

M/S Ifb Industries Ltd vs State Of Kerala on 27 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1468, 2012 (4) SCC 618, 2012 AIR SCW 1734, 2012 (3) SCALE 12, 2012 (1) KER LT 121.1 SN, (2012) 3 SCALE 12

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Bench: Anil R. Dave, Aftab Alam

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2516-2517 OF 2012

(Arising out of S.L.P. (Civil) Nos. 26102-26103 of 2010)

M/s IFB Industries Ltd.

.....Appellant

Versus

State of Kerala

.....Respondent

AND

CIVIL APPEAL NOS. 2521-2522 OF 2012

(Arising out of S.L.P. (Civil) Nos. 6861-6862 of 2011)

The India Cements Ltd.

...Appellant

Versus

The Assistant Commissioner & Ors.

... Respondents

JUDGMENT

Aftab Alam, J.

1. Leave granted in both the Special Leave Petitions.

2. How far deductions are allowable under rule 9(a) of the Kerala General Sales Tax Rules, 1963 ("the Rules" hereinafter) for trade discounts?

3. A division bench of the Kerala High Court has held that unless the discount was shown in the invoice itself, it would not qualify for deduction and further that any discount that was given by means of credit note issued subsequent to the sale of the article was in reality an incentive and not trade discount eligible for exemption under rule 9(a) of the Rules. The decision was rendered somewhat gratuitously in the case of M/s IFB Industries Ltd., (the appellant in the appeals arising from SLP (Civil) Nos. 26102-03 of 2010) but it is the India Cements Ltd., the appellant in the other set of appeals (arising from SLP (Civil) Nos. 6861-62 of 2011), that got badly hit by the decision and its claim for deduction of many kinds of trade discounts was rejected summarily and even without an opportunity of any effective hearing to it right from the stage of assessment up to the High Court. But to put the matter in order, we must see how the issue developed before reaching this Court and for that we need to first advert to the case of M/s IFB Industries Ltd.

4. M/s IFB Industries Ltd. is a manufacturer of home appliances. It has a scheme of trade discount for its dealers under which the dealer, on achieving a pre-set sale target gets certain discount on the price for which it purchased the articles from the manufacturer, the appellant. As the discount is subject to achieving the sale target the dealer would naturally qualify for it in the later part of the financial year/assessment period, that is to say, long after the sales took place between the appellant and its dealer. For the sales taking place between the appellant and its dealer after the sale target is achieved, the dealer would of course get the articles on the discounted price but for the sales that took place before the sale target was achieved, the appellant would issue credit notes in favour of the dealer. The Assessing Authority, in principle, accepted the appellant's claim for deduction of the amount of discount given by it to its dealers through credit notes under rule 9(a) of the Rules and it was only a dispute over computation that took the matter to the High Court and the High Court held that the discount in question was not trade discount at all and it was not eligible for deduction in terms of rule 9(a).

5. The case of the appellant (M/s IFB Industries Ltd.) relates to assessment periods 2001-02 and 2002-03. Dealing with the assessment periods 2001-02, the Assistant Commissioner (Assessment), Commercial Taxes, (the Assessing Authority) in its order dated January 27, 2006 observed that the dealer had given discount to the tune of Rs.58,15,485/- and as the discount was allowable in ordinary course of business, that turnover was allowed as exempted.

6. In making the computation, however, the Assessing Authority started with the figure of `Taxable turnover as per account (Home appliances) Vth Schedule Items' that was Rs.11,62,36,424.23. He then added to it the amounts of (i) Turnover under AMC, (ii) Sales return, (iii) Stock transfer,

(iv) Second sale, (v) Tax collected and (vi) Scheme Discount amounting to Rs.58,15,485/- and arrived at the figure of `total turnover proposed' that came to Rs.14,27,69,607/-. From the total turnover, he then deducted the amounts of (i) AMC, (ii) Sales return, (iii) Second sales, (iv) Tax Collected and (v) Scheme Discount being the sum of Rs.58,15,485/- and, thus, finally arrived at the figure of Rs.11,95,56,460/- as the `taxable turnover proposed'.

7. The Assessing Authority passed a similar order for the assessment period 2002-03 as well.

8. The appellant had objection to the computation made by the Assessing Authority. It contended that though in principle allowing deduction for the trade discount the Assessing Authority actually denied any deduction by subtracting the amount of trade discount only after first adding it to the turnover. In the computation made by the Assessing Authority the amount of trade discount, thus, got neutralized and the appellant did not actually get any deduction of the trade discount from its turnover.

