

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**CJ Court**

**Reserved on : 17.03.2021**

**Announced on: 26.03.2021**

**Case : Sales Tax Reference ( STR) Nos. 1, 2, 3, 4, 5-7 of 2010**

M/s MRF Limited

...Petitioner(s)

Through: Sh. Pranav Kohli, Sr. Advocate  
with Sh. Arun Dev Singh, Advocate.

v/s

Dy. Commissioner Commercial Taxes and  
anr.

.... Respondent(s)

Through: Sh. D. C. Raina, Advocate General  
with Sh. KDS Kotwal, Dy. AG.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**

**J U D G M E M E N T**

**PANKAJ MITHAL, CJ:**

1. All the above Sales Tax References are concerning the same parties, M/s. MRF Limited but for different accounting years, i.e., 1995-1996, 1996-97, 1998-1999, 1999-2000, 2000-2001, 2001-2002 respectively.
2. Since in all of them, the facts are identical and they give rise to the same legal proposition, we with the consent of the parties considered it convenient to take them up together.
3. We have heard Sh. Pranav Kohli, senior counsel assisted by Sh. Arun Dev Singh, learned counsel for the assessee and Sh. D.C.Raina, Advocate General assisted by Sh. K.D.S.Kotwal, learned counsel for the respondents.

4. The assessee is a company engaged in manufacturing of tyres, tubes, flaps, tread rubber etc. and sell its products across the county through various sale depots including one at Jammu. In the course of selling its products, the assessee allows 1% discount to its dealers as per pre-determined agreement and the entitlement of such discount to the dealer is duly indicated on each invoice. The discount so allowed uniformly to all dealers without any condition of achieving a particular target, is credited to the accounts of the respective dealers at the end of each quarter.

5. In respect to the relevant accounting years, the assessing authority passed assessment orders disallowing exclusion of discount from the turnover of sales of the assessee on the ground that the discount was not deducted from the invoice amount and since it is being adjusted later on, it was in the nature of bonus or incentive to the dealers.

6. The assessee preferred appeals against the assessment orders before the Deputy Commissioner of Sale Tax (Appeals), Jammu. The appeals were dismissed by a common order again on the ground that the discount was not deducted from the invoices and, as such, it is not liable to be excluded from the turnover.

7. The assessee not satisfied by the appellate orders, preferred further appeals to the Jammu and Kashmir Sales Tax (Appellate Tribunal), Jammu but the same were also dismissed on the same lines. The Assessee, therefore, demanded a reference under Section 12-D of the J&K General Sales Tax Act, 1962 (hereinafter refer to as 'the Act) to the High Court on the ground that the matter involves substantial question of law as to whether discount granted to the dealers on purchase of the products manufactured by the assessee is deductible from the gross turnover for the purposes of levy of tax upon the

assessee. The Tribunal vide order dated 28.01.2010 refused reference to the High Court.

8. It is in this background that the assessee has preferred these references contending that the refusal on part of the Tribunal to refer the matter to the High Court is illegal and that the references involve substantial questions of law, which may be considered and answered by the Court.

9. At the very beginning of the hearing, on the facts as narrated by either of the sides, we are satisfied that these references do involve the following substantial question of law :-

*“Whether the Tribunal is justified in disallowing the discount from the taxable turnover of the assessee on the ground that it was not actually deducted from the sale bill/voucher and, as such, does not fulfil the conditions of Rule 19 (a) (i) of the Rules.”*

10. We have made known the above question of law to the parties and as they agreed to address us on the aforesaid question with their consent, we had proceeded to hear them on its merits.

11. The submission of Sh. Kohli is that in view of the definition of turnover contained in Section 2 (n) of the Act read with Rule 19 of the J&K General Sales Tax Rules, 1962 (hereinafter referred to as ‘the Rules’), the taxable turnover of an assessee is liable to be determined after allowing certain deductions which include discount on the sales/purchases.

12. Sh. Raina in defence submits that the assessee does not qualify for any deduction of discount on the sales as the discount allowed was not deducted in the price of the goods indicated in the Sale bill/voucher and that there is no proof that the purchaser had paid lesser amount than shown in the sale bill/voucher by way of discount as required under Rule 19 of the Rules. Thus, the authorities below have not committed any mistake in disallowing the

deduction of the discount from the turnover of the assessee. The assessee does not fulfil the conditions of Rule 19 of the Rules and, therefore, in the facts and circumstances of the case, the case law relied upon by the assessee is of no value.

