rajasthan at Jaipur in S. B. Sales Tax Revision Petition No. 59 of 2006.

WITH

C. A. Nos. 2432, 2433 and 2434 of 2018

B Sameer Jain, Ms. Anu Sura, Angad Sandhu, Love Kumar Gupta, Rabin Majumdar, Advs. for the Appellant.

Amit Sharma, Sandeep Singh, Ankit Raj, Ms. Indira Bhakar, Ms. Ruchi Kohli, Advs. for the Respondents.

C The Judgment of the Court was delivered by
DEEPAK GUPTA J. 1. Leave granted.

D 2. Since a common question of law arises in these appeals, they are being disposed of by this common judgment. Briefly stated the facts are that the appellant-assessee manufactures cylinders for storage of Liquefied Petroleum Gas (LPG). At the relevant time, the entire production was for supply to Government owned companies viz. M/s. Indian Oil Corporation Ltd. (for short 'the IOC'), M/s Bharat Petroleum Corporation Ltd., and M/s Hindustan Petroleum Corporation Ltd.. It is not disputed that the cost of the cylinders was determined by the Ministry of Petroleum and Natural Gas (for short 'the MoP & NG') under the pricing policy.

E 3. On 04.05.2000, the IOC placed an order for supply of 73380 numbers of 14.2 Kg. LPG cylinders which was to be made by 31.08.2000. Clause 3 of the supply order reads as follows:

F "You can charge a provisional price of Rs. 682.00 for 14.2 Kg cylinders. Pricing formula is under review by the Government and the final prices applicable after 01.07.99 will be only as per approval of MOP & NG."

G 4. The appellant-assessee supplied the cylinders and charged the amount of Rs. 682/- per cylinder and also charged sales tax on the same in accordance with law. Similar supply orders were placed by the other companies also.

H 5. On 31.10.2000, the IOC sent a letter to the appellant that after review of the prices, the price of 14.2 Kg. cylinders has been again provisionally revised to Rs.645/- with effect from 01.07.1999. Relevant portion of the letter reads thus :-

“Pending finalization of the report and the short time available to recover the cost due to the proposed cylinder tender, Industry has decided to revise the provisional basic price of 14.2 Kg cylinder to Rs. 645/- with effect from 01.07.1999. Accordingly we will be recovering the differential amounts from your bills. Final adjustments would be made later on after finalization of the cylinder price.”

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6. Thereafter, the oil companies deducted/adjusted the excess payment of Rs.37/- and proportionate sales tax thereon from the payments due to the assessee. Thereafter the assessee approached the Assessing Authority for refund of the sales tax paid on the excess sale amount i.e. Rs.37/-. The case of the assessee was that he had paid tax on the provisional price of Rs.682/- per cylinder. After the price had been reduced to Rs.645/-, he was only entitled to Rs.645/-. The oil companies had taken refund of the amount of Rs.37/- and, therefore the tax paid on the excess amount be refunded to him. The assessee also urged that this amount of Rs.37 should not be counted in its total turnover.

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7. The Assessing Officer rejected the claim of the assessee on the ground that there is no provision under the Act for reducing or refunding the amount of tax once the amount of tax has been paid. It was also observed that the arrangement of the assessee with the oil companies was in the nature of a private agreement and the sales tax department had nothing to do with this. The appeals filed by the assessee against the assessment order before the Deputy Commissioner of Appeals were partly allowed. Thereafter, the Respondent-Revenue approached the Tax Board, which allowed the appeals of the Revenue. Being aggrieved, the assessee approached the High Court by filing revision petitions, which were dismissed. Hence, the present appeals.

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8. To appreciate the rival contentions of the parties, we may make reference to Section 2(39) of the Rajasthan Sales Tax Act, 1994, which defines ‘sale price’ as under:

“2(39) “sale price” means the amount paid or payable to a dealer as consideration for the sale less any sum allowed by way of any kind of discount or rebate according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof.”

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- A 9. Reference may also be made to Section 2(44) of the Rajasthan Sales Tax Act, 1994 which defines ‘turnover’ as under:

“2(44) “turnover” means the aggregate amount received or receivable by a dealer for sales as referred to in clause (38) including the purchase price of the goods which are subject to purchase tax under section 11 of the Act;

- B Explanation : Tax charged or collected and shown separately in the sale bill/cash memorandum or in the accounts shall not form part of turnover.”