9. Before proceeding further, it needs to be understood that the appellant's objection would have any basis only in case it is shown that the original figure of Rs.11,62,36,424.23 taken by the Assessing Authority as `Taxable turnover' was inclusive of the amount of the scheme discount being the sum of Rs.58,15,485/-. For, unless the amount of scheme discount was a factor of `Taxable turnover' there would be no question of deducting it from taxable turnover. Only in case the appellant could show that the figure of Rs.11,62,36,424.23 also included the amount of Rs.58,15,485/- as the trade discount, there would be any question of deducting it from the larger figure.

10. Be that as it may, the appellant preferred appeals against the Assessment Order (Sales Tax Appeal Nos. 219 & 220 of 2006) in which it also took the objection that the computation made by the Assessing Authority by first adding up the amount of trade discount and only then deducting it from the turnover denied it the exemption of trade discount which the Assessing Authority had himself allowed in the earlier part of his order. It is significant to note, however, that in the appeal also it was never stated that the figure of Rs.14,27,69,607/- forming the basis of the computation included the amount of trade discount of Rs.58,15,485/-.

11. The Deputy Commissioner (Appeals) III Ernakulam, (the Appellate Authority) seems to have accepted the case of the appellant and while disposing of its appeals by order dated April 28, 2006

observed that in effect the appellant's claim was disallowed even though it was allowed in the order of the Assessing Authority. He, accordingly, directed the Assessing Authority to verify whether it was a computation mistake and to modify the order accordingly.

12. Against the order passed by the Appellate Authority, the Revenue preferred appeals (T.A. Nos. 429 & 430 of 2006/C.O. 67 & 68 of 2006) before the Kerala Sales Tax Appellate Tribunal and the Tribunal by its order dated February 28, 2007 allowed the Revenue's appeals holding that since there was no assessment on trade discount, the direction of the Assessing Authority to verify whether there was a mistake in this computation was without any basis.

13. The appellant made a Rectification application but it was rejected by the Tribunal by order dated August 29, 2008.

14. Against the order passed by the Sales Tax Appellate Tribunal, the appellant went to the High Court in ST Revision Nos. 396 & 397/2008. The appellant, safe in the belief that the Assessing Authority had in principle accepted its claim for deduction of the trade discount from the taxable turnover, confined its revision to the computation made by the Assessing Authority. The High Court, nevertheless, went into the basic question whether the discount under the scheme of the appellant at all qualified for deduction under rule 9(a) of the Rules. In a brief order dated June 26, 2009 that does not refer to any earlier precedents of this Court or even of the Kerala High Court, the High Court observed that from a plain reading of rule 9(a) it appeared that what is allowable as discount in the computation of taxable turnover is the trade discount given in the bills. According to the High Court, what is insisted in the rule is that the purchaser should have paid the price charged, less the discount. And this certainly meant that the discount should be shown in the original invoice and tax should be charged only on the net amount exclusive of discount so that the buyer gets the deduction towards discount.

15. On the appellant's claim of deduction of their trade discount from the taxable turnover, the High Court made the following observation: -

"Petitioner is a manufacturer engaged in supply of goods in wholesale to distributors and dealers. Sales are therefore first sales and discount if any given can only be trade margin to dealers. If tax is not to be charged on the dealer margin, then discount should be given in the invoice itself. If the petitioner has made sales in this way, then necessarily deduction should have been claimed in the monthly return itself as the taxable turnover does not cover discount/trade margin given in the invoice. On the other hand, in the Tribunals order, what is referred to as scheme discount which is nothing but incentives given by manufacturers, and wholesalers to dealers, may be for seasonal sales or may be for annual sales. Such incentives are normally given by the credit note at the end of the season or at the end of the year. These incentives given through credit notes are outside the scope of discount covered by Rule 9(a) of the KGST Rules."

16. Observing thus, the High Court found and held that the assessment in the case of the appellant had not been properly made. It, accordingly, set aside the orders passed by the Revenue authorities and remitted the case to the Assessing Authority for passing fresh assessment orders in light of its order and after examining the quarterly returns and the annual returns submitted by the appellant.

