

***HON'BLE SRI JUSTICE G. CHANDRAIAH**

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ T.R.C. No.135 OF 2002

%04.08.2015

M/s. Hindustan Petroleum Corporation Ltd., Secunderabad.

....Petitioner.

AND

State of A.P., rep. by the State representative before the Sales Tax Appellate Tribunal, Hyderabad.

.....Respondent.

! Counsel for the Petitioner: Sri S. Krishna Murthy

^ Counsel for respondent : Special G.P for Taxes (TG)

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> Head Note:

? Cases referred:

[1] 43 STC 13

2.AIR 1968 Supreme court 22

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

T.R.C. No.135 OF 2002

Between:

M/s. Hindustan Petroleum Corporation Ltd., Secunderabad.

....Petitioner

And

State of A.P., rep. by the State Representative before the Sales Tax Appellate Tribunal.

....Respondent

DATE OF JUDGMENT PRONOUNCED: 04.08.2015.

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

T.R.C. No.135 OF 2002

ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This Tax Revision Case is filed by the assessee under Section 22(1) of A.P.G.S.T. Act (for short "the Act"), raising the following three questions of law said to be arising out of the order dated 23.10.2000, passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad, in T.A.No.1672 of 1999, for the assessment year 1990-91 (CST).

- i) "Whether the Sales Tax Appellate Tribunal is justified in concluding that siding and shunting charges are different from freight charges.
- ii) Secondly, whether the Sales Tax Appellate Tribunal is justified

in subjecting the turnover of siding and shunting charges to tax while exempting the turnover relating to railway freight.

- iii) Thirdly, whether 'C' declaration forms given for the sales turnover of goods would also cover the turnover relating to siding and shunting charges."

The facts of the case in brief are as under:

The assessee is in the business of procurement and refinement of crude and selling the finished petroleum products both within the State and outside the State. The assessee is a Government of India Enterprises. The controversy, relevant to the purpose of the present Tax Revision Case is only in relation to the expenditure incurred towards the railway siding and shunting charges and collected from the customers for dispatching the finished products to various destinations. The Assessing Officer allowed the exemption of the siding and shunting charges as forming part of the freight charges and is not includable in the sale price. In doing so, the Assessing Officer while relying upon the judgment of the Supreme Court reported in **M/s. Hindustan Sugar Mills Ltd., vs. State of Rajasthan**^[1], finally held that the amounts received by the dealer in arranging transportation of finished products through railway tankers and in the process incurring of expenditure towards siding and shunting would form part of the freight and is not includable in the sale price, as defined under Section 2(h) of the Central Sales Tax Act and thus exempt from the tax. The Revisional Authority/Deputy Commissioner (CT) set aside the orders of the Assessing Officer by order dated 22.03.1995. According to the Deputy Commissioner, the expenditure incurred, which was reimbursed by the customers to the dealer, is an expenditure incurred presale, as such, the same would form part of the sale price. With this sole reason, the Deputy Commissioner (CT) reversed the orders of the Assessing Officer holding that the expenditure incurred on account of the siding and shunting are includable

in the sale price and thus not exempt from the C.S.T. On further appeal, the Tribunal confirmed the orders of the Deputy Commissioner and remanded back the case to the Assessing Officer for quantification of the actual expenditure incurred on account of the siding and shunting charges. The remand was made accepting the contention of the assessee that the Deputy Commissioner had not made any factual verification as to actual amounts of siding and shunting charges but assumed the same at 50% of the freight charges. In those facts and circumstances, the assessee is before us raising the questions of law referred to in para No.1.

Heard the learned counsel for the petitioner and the learned Special Government Pleader for Commercial Tax Department (Telangana).

