REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 656 OF 2008

Deputy Commissioner of Commercial Taxes (Vigilance) ...Appellant(s)

Versus

M/s Hindustan Lever Limited ...Respondent(s)

J U D G M E N T

Dipak Misra, J.

In the present appeal, by special leave, the appellant has called in question the legal acceptability of the order dated 25.01.2007 passed by the Division Bench of the High Court of Karnataka at Bangalore in STRP No. 62 of 2004 whereby the Division Bench has dismissed the Special Revision Petition preferred by the appellant-department and affirmed the order dated 27.12.2003 passed by the Special Bench constituting five members of the Karnataka Appellate Tribunal, Bangalore

(for short, "the tribunal") constituted under the Karnataka Sales Tax Act, 1957 (for short, "KST Act").

2. Requisite facts to be exposited for adjudication of this appeal are that Brooke Bond India Limited established its factory at Dharwad in the State of Karnataka and the said factory was engaged in manufacture of blended packet tea. With the passage of time, Brooke Bond India Limited was amalgamated with the respondent-company with effect from 21.03.1997. There is no dispute over the fact that the respondent-company registered under the Companies Act is a dealer under the KST Act. The dealer was granted sales tax exemption benefit for five years from the date of commencement of production in accordance with exemption eligibility certificate issued by the Government of Karnataka as per the package of incentive granted vide Government Order dated 27.09.1990 and sales tax exemption notification dated 19.06.1991 to which we shall advert to at a later stage.

3. When the matter stood thus, the Assistant Commissioner of Commercial Taxes (Intelligence), Kolar visited the premises of the respondent-assessee on 20th December, 1996. During the course of physical inspection the authority noticed that there was contravention of the conditions laid down under Explanation III(e) to the notification dated 19.06.1991. It was noticed by the said authority that sale of tea packets by the respondent-company from the Dharwad unit which had the benefit of exemption and the units manufacturing tea outside Dharwad unit which did not have the benefit of exemption were similarly priced. Two invoices – one from Dharwad unit and one from non-Dharwad unit – were taken note of and found that the ultimate sale price in both cases is Rs. 118 (the non-Dharwad tea had a sales tax component of Rs. 12.27, whereas the Dharwad tea had no sales tax component). Based on the said material as well as material evincible from the price circulars of the respondent-company found in the office, the intelligence officer arrived at the conclusion that the dealer had added the tax component to the sale price of Dharwad tea

though not under the nomenclature of tax or cess. Hence, it was concluded that the respondent company was not entitled to the benefit of exemption, for Explanation III(e) to the notification dated 19.06.1991 had been violated.

4. As the facts would further unravel, on the basis of the aforesaid finding of fact of the inspecting authority, a series of assessment orders dated 15.06.1998, 31.01.1999, 22.02.2000 and 01.07.2000 were passed wherein, *inter alia,* the claim of exemption on the turnovers of Dharwad tea based on notifications dated 27.09.1990 and 19.06.1991 came to be rejected. The assessment orders were assailed before the appellate authority and vide orders dated 25.02.1999, 07.03.2001 and 23.03.2001 the appellate authority upheld the view of the assessing authority by rejecting the claim of exemption advanced by the assessee on the ground that there was collection of tax by considering the tax component in determination of sale price, though the same was not distinctly shown as tax and collected as such. The orders passed by the appellate authority were challenged before the

tribunal which thought it appropriate to constitute a Special Bench and, accordingly, five members of the tribunal took up the matter. The tribunal after hearing learned counsel for the parties came to hold that though the company had considered the local tax element in the price fixed, but it cannot be stated that the company has collected the local taxes as such from the consumers in view of the fact that in the invoice against KST and CST, it is specifically left blank in respect of Dharwad tea; and accordingly accepted the stand put forth by the assessee-respondent. The said order was challenged before the High Court in revision petition.

5. The High Court to appreciate the controversy framed the following three questions of law:-

> "(1) Whether the consideration of sales tax in fixing the price of the goods and sale of such goods along with identical goods on which taxes are collected along with the price has not resulted in an implied collection of tax in respect of such sales tax exempted goods?
>
> (2) Whether the assessee who produces identical products, one which is exempt from sales tax and one which sales tax is payable, both being priced on par and sold off the same shelf, could not lead

> to the presumption that there is a deemed collection and inclusion of sales tax in the price fixed?
>
> (3) Whether the legend 'inclusive of taxes' found on the packets of Dharwad and non-Dharwad tea, the distinction as such being lost on the consumer, whether it cannot be said that taxes are inclined and collected on the tax exempted tea."