17. The appellant has brought the matter to this Court making the grievance that though the order of the High Court is an order of remand, for all intent and purposes it puts an end to its claim of deduction of trade discount from its taxable turnover.

18. Shortly after the case of M/s IFB Industries Ltd., came the case of Godrej and Boyce Mfg. Co. Ltd. and in an equally brief order dated November 4, 2009 a bench of the Kerala High Court took the same view on the question of deductibility of trade discounts as in the case of M/s IFB Industries Ltd. The High Court observed that in order to be eligible for deduction in terms of rule 9(a) of the Rules the discount must be granted in the invoices itself. According to the High Court, the rule stipulates that in order to qualify for deduction it should be proved that the purchaser had paid the sale price less amount of discount allowed. This presupposed that the deduction available is only trade discount allowed in invoices and not on credit notes given later.

19. By the time the case of the India Cement Ltd. (appellant in the appeals arising from SLP(C) Nos. 6861-6862 of 2011) came up for assessment for the assessment periods 2003-04 and 2004-05 the decision of the High Court in M/s IFB Industries Ltd. was firmly before the Revenue authorities. The Assessing Authority, therefore, turned down the claim of the appellant, the India Cement Ltd., for exemption of different kinds of discount, namely, special discount, annual discount, turnover discount, target discount etc. given by means of credit notes and aggregating to the large sum of Rs.25,55,83,751.82. The Assessing Authority referred to the High Court decision in M/s IFB Industries Ltd. and rejected the appellant's claim for deduction of the aforesaid amount from their taxable turnover holding that, discounts given through credit notes were nothing but incentives and did not come under rule 9(a) of the Rules.

20. The appellant challenged the assessment orders before the High Court in Writ Petitions (WP(C) Nos. 34989 & 38517 of 2010). A single judge of the High Court declined to entertain the writ petitions filed directly against the assessment orders and by order dated January 18, 2011 dismissed the writ petitions leaving it open to the appellant to seek their remedies before the statutory authorities.

21. Against the order of the single judge the appellant filed intra-court appeals (W.A. Nos. 173 & 177 of 2011). The division bench agreed that since the appellant was confronted with an order of the division bench of the High Court, it would be pointless to relegate it to the statutory authorities. It referred to its orders passed in the cases of M/s IFB Industries Ltd. and Godrej and Boyce Mfg. Co. It also noted that against its decision in M/s IFB Industries Ltd. a SLP was filed which was admitted by this Court. It also referred to the decisions of this Court and of the Kerala High Court relied upon by the appellant in support of the contentions that a discount in order to qualify for deduction under rule 9(a) need not necessarily be shown in the invoice itself and may also be given by means of credit notes. It, however, declined to reconsider its order in M/s IFB Industries Ltd. and by order dated

February 8, 2011 dismissed the appeals observing as follows: -

"We feel that appellant's remedy is to challenge the decision of this Court relied on by the Assessing Officer in disallowing claim of deduction of discount before the Supreme Court. Consequently, following our above two decision, we uphold the assessment disallowing discount on credit notes. These Writ Appeals are, accordingly, dismissed on merit leaving it open to the appellant to approach the Supreme Court, if they have any grievance against this judgment."

22. In the aforesaid circumstances, the appellant is before this Court making the grievance that its claim stands rejected practically unheard and without any considerations of the earlier precedents on the point relied upon by it in support of its claim.

23. In order to clearly understand the kinds of discount that are exempted in terms of rule 9(a) we may usefully refer to the definition of 'turnover' under Section 2(xxvii) of the Kerala General Sales Tax Act, 1963. The main body of the definition is as follows: -

"(xxvii) "turnover" means the aggregate amount for which goods are either bought or sold, supplied or distributed 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."

It is followed by several explanations. Explanation 2(ii) is as follows: -

"Explanation 2 - Subject to such conditions and restrictions, if any, as may be prescribed in this behalf,-

(i) xxx

(ii) any cash or other discount on the price allowed in

respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover."

(emphasis added)

24. It is, thus, to be seen that the very definition of "turnover" recognises discounts other than cash discount and provides that those other discounts too like the cash discount shall not be included in the turn over.

25. Rule 9(a) provides as follows -

"9. Determination of taxable turnover - In determining the taxable turnover, the amounts specified in the following clauses shall subject to the conditions specified therein, be deducted from the total turnover of the dealer: -

(a) All amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice in the trade and provided also that the accounts show that the purchaser has paid only the sum originally charged less the discount."

