THE STATE OF TAMIL NADU

*v.*

MC. DOWELL AND COMPANY LTD. MADRAS

MARCH 4, 1997

[A.M. AHMADI, CJ. SUHAS C. SEN AND SUJATA V. MANOHAR, JJ.]

*Sales Tax :*

*Assessee—Distributor of liquor—Deposit Amount collected for bottles—Refunded on return—Deposit amount included in Sales turnover for imposing sales tax—Held, no sale of bottles took place—No resale on return of bottles—Not liable to sales tax on sale of bottles.*

**The respondent-assessee was a distributor of liquor for United Breweries Ltd., the principal. The assessee had to deposit certain amounts for taking delivery of the liquor in bottles. On return of bottles, the deposit amount was refunded. The assessee in turn collected deposits at the same rate from its customers and refunded the amount on return of bottles. The assessing authority included the deposit amount in the Sales turnover and impose tax.**

**On appeal the Tribunal took the view that deposit amount could not be taxed. High Court upheld the stand taken by the Tribunal. Hence the present appeal.**

**Dismissing the appeal, this Court**

**HELD : 1. The High Court was right in holding that there was no sale of bottles in the first instance and when the bottles were returned no resale took place. The assessee was just a middleman. No question of sale of bottles could arise. When the assess collected the bottles, it paid a deposit to its principal. When in its turn, it supplied the bottles to its customers, it obtained a deposit from its customers. On return of bottles by the customers, the assessee had refunded the entire amount of deposit received. Thereafter, the assessee had returned all the bottles to its principal. The Principal had then returned the deposit amount to the assessee. Hence not question of any sale of bottles arose. [687-H, 688-A, D-F]**

**2. Assuming that sale of bottles took place when the bottles with bear were supplied by the manufacturer to the wholesalers and again by the wholesaler to the customers, then it had to be held that sale of bottles also took place when the consumers returned the bottles to the dealers. Thus consumers will be liable to pay sales tax on the return of bottles by taking back the deposits. There being a single point tax on sale of bottles, the charge of tax if any would fall on the first sale by the Principal. The assessee being a middleman could not be made liable to pay sales tax on 'sale' of bottles to the retailers or the consumers. [688-G-H, 689-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3172 of 1988 Etc.

From the Judgment and Order dated 5.2.85 of the Madras High Court in T.C. No. 2200 of 1984.

A.K. Ganguli, V. Krishnamurthy and T. Harish Kumar for the Appellant.

H.N. Salve, Sunil Gupta, Ms. A.K. Verma for the JBD. & Co. for the Respondent. in C.A. No. 3172/88, 4445/84 and 3174-76/88.

The following Judgment of the Court was delivered ;

**SEN, J.** This appeal arises from a judgment of the High Court at Madras on a sales tax revision case. Mc. Dowell and Company Ltd. is primarily a distributor of liquor for United Breweries Limited (hereinafter referred to as "U.B."). It was customary for the bills issued to the assessee by U.B., the principal, to show the price, the tax payable thereon and the deposits for bottles in which the liquor was sold separately. The assessee in its turn, similarly charged its customers. The rate of deposit at which the assessee was charged by U.B. and the rate at which the assessee charged its customers were the same. The same procedure was followed year after year. From time to time, the rate of deposit was enhanced due to shortage of empty bottles. In the sale notes, it was specifically stated "Entry bottle deposit is refundable against the return of the bottles at the Brewery. The freight on return of empties and breakages will be on your (Purchaser's) account". In the copies of the bills issued as against the assessee, the price of liquor was separately shown and the sales tax was added to it. There-

after, with reference to the number of bottles supplied, a separate charge was made as deposits at the rate of 40 paise per bottle or Rs. 4.80 per dozen of bottles. The question that came up for consideration was whether these deposits were liable to be treated as part of he assessee's sales turnover for the purposes for levy of sales tax. The assessing authority was of the view that there was a sale of the bottles by U.B. to the purchaser and the deposit amount had to be included in the turnover and taxed. The Tribunal, however, took the view that the receipts were only deposits and not price realised on sales of the bottles. The deposit amount could not be taxed in any way as price of bottles.