6. The High Court, after hearing the learned counsel for the parties and analysing the material on record, dissecting the relevant provisions of the KST Act and the notification for exemption came to hold as under:-

> "30. Learned Advocate General invites our attention with regard to the price being the same with regard to Dharwad tea and non-Dharwad tea. Same is reflected in the books of accounts. The Company is governed by the Standards of Weights and Measures Act, 1976 and Rules. Rule 6 read with Rule 2(r) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 requires that the sale price of the package commodity shall be printed on the packages strictly in the following form:
>
> "Maximum (or Max) Retail Price Rs.....
>
> ... incl. of all taxes."
>
> or
>
> "MRP Rs. ... INCL. OF ALL TAXES"

> 31. Much of arguments were advanced before us that in the light of inclusive rate of tax, there is nothing but collection in the case on hand. The Tribunal in its order would say that so long as the buyer has not agreed to pay tax, and so long as the bill would show that the company is exempted from tax, there can be no inference of tax collection. Tribunal, in our view, is right in noticing that mere mentioning of MRP does not by itself a proof of any collection of tax in terms of sales tax laws. We are in agreement with the finding of the Tribunal.
>
> 32. In fact, in Annexure-F there is a clear mention of exemption of tax in terms of the note at the end of the invoice itself. Therefore, the buyer is told in unmistakable terms that what is being paid as sale price and not as sales tax.
>
> 33. The Tribunal, in our view, has considered not only the facts of the case but also all the case laws as applicable, and thereafter has come to a right conclusion in holding against the State. We are in agreement with the findings of the Tribunal."

On the basis of the aforesaid analysis, the High Court concurred with the opinion expressed by the tribunal.

7. We have heard Mr. Basava Prabhu S. Patil, learned senior counsel along with Mr. V.N. Raghupathy for the appellant and Mr. Harish N. Salve and Mr. Arvind P. Datar, learned senior counsel for the respondent.

8. The present litigation has a history. Be it stated, this is the third round of litigation. In the first round, the State of Karnataka had availed the plea that the Government Order dated 27.07.1990, pursuant to which the Exemption Notification dated 19.06.1991 was issued, was itself not gazetted. The controversy travelled to this Court in ***Lipton India Ltd. and another v. State of Karnataka and others***[1]. In the said case, the Court has held that:-

> "7. The administration of the State of Karnataka represented by its Chief Secretary, does not find the said officer guilty of gross negligence. The Chief Secretary does not find it unpardonable that the statement was made on oath on behalf of the State Government in a pending proceeding before the High Court. We cannot agree. Whether the Chief Secretary thinks it necessary to take action against the said officer or not is not our concern. Our concern is that the State Government made a statement on oath before the High Court that was incorrect and the judgment of the High Court accepts and proceeds upon the basis of that statement. The High Court's judgment must, therefore, be set aside and the matter remanded to the High Court to be heard and decided afresh.

---

1 (1996) 10 SCC 710

> 8. We must caution the High Court at Karnataka, having regard to what we have stated above, that it should be very vigilant in accepting as correct a statement, even though it be made on oath, on behalf of the State Government. It is unfortunate that we should have to say this of a State Government, but the record before us leaves us no option.
>
> 9. The learned counsel for the State Government now submits that we should not make this general observation in respect of affidavits filed on behalf of the State Government. As we have already stated, we have done so because the Chief Secretary of the State of Karnataka does not seem particularly troubled by the fact that a statement was made on oath on behalf of the State Government before the High Court which was not correct. He does not even think that the said officer was grossly negligent in making the statement that the said government order was not gazetted only on the basis of going through the Gazettes for the succeeding three months. We must assume that other officers of the State Government will be encouraged to make statements before the courts on oath upon as little or no enquiry, expecting from the Chief Secretary the same unconcern".

9. After so holding, the Court has allowed the appeals and directed the State Government to pay costs which was quantified in the sum of Rs. 50,000/-. In the second round of litigation, the State of Karnataka sought to deny the exemption

on the ground that grinding of tea does not amount to manufacture and, therefore, as such the exemption was not available. The matter travelled to this Court but eventually the appeals were dismissed by orders dated 17.07.1998 and 07.09.1998 preferred by the State of Karnataka.

