
(1927) 11 MAD CK 0009
In the Madras High Court

Bombay Co. Ltd.		APPELLANT
	Vs	
Municipal Council Dindigul		RESPONDENT

Date of Decision : 14-11-1927

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 92

Citation : AIR 1929 Mad 146 : (1928) 27 LW 243

Hon'ble Judges : Beaseley, J

Bench : Division Bench

Judgement

Beaseley, J.—The defendant, the Municipal Council of Diadigul, purporting to act u/s 92, Madras District Municipalities Act, 1920, and

Rule 16, Schedule 9 to that Act has, assessed the plaintiff company to companies" tax for the half years ending 30th September 1922, 31st March

1923, 30th September 1923, and each of the half years of 1924 in the sum of Rs. 250 in rFespect of each half year. Under protest the plaintiff

company paid this tax and has now filed this suit to recover the sums so paid which amount to Rs. 1,500. The plaintiff"s contention is that it does

not transact business in Dindigul.

2. Before dealing with the facts of this case and the legal arguments, I will refer to the section and the Rule of the Madras District Municipalities

Act, 1920, under which the plaintiff company has been assessed by the defendant- Section 92 is headed ""tax on companies"" and reads as follows:

If the Chairman publishes a notification u/s 80 that a companies tax shall be levied every company transacting business within the municipality for

profit or as a benefit society shall after the date specified in the said notification pay a half-yearly "tax on its paid-up capital on the scale shown in

Schedule 4, if and as soon as it has transacted business in the municipality for the period laid down in Section 95.

3. The explanation reads as follows:

Whenever a company employs a Servant or agent to represent it for the purpose of transacting business in a municipality, such company shall be

deemed to transact business within the municipality and such servant or agent shall be liable for the tax in respect of the company's business,

whether or not he has power to make binding contracts on behalf of the company.

4. I will next refer to Schedule 4, Rule 16 which sets out the scale upon which the companies are to be assessed. Therein companies are to be

assessed upon their paid-up capital Scale A deals with companies with a paid-up capital of more than ten lakhs. Those companies are to be

assessed to a half yearly tax of Rs. 250 and that is the tax levied upon the plaintiff company. There is a proviso that

any company, the Head Office or a branch or principal office of which is not in the municipality and which shows that its gross income received in

or from the municipality has not in the year immediately preceding the year of taxation exceeded...

then follows a scale.

5. I will now deal with the facts as they came out in evidence which are somewhat different to those set out in the plaint because in the plaint it is

merely stated that the plaintiff company through an agent in Dindigul only purchases produce, i.e., cotton and groundnuts there and that the

contracts with reference to the purchase of this produce are only concluded in Madras and that produce is sold abroad. If these had been the only

facts, this matter would have presented much less difficulty than it does, but it is complicated by the fact that the plaintiff company is also the

managing agent of another company, namely the Tinnevelly Cotton Press Co. Ltd., a company, which undoubtedly does carry on business in

Dindigul and elsewhere through the agency of the plaintiff company. In Dindigul that business is pressing and ginning cotton and decorticating

groundnuts. There are no directors of the Tinnevelly Cotton Press Co. Ltd., and the whole of its affairs and business are conducted by the plaintiff

company as its managing agents whose remuneration is at the rate of four annas for every 300 lbs. weight of cotton or the material pressed or

baled by the company. The powers of the managing agents are very wide indeed. This is apparent from the memorandum and articles of

association of the company, Clause 80 and onwards. At Dindigul there is a ginning and pressing and decorticating plant owned by the Tinnevelly

Company and the staff working that plant is paid in the first place by the managing agents who debit the company with those payments. The

property tax in respect of the premises in which the machinery is, is paid by the plaintiff company and the Tinnevelly Cotton Press Co. is debited

with that payment. In every respect any payment made in order to gin, press and decorticate the raw material is eventually paid by the Tinnevelly

Cotton Press Co. The license to use the machinery is in the name of the plaintiff company. That is necessary because the plaintiff company in its

capacity of managing agents has to manage and control the plant and the plaintiff company is also stated to be the owner of the premises in the

property tax etc, demand register. In fact it is not the owner but only the managing agent for the owner.