- C 10. The High Court held that since the words ‘paid’, ‘payable’, ‘amount received’ and ‘or receivable’ have been used in the aforesaid two sections, the assessee was entitled to receive the amount of Rs.682/- per cylinder and if he has given any discount, he cannot claim refund of the same and the price of the cylinder cannot be said to be Rs.645/- per cylinder. The High Court also held that the goods were delivered at Rs.682/- per cylinder and this amount was collected and therefore, no amount should be refunded.

11. We have heard learned counsel for the parties and a number of decisions have been cited.

- E 12. In *IFB Industries Limited v. State of Kerala*¹, the issue was with regard to the definition of ‘turnover’. This court held that to take the benefit of trade discount and to make it eligible for exemption, all that the assessee is required to prove was that the purchaser had paid only the sum originally charged less the discount and that this should be a regular practice in the trade.

- F 13. Reliance has also been placed on the judgment of the Gujarat High Court in *ONGC v. State of Gujarat*², wherein in similar circumstances, it was held that the discount does not form part of the sale price. A similar view was taken by the Madhya Pradesh High Court in *Gail India Ltd. v. State of M.P.*³. The facts of this case were that the petitioner company GAIL, a Public Sector Undertaking, was doing business of supply of various petroleum products including LPG. The price of LPG and kerosene was regulated and controlled by the Public Planning and Analysis Cell (PPAC). The assessee supplied LPG to the

¹ (2012) 4 SCC 618

² 2014 SCC Online Guj 15385 (Tax Appeal No. 50 of 2014)

H ³ (2014) 72, VST 161

oil companies on the basis of provisional price and final bill invoice was issued after the price was settled by the PPAC and credit note or debit note was issued. The High Court after referring to the judgment of this Court in **IFB Industries Ltd.** (supra), held that both the provisional price and the final price are controlled by the PPAC. The change in sale price is due to the direction by the PPAC and is not within the control of the assessee. It held that even though the credit note may have been issued on the basis of the provisional price, the price to be taken into consideration for calculating the turnover and the sale price must be the actual price received by the assessee.

14. Learned counsel for the respondent has relied upon a judgment of this Court in the case of **MRF Ltd. v. Collector of Central Excise, Madras**⁴. We are of the opinion that this judgment has no relevance to this case since it is a judgment arising out of the Excise Act where the tax is attracted the moment the goods are removed from the factory gate.

15. In our view, a bare reading of Section 2(39) of the Rajasthan Sales Tax Act, which defines “sale price” clearly indicates that it is the price which is either paid or payable to a dealer as consideration for the sale. The definition itself makes it clear that any sum by way of any discount or rebate according to the practice normally prevailing in the trade shall be deducted and shall not be included in the sale price. The definition of ‘turnover’ means the aggregate amount received or receivable by a dealer.

16. In the instant case, when the orders were placed with the assessee, the price was not finalized by the MoP & NG. There was a clear cut stipulation in the purchase order that the price of Rs.682/- is only a provisional price subject to review and it was clearly understood by the parties that the final price applicable after 01.07.1999 will be the price as approved by the MoP & NG. Therefore, though the assessee may have received Rs.682/- per cylinder, it was under a legal obligation only to receive that price which was fixed by the MoP & NG. This price could have been higher than Rs.682/- per cylinder, in which event the assessee would have had to collect and deposit with the Rajasthan Sales Tax Department sales tax on the excess amount. However, since the price of the cylinder has been reduced, the assessee cannot charge more than the price fixed, is bound to refund the excess amount collected and

⁴ (1997) 5 SCC 104.

- A is therefore legally entitled to get refund of the tax paid on the excess amount.

17. We may also note that it is undisputed that the assessee had to refund the amount of Rs.37/- per cylinder to the oil companies. Therefore, what it has actually received is only Rs.645/- per cylinder. What was legally receivable by it was the amount to be finally fixed by the MoP & NG i.e. Rs. 645/- per cylinder. In the supply order only a provisional price was fixed. We have also taken into consideration the fact that the price fixation is not in the hands of the assessee. It is not even in the hands of the oil companies. The price is fixed by the MoP & NG and in such an eventuality, the amount actually payable is the amount to be fixed by the MoP & NG and that is also the amount which the assessee is legally entitled to receive.

18. In view of the above discussion, we allow the appeals, set aside the judgment of the High Court and direct that the assessee shall be refunded the amount of sales tax paid on the excess amount. The order of the Deputy Commissioner is restored. The assessee shall be entitled to interest at the rate of 9% per annum on the amount payable to it from the date of the order of the Deputy Commissioner till payment of the amount.

19. Pending applications, if any, shall also stand disposed of.