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T.C.(MD)Nos.1 to 3 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22/09/2025

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

T.C.(MD)Nos.1 to 3 of 2017

Sterlite Industries (India) Limited,
SIPCOT Industrial Complex,
Madurai By Pass road,
Tuticorin - 628 002.

...Petitioner in
all Tax Cases

vs.

The State of Tamil Nadu,
(Represented by the
Deputy Commercial Tax Officer-II,
Tuticorin)

... Respondent in
all Tax Cases

Prayer: Tax Case Revisions filed under Section 38 of the TNGST Act, 1959
praying to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Madurai in M.T.S.A.Nos.36 to 38 of 2006, dated
10.05.2006.

For Petitioner in
all Tax Cases : Mr.N.Inbarajan

For Respondent in
all Tax Cases : Mr.K.Jayaseelan
Government Advocate (Taxes)



T.C.(MD)Nos.1 to 3 of 2017

COMMON ORDER

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P.VELMURUGAN, J.

These Tax Case Revisions have been filed challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.S.A.Nos.36 to 38 of 2006, dated 10.05.2006.

2. The petitioner manufactures sulfuric acid. Their place of business was inspected by the Enforcement Wing Officials on 17.12.2002. During the inspection, the officials found that the petitioner had charged freight separately in certain bills. The petitioner explained that they collected freight charges from the customers and paid the same to the transporters once every fortnight. The cost of freight paid on behalf of the customers was recovered by raising debit notes at a fixed rate per metric ton of acid sold. The assessing officer treated the turnover relating to the freight charges as part of the sale price and assessed them to tax.

3. Aggrieved by the orders of the Assessing Officer, the petitioner appealed to the Appellate Commissioner, who, after hearing both sides, allowed the appeal, stating that the freight charges incurred by the petitioner were post-sale and were not to be included in the sale price.



T.C.(MD)Nos.1 to 3 of 2017

WEB COPY

4. Against the order of the Appellate Assistant Commissioner, the Department filed an appeal before the Tribunal. The Tribunal, while setting aside the order passed by the Appellate Assistant Commissioner, held that although the basic price is ex-factory, the petitioner's extended responsibility for the goods until the site of the buyer takes them beyond the place where the basic price is fixed. Thus, the petitioner cannot claim that their risk ends once the goods are delivered at their factory because the price is ex-factory. There is an extended responsibility of the respondents until it reaches the buyer's site. The Tribunal also held that, as per Clause 4 of the agreement, which deals with freight charges, the respondents categorically spell out the charges for the transportation of goods to the site of the buyer and nowhere does the agreement say that the charges will be debited/collected as per the demand of the transportation contractors. The Tribunal also observed that, as per Clause 5 of the terms and conditions of the agreement, the transit insurance is borne by the manufacturer, and held that, in all respects, the sale gets concluded at the site of the buyer. Thus, the transportation charges relating to FACT forms are clearly liable to be taxed.

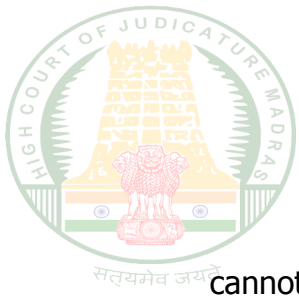


T.C.(MD)Nos.1 to 3 of 2017

WEB COPY

5. Aggrieved by the findings of the Tribunal, the petitioner has filed this Tax Case Revision.

6. The learned counsel for the petitioner submits that the Tribunal failed to appreciate that Section 20 of the Sale of Goods Act, 1930, clearly states that when there is an unconditional contract for the sale of specified goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery of the goods, or both, is postponed. This aspect has been completely overlooked by the Tribunal. The petitioner further states that the terms of the agreement/contract with FACT are clear, and it is also admitted that the price is ex-factory. In these circumstances, the Tribunal had no basis to state that the sale is concluded at the buyer's site. The learned counsel further submits that the Tribunal should have considered the entire contract with FACT, rather than isolating certain clauses, to arrive at its conclusion. Additionally, he submits that although the Tribunal acknowledged that the freight charges were separately charged by a debit note, it was incorrect for the Tribunal to state that the sale is concluded at the buyer's site. He also argues that the Tribunal failed to appreciate the intention of the parties when the price is fixed ex-factory and when the freight element is separately charged. As per Section 2(h) of the Central Act, the freight charges



T.C.(MD)Nos.1 to 3 of 2017

WEB COPY

cannot form part of the sale price, even in respect of the supply to FACT, since there is a separate agreement regarding the amount charged. The learned counsel further submits that the Tribunal should have recognized that the freight charges are post-sale charges and should not be considered part of the sale price for supplies made to FACT. Therefore, the learned counsel prays that the order of the Tribunal be set aside, and the findings of the Appellate Assistant Commissioner be confirmed.

7. The learned counsel appearing for the respondent would submit that the Assessing Officer, after conducting a thorough investigation, rightly determined that the freight charges collected separately from the customers were part of the sale price and thus taxable. The petitioner's explanation regarding the payment of freight charges to the transporters and the raising of debit notes does not alter the nature of the transaction. The freight charges were not post-sale charges but were an essential component of the transaction, as the petitioner continued to bear responsibility for the goods during transit. While the Appellate Assistant Commissioner had set aside the Assessing Officer's order, the Tribunal, after a detailed examination, correctly set aside the order of the Appellate Assistant Commissioner and confirmed the findings of the Assessing Officer. The Tribunal's conclusion was based on the fact that, despite the price being ex-factory, the petitioner incurred the



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extended responsibility for the goods and the freight charges were an integral part of the sale price, as they were directly related to the delivery of the goods. Therefore, the respondent submits that there are no valid grounds for interference with the Tribunal's decision and hence prays for dismissal of the Tax Case.