6. The only persons in Dindigul who are in the pay of the plaintiff company are those persons necessary for the plaintiff company to carry on its

managing agency, possibly to buy raw cotton and groundnuts. This therefore is not the case of a company doing acts for itself alone through an

agent but is the case of a company through an agent doing acts in its capacity of managing agents for another company in respect of which it

receives a profit for itself in the shape of its remuneration. What the plaintiff company does for itself through its agent in Dindigul is to buy cotton

and groundnuts for a certain price. This price Mr. Hearson, the managing director of the plaintiff company in Madras has explained is fixed having

regard to the cost to be incurred in ginning, pressing and decorticating the cotton or the groundnuts as the case may be. The ginning, pressing and

decorticating is done by the Tinnevelly Cotton Press Co. through its managing agent, the plaintiff company. The Tinnevelly Cotton Press Company

is for this service paid by the plaintiff company and in fixing the price paid by the plaintiff company to the seller of the raw cotton and groundnuts,

what is to be paid by the plaintiff company for the process of ginning, pressing and decorticating is allowed for, in the price that is to say, take for

example that Rs. 10 per bale is paid for ginning and pressing the cotton, the price paid to the seller is Rs. 10 less than it would have been; had the

ginning and pressing been done at the expense of the seller paid out by the seller. The plaintiffs agent in Dindigul has no power to conclude any

contract to purchase the raw produce. All he is empowered to do is to take his orders from the plaintiff company in Madras as to the price at

which he is to purchase. Sometimes he may quote offers for prices, but unless those offers are accepted by the plaintiff company in Madras he

has no authority to make a purchase. Apart therefore from its business of managing agent of the Tinnevely Cotton Press Company and its acts

done in connexion with that business, all that the plaintiff company qua-trading company does in Dindigul is to buy produce, and clearly on the

authorities put before me that business must be held to be transacted in Madras.

7. I have been referred to a number of cases dealing with this point and of these the most important is *Grainger Sons v. Gough* [1896] A.C. 325, a

decision of the House of Lords, In that case a foreign merchant, who canvassed through agents in the United Kingdom for orders for the sale of

his merchandise to customers in the United Kingdom, was held not to exercise a trade in the United Kingdom within the meaning of the Income

Tax Acts, so long as all contracts for the sale of all deliveries of the merchandise to customers were made in a foreign country. The foreign

merchant in that case was a well-known Champagne shipper in France whose chief place of business was in France and who shipped large

quantities of Champagne to England. The appellants were agents of the foreign merchant. They received orders in the name of the foreign merchant

and transmitted them to him in France, where he exercised his discretion as to executing these orders. It was sought to assess the appellant to

Income Tax on the ground that he was exercising a trade in the United Kingdom within the meaning of the Income Tax Acts,, On p. 333 Lord

Herschell in his judgment states:

Taking the findings, together, I think it clear that no contracts to sell wine were made by the appellant on behalf of foreigner. All that they did was

to transmit to him the orders received, and until he had agreed to comply or complied with them there was no contract.

8. On p. 336 Lord Herschell states:

Something more must be necessary in order to constitute the exercise of a trade within this country. How does a wine merchant exercise his trade?

I take it, by making or buying wine and selling it again, with a view to profit. If all that a merchant does in any particular country is to solicit orders,

I do not think he can reasonably be said to exercise or carry on his trade in that country.

9. This is a very strong case in favour of the plaintiff. In *Lovell and Christmas Ltd. v. Commissioners of Taxes* [1908] A.C. 46, a decision of the

Privy Council on appeal from New Zealand, it was held that where the appellants' profits consisted of a commission deducted by them from

moneys received in London under agency contracts of sales effected in London of goods bought from New Zealand as a result of transaction

made by them in that colony, that the profits were actually made in London, and that the earlier transactions in New Zealand were insufficient to

render those profits taxable under the New Zealand Income Tax Assessment Act as profits derived from business carried on in that colony, Sir

Arthur Wilson in delivering the judgment of the Privy Council on p. 51 after dealing with the decided cases states as follows:

One rule is easily deducible from the decided cases. The trade or business in question in such cases ordinarily consists in making certain classes of

contracts and in carrying those contracts into operation with a view to profits and the rule seems to be that where such contracts, forming as they

do the essence of the business or trade, are habitually made there a trade or business is carried on within the meaning of the Income Tax Acts, so

as to render the profits liable to Income Tax.