13. In connection with the above dispute, few provisions such as Section 2 (ll) of the Act which defines ‘*sale price*’, Section 2 (n) of the Act which defines ‘*turnover*’ and Rule 19 of the Rules are very relevant and material for our purpose. The relevant portions of the above provisions are reproduced herein below for the sake of convenience:-

“  
.....

*Sec. 2(ll) sale price” means the amount of valuable consideration paid or payable to a dealer for any sale including any sum paid or payable for anything done by the dealer in respect of the goods at the time of or before delivery thereof other than the actual cost of outward freight or delivery or the cost of installation when such cost is separately charged;*

.....

*Sec. 2(n) “turnover” includes the aggregate of the amounts of sale and purchase and parts of sale and purchase made by any dealer whether as principal agents or in any other capacity;*

*Explanation.- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf-*

- (1) The amount for which goods are sold shall, in relation to a contract, be deemed to be the amount payable to the dealer for carrying out such contract less the cost of labour;*
- (2) Any cash or other discount on the price allowed in respect of any amount refunded in respect of articles returned by the customers shall not be included in the turn-over;*

- (3) *The proceeds of sale of any goods on the purchase of which tax is leviable under this Act or the purchase value of any goods on the sale of which tax is leviable under this Act shall not be included in the turnover but the purchase value of the goods liable to tax under section 4-B shall be included; and.....*

**Rule 19. Determination of taxable turnover**

*(a) The taxable turnover shall be determined after allowing the deduction of the following amounts from the turnover:-*

*(i) the discount actually allowed in the customary course of business or in accordance with the agreement with the purchaser; provided that such discount has been deducted from the price in the sale bill/voucher and the purchaser, has paid the price less by that discount.*

.....”

14. Section 4 of the Act which is the charging section provides for payment of tax at a rate prescribed on the taxable turnover of the sale of goods.

15. A reading of the definition of turnover simpliciter denotes that it includes aggregate amount of sale and purchase made by any dealer and that any cash or other discount on the price allowed shall not be included in it. In other words, turnover would be assessed after excluding the discount allowed on the price of the goods sold or purchased.

16. In view of the above definition, the assessee would be liable to pay tax on its taxable turnover determined after excluding the discount, if any, allowed on the price of the goods.

17. Rule 19 of the Rules further supports the proposition that for the purposes of determining the taxable turnover, the discount allowed from the price of the sale/purchase shall be deducted.

18. In the case at hand, there is no dispute that the assessee has agreed with its dealers to extend turnover discount of 1% to the extent of the product value on all sales effected from 01.04.1996 onwards and for that purpose credit notes were issued and were adjusted or reimbursed on quarterly basis.

19. The invoice/sale vouchers apart from mentioning the value of the product sold plus octroi, sales tax and surcharge, at the foot, clearly mentions that the dealer is entitled for 1% discount as aforesaid. The said invoice/sale vouchers are followed by the credit notes clearly mentioning about entitlement and payability of 1% discount.

20. In view of the above documents, it is apparent that the assessee with the dealers had a clear understanding of allowing them 1% discount on the value of the product and to reimburse the same on the basis of credit notes. The grant of such discount is clearly depicted in the sale bill/voucher/invoices.

21. In *Union of India and Others v. Bombay Tyres International (P) Ltd.*, (2005) 3 SCC 787, it has been observed by the Supreme Court that discounts allowed in the trade, by whatever name such discount is described, should be allowed to be deducted from the sale price if provided under agreements or under the terms of sale or by established practice, the allowance and the nature of the discount is known at or prior to the removal of the goods. It is held that such trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.

22. The above observation of the Supreme Court clearly reflects that any discount from the sale price under prior agreements or terms of sale or trade practice shall not be disallowed on the ground of the time at which they are payable or for the reason that it has not been paid at the time of each invoice.

23. In view of the above, the nature of the discount whether it is cash or trade discount or the time of payment of the said discount is not material for

deducting the discount from the turnover for the purposes of determining the taxable turnover.

24. A similar controversy, as in the present references, came up for consideration before the Division Bench of Delhi High Court concerning the present assessee itself. One of the questions of law which fell for consideration of the court was whether the Tribunal fell into error in holding that the discounts on sales were not deductible from the turnover.

25. In the said cases before the High Court, the Tribunal refused to allow deduction of discount on the sales and, therefore, the question arose whether the Tribunal was in error.

26. There also, the dispute was with regard to “*entitlement for 1% discount*” as mentioned in the vouchers and sale bills which was commonly described as turnover discount.

27. In the said case also, the assessee contended that the discount is allowable to be excluded from the turnover irrespective of whether it is a trade discount or any other formal discount and whether the same was allowed at the time of sale or at a later stage makes no difference.