10. The present one is the third round. Mr. Patil, learned senior counsel appearing for the State would urge that the tribunal as well as the High Court is not justified in interfering with the finding of fact recorded by the Assessing Authority and the first appellate authority that the assessee had collected sales tax on the sale of tea manufacture at Dharwad and hence, not entitled for the benefit of sales tax exemption solely on the ground the company had considered local sales tax element in the sale price fixed. It is also contended by him that the levy of tax on the assessee cannot be found fault with inasmuch as inclusion of sales tax in the sale price would disentitle the assessee from the benefit of exemption stipulated in the Notification dated 19.06.1991 issued under Section 8A of the KST Act. Lastly, it is canvassed by Mr. Patil that the

issue whether the legend "inclusive of taxes" found on both the packed tea produced in the exempted unit, Dharwad, Karnataka and tea obtained from outside the State and sold in the State (taxable tea), makes the end consumer believe that in the end consumer price sales tax element has been considered, has not been properly considered by the High Court. Learned senior counsel would submit that the High Court has not properly appreciated the authorities in the field and arrived at the erroneous conclusion. Mr. Patil has placed reliance on ***State of Karnataka v. M/s C. Venkatagiriah and Brothers***[2] and ***T. Stanes & Co. Ltd. v. State of T.N. and another***[3].

11. Mr. Salve, learned senior counsel appearing for the assessee-respondent would urge that the declaration made by the assessee about MRP is a statutory declaration required as per Rule 2(r) of the Standards of Weights and Measures

---

2 1994 Supp (2) SCC 572

3 (2005) 9 SCC 308

(Packaged Commodities) Rules, 1977 framed under erstwhile Standards of Weights and Measures Act, 1976 and the same does not mean that the assessee had collected any amount by way of tax. The aforesaid statutory declaration only means that the end consumer does not have to pay amount beyond MRP. It is urged by him that the assessee had taken the stand that it has uniform MRP throughout India irrespective of whether sales tax is payable in certain States or not and despite the fact that the rate of tax is also different in different States because the assessee has felt that it is necessary to have uniform MRP for PAN India to prevent flowing of goods from one State to another. It is his further submission that revenue has erroneously based its conclusion on a comparison of price between the two units of the same manufacturer either in the same State or in two different States wherein one unit is covered by exemption and the other is not. Incrementing the said argument learned senior counsel would contend that though the two prices are uniform, the revenue on an erroneous comparison has presumed that the assessee

has collected tax without appreciating the fact that the assessee has adopted a singular business model to have a uniform price throughout India which does not countenance any kind of comparison. Mr. Salve would contend that the authorities cited by the revenue are absolutely inapplicable to the facts of the case, for the controversy is totally different therein. According to Mr. Salve, the controversy in the case has been put to rest in ***Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore***[4].

12. The heart of the matter is whether the respondent has violated clause (e) of Explanation III to the Sales Tax Exemption notification dated 19th June, 1991. The said clause is reproduced below:-

> "*Explanation III.* The provisions of this Notification shall not apply:
>
> (a) xx xx xx xx
> (b) xx xx xx xx
> (c) xx xx xx xx
> (d) xx xx xx xx

---

4 (1971) 2 SCC 559

> (e) To the turnovers on which any tax is collected by a new Industrial Unit under the provisions of KST Act, 1957."

The above quoted clause stipulates that the notification will not apply on turnovers on which any tax is collected by the new industrial unit under the provisions of the KST Act. It is the submission of the appellant that inference should be drawn that the respondent company had collected sales-tax on packaged tea sold by the new industrial unit, and thus, there was violation of clause (e) of Explanation III to the Sales Tax Exemption Notification. Reliance is primarily placed on the observations of this Court in ***Amrit Banaspati Co. Ltd. and another v. State of Punjab and another***[5] and more particularly on paragraph 11, which reads as under:-

> "11. Exemption from tax to encourage industrialisation should not be confused with refund of tax. They are two different legal and distinct concepts. An exemption is a concession allowed to a class or individual from general burden for valid and justifiable reason. For instance tax holiday or concession to new or expanding industries is well known to be one of

---

5 (1992) 2 SCC 411

> the methods to grant incentive to encourage industrialisation. Avowed objective is to enable the industry to stand up and compete in the market. Sales tax is an indirect tax which is ultimately passed on to the consumer. If an industry is exempt from tax the ultimate beneficiary is the consumer. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rate as compared to others. Therefore, both the manufacturer and consumer gain, one by concession of non-levy and other by non-payment. Such provisions in an Act or Notification or orders issued by Government are neither illegal nor against public policy."

