

(1998) 10 MAD CK 0008
In the Madras High Court

Arulmigu Ramanathaswamy Devasthanam	APPELLANT
Vs	
The Principal Commissioner and Commissioner of Commercial Taxes and Others	RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Citation : (1999) 1 LW 228 : (1999) 1 MLJ 145

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—These two revision petitions are filed under Article 227 of Constitution of India against the orders of assessment made

by Deputy Commercial Tax Officer, Ramanathapuram whereby the petitioner is assessed to pay taxes under the Tamil Nadu Tax on Luxurious

Hotels and Lodging Houses Act, 1981.

2. Ramanathapuram Arulmigu Ramanathasamy temple is running its cottages for occupation of the worshippers and pilgrims and used to collect

rental charges from the occupants by issuing receipts. It is also said that it collected rent at the particular rate from the occupants and the same is

liable to be taxed under the provisions of that Act.

3. In the objection raised by the assessee/petitioner, it is said that it is one of the oldest Devasthanam in India and it is neither owning a hotel or

other building which attracts the provisions of the said Act and it is said that it is not doing business which alone attracts tax under the Act. It is only

doing services to the Pilgrims and if any income is received from services, that cannot be equated to business and make it assessable under the

Act.

4. The assessing authority did not find favour with the Petitioner and it held that the petitioner is liable to pay taxes.

5. Before going to the rival contentions, it is better to extract the object and reason of the Act for consideration.

Act No. 6 of 1981: The Tamil Nadu Taxes on Luxuries in Hotels and Lodging Houses Act, 1981 was enacted to levy tax on luxuries provided in

hotels and lodging houses where the rate of tax for accommodation of residents (including charges for air-conditioning, television, radio, music,

extra beds and the like but excluding charges for food, drink and telephone calls) is twenty rupees or more but is less than fifty rupees per person

per day.

Such tax can be collected of the property from the person residing in the hotel and for whom luxury is provided in the hotel. It received the assent

of the Governor on 3.3.1981. Under the Act, "Hotel" is defined thus,

Section 2(f): "hotel" means a building or part of a building where residential accommodation with or without board is by way of business provided

for a monetary consideration and includes a lodging house.

The entire argument is based on this definition.

6. It is the case of the respondent that if a residential building is given on rent, that will be a hotel for the purpose of this Act, counsel also relied on

the definition of business under the Madras General Sales Tax Act, which read thus,

Section 2 (f-2) "business" includes: (i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or

manufacture, whether or not such trade, commerce, manufacture adventure or concern is carried on with a motive to make gain or profit and

whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and,

(ii) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

...

If we bear these aspects in mind the resultant position would be, (i) that to constitute business the existence of profit-motive is not relevant; (ii) that

any transaction in connection with, or incidental or ancillary to the main business, also constitutes ""business"" for the purpose of levy of tax; and (iii)

that the concept of "business" takes within its sweep not only the main activity but also any transaction which may be incidental or ancillary to the

main business. Therefore, any transaction which is incidental or ancillary to the main business also constitutes a business.

7. On the basis of these two definitions, the argument is that all conditions are complied with and it is not the concern of the Department whether

the business results in profit or not or whether there is a motive to make profit or not. Learned Government Pleader also relied on the decision in

United India Insurance Co. Ltd. v. Commissioner of Commercial Taxes 78 S.T.C. 99 (Karn) for the said purpose. Reliance was also placed on

two decisions of the Honourable Supreme Court. In State of Tamil Nadu Vs. Shakti Estate, Tamil Nadu, which is a case coming under Tamil

Nadu General Sales Tax Act, where the word "business" has been defined, and also the decision reported in Member, Board of Revenue, West

Bengal Vs. Controller of Stores, Eastern Railway, Calcutta and Others, which is the case under Bengal Finance (Sales Tax) Act. The argument

which is accepted by the Department was in transactions in connection with, or incidental or ancillary to its business as carrier of goods and even if

there is no motive for making a profit, that will amount to a business.

8. I will come to how far those decision will apply, in later portion of this order.

9. I will first come to the definition under the Act. "Hotel" means a building or part of a building where residential accommodation with or without

board is by way of business provided for a monetary consideration.

10. What is the temple mean under the Hindu Law? It means place by whatever designation known, used as a place of public religious worship,

and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof as a public religious worship. The

Honourable Supreme Court in The Poohari Fakir Sadavarthy of Bondilipuram Vs. The Commissioner, Hindu Religious and Charitable

Endowments, , held,

A religious institution will be a temple if two conditions are satisfied. One is that it is a place of public religious worship and the other is that it is

dedicated to, or is for the benefit of, or is used as of right by, the Hindu community, or any section thereof, as a place of religious worship.