28. The Delhi High Court in considering and answering the above question, referred to the decision in the case of *M/s. Indian Pistons Limited v. State of Tamil Nadu*, (1974) 33 STC 472 (Mad), where it was held that such deduction is allowable only in respect of cash discount and relying upon few other decisions, held that in computing the taxable turnover, the sale price received or receivable by the assessee is to be reduced to the extent of discount allowed.

29. In answering the above question, the Delhi High Court referred to the similar question which had arisen in the case of *IFB Industries Limited v. State of Kerala*, (2012) 4 SCC 618, in the backdrop of Section 2 (xxvii) of Kerala

General Sales Tax Act, 1963 whose phraseology is in *pari materia* with Section 2 (n) of the Act and Rule 19 of the Rules under consideration where it was held that it permits exclusion of any cash or other discount on the price allowed in respect of any sale provided it is established that the purchaser had paid a sum lesser than the original price by way of discount. The Delhi High Court vide its judgment and order dated 14.05.2015 in ST Appeal Nos. 1 & 2 of 2015, MRF Limited v. Commissioner of Trade and Taxes thus held that the turnover for the assessment years in question was to be computed after deducting the turnover discount granted to the dealers as claimed in the returns by the assessee and that the assessing authorities have erred in unjustly denying the said benefit of deduction to the assessee.

30. It is pertinent to mention here that the aforesaid judgment of the Division Bench of the Delhi High Court is final and conclusive as the SLP filed against it stood dismissed on 28.11.2016 by the Apex Court.

31. In the light of the above legal position and the decision of the Delhi High Court on an identical point in respect of the same assessee, though in context with different legislation, we are of the opinion that the assessee herein is also entitled to have its taxable turnover determined after excluding 1% turnover discount.

32. The contention that the assessee does not fulfil the conditions enumerated in Rule 19 of the Rules is bereft of merit, inasmuch as the aforesaid Rule provides for the calculation of the taxable turnover after allowing deduction of the discount granted from the price of the goods mentioned in the sale bill/voucher. The aforesaid determination is qualified and pre-supposes the following conditions:-

- (i) the discount is actually allowed ;



- (ii) the discount has been deducted from the price in the sale bill/voucher ;
- (iii) and the purchaser has paid the price less by the discount.

33. In the cases at hand, the documents on record reveal that every voucher provides for 1% turnover discount, meaning thereby that the discount has been actually allowed as per the agreement/understanding of the parties. The said discount stand deducted as a credit note in respect thereof is issued simultaneously to be adjusted later on or by re-imburement. It is not the case of anyone that the dealer has paid the actual price of the goods mentioned in the voucher and not the lesser amount by way of discount. In fact, upon re-imburement as per credit note, the actual price paid by the dealer stand reduced. There is no evidence that the dealer paid to the assessee the original value of the goods and not the discounted price.

34. Accordingly, we are of the opinion that the authorities below have adopted a too technical an approach in disallowing the deduction of discount from the taxable turnover of the assessee.

35. In *State of Orissa v. Mahabir Prasad Agrawalla*, (1990) 79 STC 163 (Ori), the Apex Court observed as under:

*“In our opinion, the administration of justice has to keep pace with the march of the times. The nature of procedure prescribed by a statute whether it is mandatory or directory merely has to be judged by reference to the purpose sought to be achieved. We are very clear in our mind that when the facts of the case are either not disputed or cannot be disputed and as contained in the order of the Tribunal would be enough to enable the High Court to answer the question of law posed before it, it is not necessary for the High Court to call for a statement of case as, in our opinion, that would be an exercise in futility. The High Court can straightaway proceed to answer the question.”*

36. Since we were of the view that the facts contained in the orders of the authorities below were enough for answering the question, we did not deem it necessary to call for a statement of the case which, in our view, would have been an exercise in futility and thus have straightaway proceeded to answer the question.

37. The references are accordingly answered in favour of the assessee and it is held that the Tribunal is not justified in disallowing 1% discount from the taxable turnover of the assessee and the findings that the assessee does not fulfil the conditions of Rule 19 of the Rules are perverse and not tenable.

38. The references are allowed and the authorities are directed to proceed accordingly.

**(SINDHU SHARMA)**  
**JUDGE**

**(PANKAJ MITHAL)**  
**CHIEF JUSTICE**

Jammu  
26.03.2021  
Tilak

Whether the Judgment is speaking?  
Whether the Judgment is reportable?

Yes  
Yes