13. Reference is also made to the decision of this Court in ***M/s C. Venkatagiriah and Brothers*** (supra) wherein it has been observed:-

> "4. For the said proposition, the Tribunal relied upon a decision of the Mysore High Court in *Spencer & Co. Ltd.* v. *State of Mysore*[6]. The proposition enunciated in the said decision is that the dealer can be held to have collected the tax under the Act, if:
>
> "[F]rom the facts and circumstances, it can be inferred that the seller intended to pass on the tax and the buyer had agreed to pay the sales tax in addition to the price and *that in the accounts of*

---

6 (1970) 26 STC 283 (Mys)

the dealer he has shown such amounts separately."

(emphasis supplied)

Applying the said proposition, the Tribunal held that even though the bills issued by the dealer in this case did say specifically that the price charged was inclusive of tax it cannot be held that he has collected the tax. We are of the opinion that the additional requirement envisaged in *Spencer & Co. Ltd* (supra) is not correct in law. Whether a dealer has discharged the burden that is laid upon him by the statute is a question of fact, to be decided in each case with reference to the facts and material in that case. It is not a matter of law nor can the mode of proof be reduced to a proposition of law. Sub-section (2) or sub-section (1) of Section 10 of the Amendment Act do not provide for such a requirement. In such a situation, it cannot be said as a general proposition that unless the tax collected is reflected in the account books of the dealer, it cannot be said to have been collected. No such general proposition can be evolved in a matter totally within the realm of appreciation of evidence. It is up to the dealer to discharge the said burden by producing such material as he can and it is for the appropriate authority to say whether the dealer has succeeded in discharging the burden or not. In this view of the matter, we cannot agree with the Tribunal's view which has been upheld by the High Court. The endorsement in the bill that the price charged is inclusive of tax is prima facie proof against the dealer's contention. Unless he produces material to displace the presumption arising from the said

endorsement, he must be held to have collected the tax."

14. It is the argument of the assessee that the aforesaid declaration about MRP is a statutory declaration and that does not mean that the assessee had collected any amount by way of tax. The further stand is that the end consumer does not have to pay any amount beyond MRP and that is how the business model of the assessee operates and hence, there is no question of any comparison. In fact, the appellant department is of the view that the respondent assessee ought to have determined lesser price for the exempted unit as compared to other units. It is urged that the absence of any price control the view of the department is neither a legal requirement nor practically possible. Once this erroneous comparison is obliterated, the entire case of department collapses.

15. First, we shall deal with the applicability of the principle stated in ***Amrit Banaspati*** (supra). The issue raised in the case of ***Amrit Banaspati*** (supra) was quite distinct and

separate. The question raised was whether the principle of promissory estoppel would apply, for the learned single Judge of the High Court on facts had found that there was sufficient material to direct the State to honour its commitment to refund the sales-tax. The issue involved in the said case relates to refund of tax paid to the State. In this context, this Court observed that refund of tax was made in consequence of excess payment or when it was realized illegally or contrary to law. The refund of tax due and realised in accordance with law cannot be comprehended and no law can be made for refund of tax to a manufacturer realized under the statute for the same would be invalid and *ultra vires*. A promise or an agreement to refund tax which was due under the law and realised in accordance with the law would be a fraud on the Constitution and breach of faith of the people. It is in this context, the aforesaid observations were made in paragraph 11 in the case of ***Amrit Banaspati*** (supra).

16. In fact, a careful elucidation of the said reasoning would support the stand of the respondent. The assessee, on the

basis of exemption notification had set up a new undertaking incurring expenditure. This was done on the foundation that the new unit would be exempt from tax. The exemption granted under the law by a legally valid notification was to encourage investment in the backward districts and enabled the newly established industry to overcome initial financial problems, recoup and ensue reasonable return on the capital expenditure and associated risks. Exemptions are allowed to industrial units to overcome the teething problems. Observations in paragraph 11 in ***Amrit Banaspati*** (supra), nowhere stipulate that the sale price as fixed must expressly exclude the tax component. It is obvious when a manufacturer is granted an exemption, the unit would fix the sale price taking the said exemption into account. In this manner both the manufacturer and the consumer gain. As sales-tax is an indirect tax, the purchaser has to pay the same and when the tax is not levied, the purchaser does not pay the same.