To constitute a temple it is enough if it is a place of public religious worship and if

the people beliefs in its religious efficacy irrespective of the fact whether there is an idol or a structure or other paraphernalia. It is enough if the devotees or the pilgrims feel that there is some super human power which they should worship and invoke its blessings.

11. Under Tamil Nadu Hindu Religious and Charitable Endowments Act, temple is defined as, "a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right, by, the Hindu community or any section thereof as a public religious worship."

12. Under the Hindu Law, there is no distinction between religion and charity and whatever is religious is also considered as Charity and whatever

charity is also considered as religious, In Mukherjea's Hindu Law of religious & Charitable Trusts, 1979 Edition, the learned author says,

No Distinction Between Religion & Charity in Hindu Law: In the Hindu system there is no line of demarcation between religion and charity. On the

other hand charity is regarded as part of religion. The Hindu religion recognises the existence of a life after death, and it believes in the law of

Karma according to which the good or bad deeds of a man produce corresponding results in the life to come. All the Hindu sages concur in

holding that charitable gifts are pious acts par excellence, which bring appropriate rewards to the donor, and the seer in the Rigveda says in the

clear accents that ""He who gives alms goes to the highest place in heaven." According to the Smriti writers, charity is the supreme virtue in this

(Kali) age. Thus Manu says, ""In the ceta the prevailing virtue is declared to be in devotion, in Treta divine knowledge, in the Dwapara holy sages

call sacrifice the duty chiefly performed; in the Kali liberality alone."" The same verse occurs in Parasara. It may be mentioned here that charity is

not only regarded by Brahminical writers as a means of securing happiness in after life, it is also one of the forms of expiation prescribed for those

who have committed sinful acts. ""By forgiveness of injuries"", says Manu, the learned are purified; by liberality those who have neglected their

duties."" As we have already seen, the expression Purta is not confined to secular charities alone, but includes various acts (e.g. erecting a temple)

which are regarded as meritorious only from the religious point of view. The sole distinction between Isha and Purta lies in the fact that the former

relates to Vedic sacrifices which the latter do not. As the Vedic sacrifices fell into disuse and became confined to comparatively few persons, the

Purtta works became more popular, particularly as they were open to the Sudras as well. This is why later Smriti writers extol the merits of Purta

works and regard them as the means of securing salvation. Even as regards Vedic Sacrifices it may be pointed out, as has been observed in the

Chhandogya Upanishad, that "the offerings to the God are really offerings for the benefit of all human beings". The position therefore is that in the

Hindu system, religion and charity overlap each other and do not admit of any differentiation. They are both integral parts of "Dharma" or the rule

of righteousness which the Hindu sages regard as the upholder of the entire fabric of the universe, both in its physical and moral aspects.

[Italics supplied]

The same author considered what is the position of Dharmasala or rest houses. In the same book at page 31, the learned author has held thus,

Dharmasalas, rest houses, and satras which are known by the name *izfrJ;x`g* occupy a position analogous to that of mutts, and they are generally

dedicated for the benefit of travellers and ascetics. The Bahni Puran thus describes the dedication of a *izfrJ;x`g*: "Having caused to be made an

auspicious and spacious asylum of burnt bricks, with strong pillars, and large compound, accompanied with distinctive marks, covered with plaster,

guarded, equipped with comfortable apartments, and conferring endless religious merit - should dedicate to the Saiva and the Vaishnava Ascetics.

And having caused to be made an auspicious,, spacious and beautiful house, furnished with good food, and equipped with pure drinking water, and

possessed of an auspicious gate should dedicate it for the benefit of the poor and helpless and travellers. "All these are intended for the benefit of

public or certain sections of the public and there is no specific donee by whom the gift is to be accepted.

[Italics supplied]

13. This is the essence of a temple. Building that is attached to it, which is used by the Public, is to provide shelter to the pilgrims which is a

charitable purpose and it is service to the pilgrim which is a mission. It is not ancillary to a business. If it is for a charitable purpose, merely because

some income is derived therefrom it cannot be termed as a hotel. For giving

shelter to the pilgrims, who visit the temple and for their convenience buildings have been constructed, the temple has no business in renting out the building or to collect income therefrom. The temple only looks after the welfare of the pilgrims and members of the public who visit for the purpose of worship. There is no business transaction of any kind. If there is no business of any kind in a temple, naturally merely taking some income from a building belonging to it which was allowed to be occupied by the pilgrim will not make it a hotel. On going by the definition what I feel is the income must be by way of business by letting out the building. That principle may not apply in this case.

