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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.357-367 OF 2018
(Arising out of SLP (Civil) Nos 24249-24259 of 2014)

M/s Maya Appliances (P) Ltd now known as Preethi Kitchen Appliances Pvt. Ltd. .....Appellant

Versus

Addl. Commissioner of Commercial Taxes & Ors .....Respondents

J U D G M E N T

Dr D Y CHANDRACHUD, J.

1 The appellant manufactures home appliances such as mixer grinders, wet grinders and gas stoves. According to the appellant, based on a regular trade practice, it allows discounts to its distributors. These discounts may take the form of a scheme discount or, as the case may be, a quantity discount. The appellant claims the discount as a deduction from the total turnover while arriving at the taxable turnover under the Karnataka Value Added Tax Act 2003 ('the Act').

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2 On 29 May 2010, the Deputy Commissioner of Commercial Taxes, Bengaluru disallowed the quantity discount accorded by the appellant to its distributors on the ground that the discount was not relatable to the sales effected by the relevant tax invoices. The assessing authority held that the quantity discount offered by the appellant could not be allowed under Rule 3(2)(c) of the Karnataka Value Added Tax Rules 2005 ('the Rules'). The period in question was 1 April 2006 to 31 March 2007, 1 April 2007 to 31 March 2008 and 1 April 2008 to 31 March 2009.

3 On appeal, the Joint Commissioner of Commercial Taxes (Appeals – 1), Bengaluru set aside the order of the assessing authority, holding that the quarterly scheme discount given by the appellant was an allowable deduction since the appellant had realized the consideration from the purchaser towards the sale of goods after deducting the amount of discount and, VAT was charged only on the net amount shown in the tax invoice after allowing the benefit of discount.

4 The order of the first appellate authority dated 12 October 2010 was revised under Section 64 (1) of the Act by the Additional Commissioner on the ground that the quarterly discount given by the appellant was in respect of the performance of the previous quarter and not in respect of the sales offered under the same invoices.

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5 The appellant instituted Sales Tax Appeals before the High Court of Karnataka. By a judgment dated 19 March 2014, a Division Bench of the Karnataka High Court dismissed the appeals.

6 The case of the appellant is that it offers a quantity discount to its distributors depending on their performance during the previous quarter. This is part of a marketing/sales strategy under which the appellant allows a certain percentage as a quarterly discount to its dealers on the basis of the sales turnover generated by a dealer in every quarter of the financial year. The discount is given by the appellant to its dealers in the sales invoices raised in the subsequent quarter. The amount of the discount is deducted from the gross sale price and VAT is collected and remitted on the net sale price. According to the appellant, the discount is offered in the regular course of business and the amount which it receives towards sales consideration is only the net amount exclusive of discount, on which VAT is collected. Sales tax is leviable on the sale consideration received/receivable. Section 2 (36) defines the expression ‘turnover’ as the aggregate amount for which the goods are sold and the term ‘aggregate’ means the net amount for which the goods are sold. The appellant claims that allowing a discount on the basis of the quarterly performance of its dealers is only a measure adopted by it for the computation of the discount. However, the discount is given in a sales bill and VAT is collected on the net sale consideration after the deduction of the discount. The High Court, it has been submitted, erred in rejecting the case of the appellant on

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the ground that the discount is given in respect of the performance of the previous quarter and not in respect of the sales transaction for which the invoice is raised. The High Court, it has been submitted, has failed to notice that Section 2(36) mandates that turnover be computed as the aggregate amount for which goods are sold. It has been urged that deductions on account of trade discounts are given under agreement; or under terms of sale or by established practice and should not be disallowed only because they are not payable at the time of each invoice or deducted, from the invoice price (**Union of India** v **Bombay Tyre International Ltd**[1]). Moreover, periodical discounts such as half yearly discounts cannot, by their very nature, be shown on the face of each invoice as the discount is known only at the end of the relevant period. Since the discount is known and understood at the time of the removal of goods, though quantified later, it was held to be eligible for deduction as held in **Government of India** v **Madras Rubber Factory Ltd**[2]. In sum and substance**,** the case of the appellant is that the sale price received by it is the net amount exclusive of discount. It is understood at the time of the sale itself that the customer would be entitled to a discount, the quantum being computed at the end of the quarter. Hence, the real sale price charged by the appellant for parting with the goods is the net amount exclusive of discount and hence the trade discount given by the appellant cannot form a part of the sales turnover. Finally, it

[1] (2005) 3 SCC 787
[2] (1995) 4 SCC 349

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has been urged that a literal construction of Rule 3 (2)(c) would render it unworkable and practically impossible to implement.