The facts are not in dispute. The contract of sale stipulated delivery of the goods as ex-Refinery, Visakhapatnam. All the expenditure and the amounts incurred in the dispatch of the goods in terms of the contract entered into between the dealer and the purchaser are incurred for and on behalf of the purchaser and the same are reimbursed by the purchaser, on account of the fact that the sale of the goods is F.O.R despatching locations price and delivery. As a matter of fact, the price at which the petroleum products could be sold by the petitioner was determined by the Administrative Pricing Mechanism (APM) by the Government of India. In other words, the sale price is a fixed one as dictated by the Government of India. This aspect of the matter is not in dispute. It is also not in dispute that the sale price was separately shown in the invoice. In addition to the other expenditure siding and shunting charges as one of the components were included under the freight charges. The Assessing Officer had also recorded that the siding and shunting charges are assessed and recovered on a specific basis viz., the movement of rakes having one or two engines placed at the site at the request of the customer for the purpose of

loading of goods into the wagons. The movement of the empty tankers to the loading point cannot be said to be unnecessary as it is obvious the same is for the purpose of movement of the finished products. It is but natural that any expenditure incurred in connection with placement of empty tankers at loading point for loading would form part of the expenditure for movement of the goods which normally in trade circles known as forwarding and freight charges or cost of freight. This expression of cost of price or cost of delivery has not been defined in the statute as such, the same would have to be understood in the sense of commercial or common parlance, and if so understood, such charges would cover all the expenditure incurred which are directly in aid and facilitate movement of goods to the destination. Hence, it cannot be said that they do not form integral part of the expression freight charges, as without such expenditure being incurred, it is highly impossible for moving the goods to the destination. The contention that is urged on behalf of the respondent/department that the part of the expenditure incurred in placing the empty tankers at the filling station/delivering point would be presale expenditure, though at the first blush appears to be attractive, on close scrutiny it is liable to be rejected. It is a matter of common knowledge and in fact business sense that when a transporter undertakes to transport the goods, the freight charges, though expressed as a single unit, nevertheless would include the expenditure that such transporter is likely to incur in bringing the empty vehicle to the loading point and all other expenses and profit elements in the process of carrying out their obligation as a transporter. Viewed from that angle, it cannot be said in the facts of the present case that merely because certain elements of expenditure are involved on account of the siding and shunting charges for placing the empty wagons at the filling/delivering point, the same would not form part of the freight charges. We may have to keep in focus that the entire expenditure is being incurred to enable the goods to be transported from the delivery point to the destination and

incurred for the movement of the goods. Viewed from that angle, the expenditure incurred in the present case would certainly form part of the freight charges and in the facts of the present case, the contract being ex-works for refinery, Visakhapatnam and such expenditure agreed to be borne under the contract by the buyers to the buyers' account. Thus the siding and shunting charges would not form part of the sale price and thus the Assessing officer had rightly excluded the same from the computation of the sale price.

The learned counsel for the dealer has fairly submitted that the issue relating to siding and shunting charges are not the subject matter of the earlier appeal and to that extent the statement of the Assessing Officer may not be correct. We appreciate the fairness on the part of the learned counsel for the dealer in bringing the correct facts to the notice of the Court. The reliance placed by the learned counsel for the respondent on the judgment of the Supreme Court reported in **Union of India v. Indian Sugar Mills Association and another**^[2] does not support the case of the petitioner in any way. In the said judgment, question which fell for consideration in the context of the expression "any other charges occurring in Section 41(1) of the Railways Act" would include the siding and shunting charges. In fact, in the context of discussing the said case in para 19 the Supreme Court had held that "the siding charges in respect of freight on the traffic over the assisted sidings shall be payable by the company" would indicate that the expenditure incurred by the individual who is using the facility of siding and shunting extended by the railways in a given case would form part of the freight charges.

In the facts of the case, the order of the Tribunal to the extent confirming the order of the Deputy Commissioner (CT) treating the siding and shunting charges as part of the sale price are liable to be set aside and the questions are required to be answered in favour of the assessee

and against the revenue.

Accordingly, the Tax Revision Case is allowed answering the questions in favour of the assessee and against the revenue. No order as to costs. Miscellaneous Petitions, if any, pending in this Tax Revision Case shall stand disposed of.

G. CHANDRAIAH,J

CHALLA KODANDA RAM, J

Date:04.08.2015.

Note:

L.R copy to be marked.

B/o.

Gk.

HON'BLE SRI JUSTICE G. CHANDRAIAH

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[\[1\]](#) 43 STC 13

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