(emphasis added)

26. It is significant to note that the rule does not speak of invoices but stipulates that the discount must be shown in the accounts. On a plain reading of the provision it is clear that the exemption is allowable subject to two conditions; first, the discount is given in accordance with the regular practice in the trade and secondly, the accounts should show that the purchaser had paid only the sum originally charged less the discount. We find nothing in rule 9(a) to read it in the restrictive manner to mean that a discount in order to qualify for exemption under its provision must be shown in the invoice itself.

27. We, therefore, find it difficult to sustain the view taken by the Kerala High Court in the orders impugned before us.

28. We are fortified in our view on the basis of some earlier decisions of this Court and some High Courts, including the Kerala High Court.

29. In Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) v. M/s Advani Oorlikon (P) Ltd., (1980) 1 SCC 360, this Court pointed out that cash discounts and trade discounts are wholly distinct and separate concepts and are not to be confused with one another. Advani Oorlikon was a case under the Central Sales Tax Act and section 2(h) of the Act defined the expression 'sale price' to mean 'the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount...'. It is to be noted that though the Central Sales Tax Act mentioned only cash discount as being deductible from sale price, this Court nevertheless held that any trade discount must also be similarly deducted for determining sale price of goods. In paragraphs 5 and 6 of the judgment the Court observed and held as follows: -

"5. At the outset, it is appropriate that we set forth the two relevant definitions contained in the Central Sales Tax Act. Section 2(j) defines "turnover" to mean "the aggregate of the sale prices received and receivable by him (the dealer) in respect of sales of any goods in the course of inter-State trade or commerce...". And Section 2(h) of the Act defines the expression "sale price" to mean "the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade...". It is true that a deduction on account of cash discount is alone specifically contemplated from the sale consideration in the definition of "sale price" by Section 2(h), and there is no doubt that cash discount cannot be confused with trade discount. The two concepts

are wholly distinct and separate. Cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed. It is a discount granted in consideration of expeditious payment. A trade discount is a deduction from the catalogue price of goods allowed by wholesalers to retailers engaged in the trade. The allowance enables the retailer to sell the goods at the catalogue price and yet make a reasonable margin of profit after taking into account his business expense. The outward invoice sent by a wholesale dealer to a retailer shows the catalogue price and against that a deduction of the trade discount is shown. The net amount is the sale price, and it is that net amount which is entered in the books of the respective parties as the amount reliable. *Orient paper Mills Ltd. v. State of Orissa*, (1975) 35 STC 84: 1974 Tax LR 2224 (Ori. HC)

6. Under the Central Sales Tax Act, the sale price which enters into the computation of the turnover is the consideration for which the goods are sold by the assessee. In a case where trade discount is allowed on the catalogue price, the sale price is the amount determined after deducting the trade discount. The trade discount does not enter into the composition of the sale price, but exists apart from and outside it and prior to it. It is immaterial that the definition of "sale price" in Section 2(h) of the Act does not expressly provide for the deduction of trade discount from the sale price. Indeed, having regard to the circumstance that the sale price is arrived at after deducting the trade discount, no question arises of deducting from the sale price any sum by way of trade discount."

30. The decision of this Court in *Deputy Commissioner of Sales Tax(Law) Board of Revenue (Taxes), Ernakulam v. Motor Industries Co, Ernakulam*, (1983) 2 SCC 108, is on rule 9(a) of the Kerala General Sales Tax Rules and the discount admissible to exemption under that provision. It may, however, be clarified that in terms of the rule, as it stood at that time, exemption was allowable on trade discount given not only in accordance with the regular practice in the trade but also in accordance with the terms of the contract or agreement entered into a particular case. In *Motor Industries Co.* the claim for exemption was on the basis of the agreement entered into between the dealer and its purchaser, the retailer. But that is of no significance as the issue in the case was in regard to the nature of discount admissible to exemption under rule 9(a). This Court, upholding the decision of the Kerala High Court allowing exemption to the dealer, held and observed as follows:-