7 On the other hand, it has been urged on behalf of the respondents that under Rule 3 (2)(c) an amount which has been allowed as discount is permissible as a deduction in computing the taxable turnover only if the tax invoice issued in respect of the sales relating to such discount shows the amount allowed as discount. The taxable event is the sale and the sale price has to be determined on the basis of the tax invoice or sales bill issued at the time of sale from the seller to the purchaser. The sale price cannot be altered or modified subsequent to the date of issuance of the tax invoice or sales bill. According to the respondents, Rule 3 (2)(c) makes it mandatory that only a discount reflected in the sales invoice is eligible for deduction. Admittedly, the discounts shown in the invoices of the appellant were not for sale but for the performance of the previous period of three to six months before the date of the invoice. In the submission of the respondents, a harmonious reading of Section 3, the charging section, along with the definition of ‘taxable turnover’ in Section 2(34), ‘total turnover’ in Section 2(35) and ‘turnover’ in Section 2 (36) read with Rule 3(2)(c) would show that a performance-based discount, issued at a much later date after assessing the performance of the dealer for a given period would not fall within the purview of eligible discount. In order to arrive at the taxable turnover under Rule 3(2)(c), the discount has to be shown in respect of the sales in the tax invoice or the bill of sale.

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8 Section 3 of the Act provides for the levy of tax. It provides that the tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered in accordance with the provisions of the Act. Every such dealer is under Section 4 liable to pay tax on his taxable turnover. The expression 'turnover' is defined in Section 2(36) thus:

> "2(36). 'Turnover' means the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (29) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, and includes the aggregate amount for which goods are purchased from a person not registered under the Act and the value of goods transferred or despatched outside the State otherwise than by way of sale, and subject to such conditions and restrictions as may be prescribed the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.
>
> Explanation: The value of the goods transferred or despatched outside the State otherwise than by way of sale, shall be the amount for which the goods are ordinarily sold by the dealer or the prevailing market price of such goods where the dealer does not ordinarily sell the goods."

The expression 'taxable turnover' is defined in Section 2(34) as follows:

> "2(34) 'Taxable turnover' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale."

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The above definitions indicate that turnover is defined to mean the aggregate amount for which goods are sold, distributed, delivered or otherwise disposed of. The taxable turnover is computed after making such deductions from the total turnover and in such manner as may be prescribed ('total turnover' is defined by Section 2(35) to mean the aggregate turnover in all goods of a dealer at all places of business in the States). In arriving at the taxable turnover, the statute contemplates deductions, as prescribed, are to be made from the total turnover. The liability to pay tax is on the taxable turnover. Taxable turnover is the net amount that remains upon making deductions as prescribed from the turnover.

9 Rule 3 of the Rules provide for the determination of turnover. Clause (1) of Rule 3 provide for the determination of the total turnover of a dealer. Clause (2) provide for the determination of the taxable turnover. Taxable turnover is arrived at by making the deductions which are stipulated in clause (2) from the total turnover. Rule 3(2)(c) provides as follows:

> "(2) The taxable turnover shall be determined by allowing the following deductions from the total turnover:-
>
> (c) 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 any contract or agreement entered into in a particular case [3][and the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as discount:."

[3] Inserted vide Noti. No. FD 124 CSL 2006, dt. 27-5-2006, w.e.f. 1-4-2006.

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10 In **Southern Motors** v **State of Karnataka**[4], a Bench of two learned judges of this Court considered the provisions of Rule 3(2)(c) of the Rules. In that case, the appellant who was a registered dealer with a business in motor vehicles issued tax invoices to its purchasers. After the sales were completed, credit notes were issued to the customers granting them discounts. As a result, the appellant retained only the net amount of the invoice less the discount reflected in the credit notes. During the course of the assessment, the appellant was subjected to orders of rectification, disallowing the deduction of post-sale discounts. This Court held thus:

> "28. It is a matter of common experience that in the present contemporary competitive market, trade discounts not only are dependent on variable factors but also might be strategically not disclosable at the time of the original sale/purchase so as to be coevally reflected in the tax invoice or the bill of sale, as the case may be. The actual quantification of the trade discount, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be deferred till the happening of a contemplated event, so much so that the benefit thereof is extended at a point of time subsequent to that of the original sale/purchase. That by itself, subject to proof of such regular trade practice and the contract/agreement entered into between the parties, would not render the trade discount otherwise legal and acceptable, either non est or fictitious for evading tax liability. In the above factual premise, **the interpretation as sought to be provided by the Revenue would evidently reduce Section 3(2)(*c*) to a dead letter, ineffective and unworkable and would defeat the objective of permitting deductions from the total turnover on account of trade discount**." (Id at page 485)
>
> (emphasis supplied)

[4] (2017) 3 SCC 467

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Relying on the earlier decisions of this Court, it was held that a trade discount ought not to be disallowed merely on the ground that it is not payable at the time of each invoice or deducted from the invoice price. In the of view of this Court :

> "29…Perceptionally, if taxable turnover is to be comprised of sale/purchase price, it is beyond one's comprehension as to why the trade discount should be disallowed, subject to the proof thereof, only because it was effectuated subsequent to the original sale but evidenced by contemporaneous documents and reflected in the relevant accounts." (Id at page 485)

The Legislature, the Court held, would not be unaware of the prevalent practice of offering trade discounts in commercial dispensations. In the view of the Court:

> "38…To insist on the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/bill of sale, would be to demand the impossible for all practical purposes and thus would be illogical, irrational and absurd." (Id at page 492)

This Court accordingly read down the first proviso to Rule 3(2)(c) in the following manner:

> "40. On an overall review of the scheme of the Act and the Rules and the underlying objectives, in particular of Sections 29 and 30 of the Act and Rule 3 of the Rules, we are of the considered opinion that the requirement of reference of the discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the final sale/purchase price and not limited to the original sale sans the trade discount. However, the transactions allowing discount have to be proved on the basis of contemporaneous records and the final sale price after deducting the trade discount must mandatorily be reflected in the accounts as stipulated under Rule 3(2)(*c*) of the Rules. The sale/purchase price has to be adjudged on a combined consideration of the tax invoice or bill of sale, as the case may be, along with the accounts reflecting the trade discount and the

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> actual price paid. The first proviso has thus to be so read down, as above, to be in consonance with the true intendment of the legislature and to achieve as well the avowed objective of correct determination of the taxable turnover. The contrary interpretation accorded by the High Court being in defiance of logic and the established axioms of interpretation of statutes is thus unacceptable and is negated." (Id at page 493)

11 This view was rendered by a bench of two learned Judges, including one of us (the learned Chief Justice). Having regard to the construction which has been placed on the provisions of Rule 3(2)(c) of the Rules in **Southern Motors** (supra), the judgment of the High Court in the present case is accordingly unsustainable.

12 The liability to pay tax is on the taxable turnover. Taxable turnover is arrived at after making permissible deductions from the total turnover. Among them are "all amounts allowed as discounts." Such a discount must, however, be in accord with the regular trade practice of the dealer or the contract or agreement entered into in a particular case. The expression "the tax invoice or bill of sale issued in respect of the sales relating to such discount shows the amount allowed as such discount" is not happily worded. The words "in respect of the sales relating to such discount" cannot be construed to mean that the discount would be inadmissible as a deduction unless the tax invoice pertaining to the goods originally issued shows the discount. This is a matter of ascertainment. The assessee must establish from its accounts that the discount relates specifically to the sales with reference to which it is allowed. In the first part of the proviso, Rule 3(2)(c) recognizes trade

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practice or, as the case may be, the contact or agreement of the dealer. The latter part which provides a methodology for ascertainment does not override the earlier part. Both must be construed together. Above all, it must be remembered that taxable turnover is turnover net of deductions. All trade discounts are allowable as permissible deductions.

13 We accordingly allow the appeals and set aside the judgment of the High Court. We direct that in computing the taxable turnover for the relevant years, the appellant would be entitled to a deduction of the trade discount, following the parameters laid down in paragraph 40 of the judgment in **Southern Motors** (supra) and as explained above. There shall be no order as to costs.

.....CJI
[DIPAK MISRA]

…….....J
[A M KHANWILKAR]

.....J
[Dr D Y CHANDRACHUD]

New Delhi
February 06, 2018