Before the High Court, contention of the State was that the transactions were liable to be treated as sales. The deposits were merely shown in the accounts separately. That did not mean that these deposits were not sale proceeds. The way they were shown in the accounts could not be determinative of the nature of the amount received. The rights of the parties crystallised at the time when sale of liquor took place. The purchaser not only paid for the liquor but also for the bottles. The amounts received on account of sale of the bottles though described in the account as deposits, were nothing but sale price of the bottles.

Another point which was highlighted on behalf of the State was that the assessee has debited the amounts paid for the bottles in its purchase account. It was, therefore, contended that there was no doubt in the mind of the assessee that it was purchasing the bottles.

The High Court, however, did not uphold the contention of the State. It was of the view that the bottles were handed over to the assessee subject to their being returned. As a safeguard against the contingency of the bottles being damaged or not being returned for any reason, a deposit was collected which was refunded as soon as the bottles were returned. According to the High Court, this was a clear case where the deposit retained the character of deposit and did not acquire the character of sale price of the goods. It pointed out that even in the case of soft drinks, in all retail outlets, the trade practice was to collect small amount against the return of the bottles. It the bottles were not returned, the amounts were forfeited. But if the bottles were returned, the amount was refunded to the consumer. In all such case, it cannot be did that there was a sale of the bottles in the

A first instance, and thereafter, when the bottles were returned, a resale took place.;

We are of view that the High Court in the facts of this case, has come to a correct decision. The bottles were supplied initially be U.B. to the assessee who was a distributor. The findings of fact by the Tribunal is that the assessee had to deposit certain amounts for taking delivery of the liquor in bottles. The clear understanding was that when the bottles were returned, U.B. would refund the amount of the deposits. The assessee, in its turn, collected deposits at the same rate from is customers when it sold liquor in bottles. When the bottles were returned, the assessee refunded the amount of deposit collected by it to its customers. If any customer did not return the bottles due to breakages or for any other reason, the assessee did not refund the deposit amount.

When the assessee received back the bottles from its customers, it used to return the bottles to its principal and get back its deposit. If there was any shortage in returning of the bottles, the deposit to that extent was retained by U.B., the principal. In this case, the assessee was just a middle-man. No question of sale of bottles could arise. When it collected the bottles, it paid a deposit to its principal. When in its turn, it supplied the bottles to its customers, it obtained a deposit from it customers as instructed by its principal. If the customers returned all the bottles, the assessee would refund the entire amount of deposit received by it from its customers. Thereafter, the assessee would return all the bottles to its principal. The principal would then refund the deposit amount to the assessee. In the facts of this case, hence no question of any sale of bottles arises.

It the State's contention is accepted that sale of bottles took place when the bottles with beer were supplied by the manufacturer to the wholesaler and against by the wholesaler to the consumers, then it will have to be held that sale of bottles also took place when the consumers returned the bottles to the dealers. Therefore, the consumes will be liable to pay sales tax when turn the bottles by taking back the deposit. This proposition was countered by arguing that there was a single point tax on sale of bottles. If that be so, then the charge of tax, if any, would fall on the first sale by the principal, i.e., United Brewery Company Limited. The assessee was a middle-man and could not be made liable to pay sales tax on account of

"sale" of the bottles to the retailers or the consumers in any event. A

This appeal is without any merit and is dismissed. No order as to costs.

*CIVIL APPEAL NOS. 44-45/84, 445-447/84, 4362/84, 3173-3176/88 AND 5553-54/90.* B

In view of our above decision in Civil Appeal No. 3172 of 1988, these appeals are also dismissed with no order as to costs.

SV.K.I.