17. The respondent having set up a new industry which was exempted, should not have, in terms of clause (e) of the

Explanation III of the notification, collected any tax and to the extent the tax was collected the turnover was not exempted. Sales-tax, as noticed above, is an indirect tax, which is charged from the consumer or the purchaser. But the liability to pay is that of the dealer. It may be charged by the dealer from the purchaser. Sometimes this indirect tax is inbuilt and included in the retail price. This may be mandated by law to protect consumer interest. One frequently comes across products where the maximum sale price is specified and stated on the packaging as in the present case. Rule 2 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, framed under the erstwhile Standards of Weights and Measures Act, 1976, stipulated that the maximum sale price should be inclusive of all taxes. This was the statutory requirement binding on the respondent, who was selling packaged product. The statement on the packaged product inclusive of all taxes, means all taxes which were leviable, were already included in the price mentioned. It should not be constructed as an admission that the respondent had charged

sales tax. The respondent could not have deviated or ignored the statutory requirement by making a declaration contrary to the statutory rules. The consequences of not obeying and violating the statutory rules would have been severe.

18. Observations made in ***M/s C. Venkatagiriah and Brothers*** (supra) have to be again understood in the context in which they were made. In the said case the dealer was exigible to Central Sales-tax only if he had collected the tax and not otherwise. In the said context, this Court referred to amendment made under the Central Sales-tax Act, putting the burden of proof on the dealer to show that he had not collected the tax. For this reason, it was observed that when an endorsement was made in the Bill that price charged was inclusive of tax, it was *prima facie* proof against the dealer's contention and in such circumstances where burden was on the dealer, he should produce material to displace the presumption. The finding of the tribunal that the Central Sales-tax had not been charged independently in the Bills, it was observed, would not be a conclusive proof or good finding

in law. Importantly, this Court observed that the question whether the dealer had discharged the burden placed upon him by the statute is the question of fact and has to be decided in each case with respect to facts and material of the case. Significantly, in the present case no such burden has been placed on the assessee. Further the tribunal and the High Court have recorded as a finding of the fact that the assessee respondent had not collected the tax on sales made from the exempted unit. The assessee has relied upon invoices issued by them to the purchaser which have the following declaration:-

> "Goods sold under this invoice are fully exempted from levy of KST/CST under exemption certificate No. IDF/E3/50-St/92-93 dt. 1-12-1992 by the Director of Industries and Commerce Department, Govt. of Karnataka, Bangalore as applicable to our newly set up tea factory at Dharwad. We are on rolls of Asst. Commissioner, ST Bangalore. Our principal place of business is at No.2 4th Cross, MM Compound, Mysore Road, Bangalore.
>
> OR
>
> "Goods sold under this invoice are fully exempted from levy of KST/CST in terms of Govt. of

> Karnataka's order No. C/1/138/SPC/90 (GO dt. 27.9.1990 and Finance Department Notification No. FD/239/CSI/90 dt. 19.6.1991 and Industries and Commerce Department Certificate No. IDF/FS/91-24/93-94 dt. 5.6.1993 applicable to our newly set up factory at Dharwad (Ka). Our principal place of business is at Booke Fields, Marathahalli".

19. It has been highlighted that 3,50,000 invoices relating to the said product manufactured and sold from the Dhaward unit were placed on record. Apart from this the assessee-respondent had also placed 1200 price circulars issued, which showed that the assessee respondent had not collected sales tax. The books of account corroborate the trade price circular and invoices. The entire sale proceeds or consideration was shown as receipt and the amount was not bifurcated into sale price and tax collected.

20. An assessee is entitled to carry on and conduct business, fix the maximum retail price of its products. In the present case in spite of the multiple units both exempted and non-exempted, the respondent had adopted and followed uniform market price throughout India. The respondent is

entitled and can fix a uniform price meant for whole of India. The uniform market price does not differ in spite of differences in sales-tax payable at the end point, i.e., at the point of sale. This is a matter of business policy and cannot be taken exception to. The respondent has also explained that uniform market retail price at all India level ensures that the goods from one State do not flow to the other State, thereby distorting sales. It avoids and prevents shortages of goods in lower tax area. Uniform pricing cannot be a ground to hold that the respondent was charging sales tax on a sale price of the goods manufactured in the exempt unit. Cost of production in different units of the respondent assessee can vary. Cost of production has various components and is computed with reference to revenue expenditure, rate of return on the capital expenditure, etc. These are complex commercial and business considerations which cannot be decided with reference to a single factor, i.e., the uniform market retail price. A market retail price stating that it is inclusive of all

taxes could be the starting point, but would not prove and establish that the sales-tax has been collected.