14. Now I come, to the argument of the learned Government Pleader basing his argument of business under General Sales Tax Act. According to me the very decision relied on by the learned Government Pleader shows that in this particular case, there is no business activity of any kind. In *United India Insurance Co. Ltd. v. Commissioner of Commercial Taxes (Karn)* 78 S.T.C. 99, after extracting the definition of "business", Their Lordships held what is meant by a business.

If we bear these aspects in mind the resultant position would be (i) that to constitute business the existence of profit-motive is not relevant; (ii) that any transaction in connection with, or incidental or ancillary to the main business, also constitutes "business" for the purposes of levy of tax; and (iii) that the concept of "business" takes within its sweep not only the main activity but also any transaction which may be incidental or ancillary to the main business. Therefore, any transaction which is incidental or ancillary to the main business also constitutes a business.

15. In *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, the question that came up for consideration was under the Rajasthan Sales Tax Act about the sale of unserviceable materials and scrap iron. The question was whether the Railways are liable to pay sales tax? The argument before the Honourable Supreme Court was, the fact that the activity involved in selling the unserviceable material and scrap iron would not be amount to carrying on business was not accepted. Their Lordships in para. 5 of the judgment held thus,

We think that the activity of the appellant in the selling of unserviceable material

and scrap iron etc. would be ""business"" within Clause (i) of the definition of the word "business" introduced by the amending Act. The word "business" according to Clause (i) of that definition would include any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not it is carried on with a motive to make gain or profit. So even if it be assumed that the activity involved in selling unserviceable material and scrap iron etc. would not amount to carrying on business in the normal connotation of that term, it would be "business" within Clause (i) of that sub-clause as introduced by the amending Act.

16. In *State of Tamil Nadu Vs. Shakti Estate, Tamil Nadu*, , in the case Coming under Tamil Nadu General Sales Tax Act, the learned Lordships

considered what is meant by business. In that case Assessee acquired some forest land for the purpose of raising Coffee and Cardamom

plantation. For that purpose, they have to clear a portion of the forest and in the process fell the unwanted trees standing thereon as natural growth.

The cut trees were sold by the assessee in the form of firewood as well as in the form of cut sizes of timber as well as sleepers. The question that

arose for consideration was whether the sale of cut sizes of timber and sleepers amount to be a business and taxed. Their Lordships in para 8 of

the judgment held thus,

They (assesseees) took steps to exploit them in a commercial manner. When the trees yielded timber, the assessee not only had them sawn and cut

to sizes but even converted them into sleepers and sold them. They reduced a part of the jungle growth to charcoal and sold the same. Taken all

together, one is left in no doubt that when the assesseees went in for a purchase or lease of the forest for starting a plantation they also knowingly let

themselves in for engaging in a trade in the forest produce. The fact that the assesseees are business entities, the size of the tract developed, the

extent and value of the trees standing on the land, the inevitability of the jungles having to be cleared and the standing trees disposed of before

commercial crops could be grown, the manner in which the forest trees were disposed of are all, we think, insignia that mark out the entire set of

activities as a concern in the nature of trade.

[Italics supplied]

17. From the above decision, it is clear that if the main activity is one for business, the incidental activity also forms part of the same. Even though incidental part may not be intended as profit making, that also be termed as business by virtues of the business.

18. In the next case reported in Member, Board of Revenue, West Bengal Vs. Controller of Stores, Eastern Railway, Calcutta and Others, , the

Railways as common carrier sold some unclaimed goods. The question was whether that is liable for Sales Tax. In para 6 of the judgment, their

Lordships held,

...It is an activity which may be regarded as necessarily incidental or ancillary to its business as carrier of the goods. It seems to us that the assessee

South Eastern Railway was a "dealer" for the purposes of the Bengal Finance (Sales Tax) Act, 1941." and therefore held it is a business activity.

19. On the basis of these decisions, it is clear that the main activity of the assessee is to do business. Then any trade, commerce or manufacture in

the nature of commerce also be included in the business, whether the intention to get profit or not. If the assessee has no business at all of any kind,

merely because it allows the pilgrims to occupy for few hours, the building belonging to it on a licence basis, that cannot be treated as business by

the temple. We must understand that the definition under Sales Tax is in inclusive definition. If the temple is only doing service to the pilgrim and

letting out is not a business or incidental to the main business, there is no scope of applicability of Tamil Nadu Taxes on Luxuries in Hotels and

Lodging Houses Act, 1981.

20. In the result, the impugned orders are set aside and these revisions are allowed. There will be no order as to costs. Consequently, C.M.P.Nos.

5868 to 5870 of 1998 are closed.