8. Heard the learned counsel on either side nad perused the materials available on record.

9. The tax case was admitted on the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case and in law, the Tribunal is right in finding that the sale gets concluded at the site of the buyer, even though the freight charges are charged for separately by a debit note?

(ii) Whether in the facts and circumstances of the case and in law, the Sales Tax Appellate Tribunal has any evidence to state that the freight charges are not charged for separately?

(iii) Whether in the facts and circumstances of the case and in law, the Sales Tax Appellate Tribunal is right in construing that even though the price is ex-factory, by virtue of the extended responsibility, such freight charges are forming part of the sale price?



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10. The main contention of the petitioner is that, since the price is ex-factory, the freight charges are post-sale in nature and, therefore, cannot be considered part of the sale price liable to tax. A careful examination of the orders of the Assessing Officer and the Tribunal, as well as Clauses 4 and 5 of the agreement with FACT, shows the following:

4. Freight Charges:

a) Phosphoric Acid : @ Rs.1,087.50 PMT P 205

b) Sulphuric Acid : Rs.562.40 PMT

The revision for freight charges for Sulphuric Acid shall be at the rate of 2.50 paise per tonne per KM for one rupee per litre increase or decrease in price of High Speed Diesel Oil. The revision in rate shall be calculated in this proportion (i.e, if the increase or decrease is only 50 paise per litre, the rate shall be increased/decreased by 1.25 paise per tonne per KM calculated for one way (single) distance. For the purpose of working out the increase / decrease in rate, the one way distance from SILL's factory to FACT at Ambalamedu / Udyagamandal shall be considered. Also, the price of HSD will be reckoned based on that ruling at the place where the SILL's factory is situated.

The distance from Tuticorin to FACT is 380 km. Current HSD price is Rs.15.62 per litre (subject to production of proof by SILL).

The revision for freight charges for Phos. Acid shall be reckoned at 2 (two) times that applicable for Sul. Acid for supplies upto 45% P205 and will be revised as and when the concentration of Phos. Acid being supplied goes beyond 50%.

5. TRANSIT INSURANCE: Shall be arranged by SIIL."



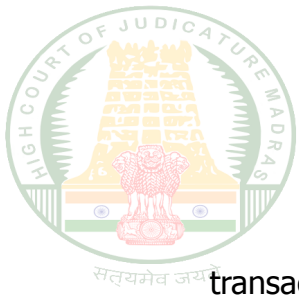
T.C.(MD)Nos.1 to 3 of 2017

WEB COPY

A detailed examination of Clauses 4 and 5 of the agreement with FACT reveals that the petitioner retained responsibility for the goods until delivery at the buyer's site. Clause 4 specifies the freight charges for Sulphuric Acid and Phosphoric Acid, including the method of revision linked to the price of High-Speed Diesel and the distance from the factory to the buyer's site. Clause 5 clearly provides that the petitioner shall arrange for transit insurance. These provisions demonstrate that the petitioner's obligations extend beyond the factory premises, and the freight charges, though billed separately, are integrally connected to the sale transaction.

11. It is not in dispute that the petitioner collected freight charges separately from the customers by raising debit notes. The petitioner contends that these charges are post-sale expenses and therefore should not form part of the sale price. However, the State/Revenue has correctly submitted that freight charges, even if billed separately, constitute an integral component of the sale price and are therefore subject to tax.

12. The Tribunal and the Assessing Officer rightly observed that the petitioner's responsibility for the goods continues beyond the factory premises until delivery at the buyer's site. The fact that the petitioner separately paid freight to transporters and raised debit notes does not alter the nature of the



T.C.(MD)Nos.1 to 3 of 2017

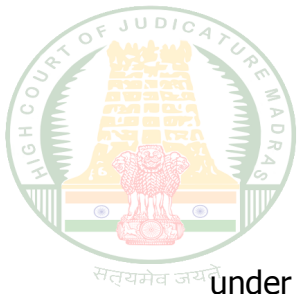
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transaction. These charges are not mere post-sale expenses; they are essential elements of the sale transaction because the petitioner retains responsibility for the goods during transit.

13. Although the price is ex-factory, the sale cannot be considered complete until the goods reach the buyer's site, given the extended responsibility retained by the petitioner. The freight charges are directly related to the delivery of goods and therefore form an inseparable part of the sale consideration. The Tribunal correctly concluded that, even if separately invoiced, such charges are to be included in the turnover for taxation purposes.

14. For goods transported to the buyer, the delivery obligations and associated responsibilities make it necessary that freight charges, though billed separately, are treated as part of the sale consideration. Clause 4 provides for the freight charges, while Clause 5 confirms that the manufacturer bears transit insurance, reinforcing that the petitioner's obligations extend the sale transaction to the buyer's site.

15. Both the Assessing Officer and the Tribunal have, therefore, correctly held that freight charges form part of the sale price and are taxable



T.C.(MD)Nos.1 to 3 of 2017

WEB COPY

under the relevant provisions of the Sales Tax Act. The petitioner's contentions to the contrary are without merit.

16. In view of the foregoing, the substantial questions of law are answered against the petitioner. The Tax Case Revisions are devoid of merit and are accordingly dismissed. There is no order as to costs.

(P.V., J.) (K.K.R.K., J.)
22/09/2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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T.C.(MD)Nos.1 to 3 of 2017

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To

- 1.The Deputy Commercial Tax Officer-III,
Tuticorin)
- 2.The Appellate Assistant Commissioner (CT),
Tirunelveli.
- 3.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench),
Madurai.



WEB COPY



T.C.(MD)Nos.1 to 3 of 2017

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T.C.(MD)Nos.1 to 3 of 2017

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