21. Reliance placed on ***T. Stanes & Co. Ltd.*** (supra) is misconceived. The question involved therein related to interpretation of Section 22 of the Tamil Nadu General Sales-tax Act. The said Section stipulates that no person, who was not a registered dealer would collect any more tax and no registered dealer shall make any such collection, except in accordance with the provisions of the Act and the rules. The proviso stipulated that the sub-section would not apply to collection of an amount by a registered dealer towards an amount of tax already suffered under the Act in respect to the goods, the sale or purchase price of which was controlled by any law in force. In this background, it was observed that the term 'collected' would include any collection in any manner and purported recoupment as projected and pleaded would be nothing but collection. The contention of the assessee that he was only recouping and was not collecting the tax was rejected. Thus, the factual score is totally different.

22. In this context, it would be relevant to refer to the decision of the Court in ***Delhi Cloth and General Mills Co. Ltd.*** (supra). This case relates to Madhya Pradesh General Sales-tax Act, 1958. While interpreting the words "turnover" and "sale price" in the context of the charging Section it was observed that the liability to pay tax was on the dealer and the purchaser had no liability to pay tax. If a dealer had to pass the tax burden on to the purchaser, he could only do by adding the tax in question to the price of the goods sold. If that be so, the taxes collected by the dealer from the purchaser became a part of the sale price as fixed. Thus, the amount recovered by the dealer was in reality a part of the entire sale consideration. To appreciate the principle we may usefully reproduce certain passages from the said authority:-

> "6. Under Section 4 the liability to pay tax is that of the dealer. The purchaser has no liability to pay tax. There is no provision in the Act from which it can be gathered that the Act imposes any liability on the purchaser to pay the tax imposed on the dealer. If the dealer passes on his tax burden to his purchasers he can only do it by additing the tax in question to the price of the goods sold. In that event the price fixed for the

goods including the tax payable becomes the valuable consideration given by the purchasers for the goods purchased by him. It that be so, the tax collected by the dealer from his purchasers becomes a part of the sale price fixed, as defined in Section 2(*o*). In some of the Sales Tax Acts power has been conferred on the dealers to pass on the incidence of tax to the purchasers subject to certain conditions. Those provisions may call for different consideration. In the Act there is no such provision except Section 7-A which was introduced into the Act by Madhya Pradesh Act 23 of 1963. That provision would have relevance only in respect of the assessment for the year 1963-1964.

Section 7-A says:

> "No dealer shall collect any amount, by way of sales tax or purchase tax, from a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting."

7. In these appeals, it is not necessary to examine the relevance of that provision. But that provision does any give only statutory power to collect sales tax as such from any class of buyers. There is no other provision in the Act which confers such a power on the dealers. Unless the price of an article is controlled, it is always open to the buyer

> and the seller to agree upon the price to be payable. While doing so it is open to the dealer to include in the price the tax payable by him to the Government. If he does so, he cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers the same can only be considered as valuable consideration for the goods sold.
>
> x x x x x
> x x x x x
>
> 10. From all these observations, it is clear that when the seller passes on his tax liability to the buyer, the amount recovered by the dealer is really part of the entire consideration paid by the buyer and the distinction between the two amounts, — tax and price — losses all significance."

The relevance of this decision is that it holds that in a given case the tax component may form a part of the sale price and cannot be treated as a separate component.

23. In the case at hand, when the respondent was not liable to pay tax and had not passed on the tax liability, we do not

think, sale consideration received should be bifurcated and divided on the basis of any assumption that the sale price received must have included the tax. This fiction has no application in the present case. There is neither such principle nor any precept in law. In any case the finding of fact is to the contrary.

24. In view of the aforesaid premised reasons, the appeal, being sans merit, stands dismissed with costs which is assessed at Rs. 1,00,000 (Rupees One Lac Only).

.....J.
(Dipak Misra)

.....J.
(N.V. Ramana)

New Delhi;
June 30, 2016