"We shall first deal with the claim made in respect of "service discount". Under clause (a) of Rule 9 of the Rules all amounts allowed as discount where such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of contract or agreement entered into in a particular case have to be deducted from the total turnover in determining the taxable turnover provided the accounts of the assessee show that the purchaser has paid only the sum originally charged less the discount. In the instant case the "service discount" in respect of which the deduction was claimed by the assessee was the additional trade discount allowed by it to its main distributors (purchasers) namely the T.V.S. group of companies which constitute a prestigious group of commercial concerns over and

above the normal trade discount in consideration of the extra benefit derived by the assessee by reason of the marketing of its goods through them. This additional trade discount is allowed in accordance with the trade agreement subject to periodical variation depending upon the cost structure and changes in market conditions. It is not disputed that there were such agreements between the assessee and the purchasers and the accounts of the assessee truly reflected the actual discount allowed to the purchasers. What is however urged by the department is that the said additional discount allowed by the assessee could not strictly be termed as discount as it was in lieu of services rendered by its main distributors by way of popularisation of the sales and consumption of the products sold by the assessee. We find it difficult to accept the submission made on behalf of the department. Rule 9(a) says that all amounts allowed as discount either in accordance with regular practice or in accordance with agreement would be deductible from the total turnover provided they are duly supported by the entries in the accounts of the assessee. Ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can legitimately be claimed as a deduction under clause (a) of Rule 9 of the Rules. Such a concession is usually allowed by a manufacturer or a wholesale dealer in favour of another dealer with the object of improving prospects of his own business. It is common experience that when goods are marketed through reputed companies, firms or other individual dealers the demand for such goods increases and correspondingly the business of the manufacturer or the wholesaler would become more and more prosperous and its capacity to withstand competition from other manufacturers or other dealers dealing in similar goods would also improve. Hence any concession in price shown in such circumstances by way of an additional incentive with a view to promote one's own trade does qualify for deduction as a trade discount. It cannot be termed as a service charge as is attempted to be termed in this case. In fact in this case apart from buying the products of the assessee, no other service is being rendered by the T.V.S. group of companies to the assessee. In the circumstances the additional discount or "service discount" as it is called in this case is no other than the discount referred to in Rule 9(a) of the Rules."

31. In *Union of India and Others v. Bombay Tyres International (P) Ltd.*, (2005) 3 SCC 787, in a very brief order this Court very succinctly described 'trade discount' and held it to be deductible from the sale price:

"(1) Trade discounts - Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. 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."

(emphasis added)

32. A bench of the Andhra Pradesh High Court in Godavari Fertilizers and Chemicals Ltd. v. Commissioner of Commercial Taxes, (2004) 138 STC 133, examined a number of earlier decisions on this point and came to the conclusion that a discount given by means of credit notes issued subsequent to the sale is as much a trade discount admissible to deduction in determining the turnover of a dealer.

33. A bench of the Kerala High Court in Kalpana Lamps and Components Ltd. v. State of Kerala, (2006) 143 STC 666, in paragraphs 4 and 5 of the judgment observed and held as follows: -

"4. According to us, in the present case, the Appellate Tribunal dismissed the appeal merely on the ground that the circumstances under which the special discount has been granted to the customer (sic). Learned counsel for the petitioner submits that the petitioner was not able to convince the Tribunal because no opportunity was given by both the authorities, viz., the assessing authority and the appellate authority. They rejected the case of the petitioner merely on the ground that the books of accounts were not produced. Hence, the petitioner prayed for an opportunity to explain the circumstances under which the special discount was granted.

5. Before parting with the case, we may state that so far as the special discount is concerned, all that the authorities have to look into whether as a matter of fact, the petitioner received only the sum originally charged less the discount. It is the look out of the traders to see that the trade increase and it is for that purpose the trade discount is given. Hence, a person may not be able to clearly prove as to why the special discount was given. But if there has been a consistent practice of giving special discount, that has to be accepted by the assessing authority."

34. On the basis of the discussions made above and in light of the earlier decisions of the Court, we are unable to sustain the orders of the Kerala High Court coming under appeal. The impugned orders in both the appeals are set aside. The cases of the appellants for the respective assessment periods are remitted to the Assessing Authority with a direction to make assessments and pass fresh orders in accordance with law and in light of this judgment.

The Assessing Authority shall not reject the appellants' claim for exemption of the amounts of trade discount solely on the ground that the discount amounts were not shown in the sale invoices.

35. In the result the appeals are allowed but with no orders as to cost.

.....J. (Aftab Alam)J. (Anil R. Dave) New Delhi;

February 27, 2012.