10. In *Meera Rowther v. President of the Corporation of Madras* [1910] 33 Mad. 82, which was a decision under the City Municipal Act,

{Madras) 3 of 1904, the Court had to consider what the words "" exercising a;trade "" meant and it was held that where a person has a servant at a

certain place who purchases piece goods there and forwards them to another place where they are sold and the profits are earned, such person

exercises his trade within the meaning of Section 120, Madras City Municipal Act, at the place where the piece goods are sold and not at the

place where they are purchased. In this case the Court followed the principle laid down in *Lovell and Christmas Ltd., v. Commissioners of Taxes*

already referred to amongst other cases. In *Municipal Council of Cocanada v. Clean's Line Steamers Ltd.* [1919] 42 Mad. 455, which was a

decision under the District Municipalities Act of 1884, a shipping company, which earned profits by carriage of goods by sea and in the course of

its business called at several ports in various parts of the world, was in the habit of loading and unloading goods at Cocanada, and it appeared that

the company had its principal agent at Madras who employed a sub-agent at Cocanada, but all the contracts with shippers could be and were

entered into only by the agent at Madras, and the company was assessed by the Municipality of Cocanada to pay tax under the District

Municipalities Act for exercising its trade and carrying on its business in Cocanada and it was held that the company was not exercising any trade

or carrying on business in Cocanada so as to be liable to be taxed under that Act, because the freight earning contracts with the shippers were not

entered into at the port of Cocanada. In this case *Grainger & Sons v. Gough and Lovell and Christmas Ltd. v. Commissioners of Taxes* were

followed. In the *Board of Revenue v. Madras Export Co. Ltd.* AIR 1923 Mad. 422 an agent of a firm situated in Paris bought raw skins in

Madras and exported them to Paris, where the firm sold them for profit and it was held that as the profits accrued solely in France they were not

taxable in British India. Of these cases some were cases decided upon the construction of Income Tax Acts and two of the Indian cases were

decisions upon Acts entitling a Municipality to exact a tax on professions or trades.

11. But although the case I have before me now is not one which arises under an Income Tax Act, the decisions to which I have been referred

under the Income Tax Acts are of the very greatest importance in determining the question as to whether the plaintiff company are transacting

business for profit in Dindigul and indeed the Madras High Court in those cases referred to above, in considering the construction of words very

similar to the Municipal Act, was guided by the construction placed on the Words of Income Tax Acts by the House of Lords and the Privy

Council and I think that whether the words are "'carrying on business,'" exercising a trade for profit"' or "' transacting business,'" those words must be

used in the same sense and have the same meaning. But it is contended by the defendant that these cases have no application to the present case

because the companies' tax is not in any sense an Income Tax, but is a license to transact business without which no company can trade at all

within a municipality and reference was made to the Commissioner of Income Tax v. Nedungadi Bank Ltd. AIR 1924 Mad 693, in which it was held that a tax on companies levied u/s 92, Madras District Municipalities Act 1920, the Act, under which the plaintiff company in this case had been assessed, should be deducted as a business allowance u/s 10 (2), Income Tax Act, in assessing income under the latter Act and that the tax on companies levied under the Madras District Municipalities Act 1920 is not an income or profession tax, but is a compulsory toll on trading companies without which they are not permitted to carry on their trade and the payment of which is an expenditure incurred solely for the purpose of earning profits or gains.

12. In my view this case in no way affects the real question which is whether the plaintiff company are according to legal definition transacting business for profit in Dindigul. What it decides is that if a company is assessable to companies' tax, the company is entitled to deduct what it has paid in respect of tax in assessing its income under the Income Tax Act as an expenditure incurred solely for the purpose of earning profits or gains. I am clearly of the opinion in view of the authorities already referred to that where the company merely buys goods in another place through an agent and where the contract for purchase of those goods is only concluded elsewhere, the company, is not in the place where the goods are bought transacting business in the sense that those words are used in the Madras District Municipalities Act 1920. But it is contended alternatively by the defendant that the plaintiff company does carry on a business in Dindigul, namely that of managing agent of Tinnevelly Cotton Press Co. Ltd., for which it is remunerated and, therefore, liable to tax under Rule 16, Schedule 4 of the Act or under its proviso. It is conceded on behalf of the plaintiff company that a part of the profits earned by it in respect of the management of the Tinnevelly Company's business is the remuneration of four annas per 300 lbs. bale of cotton pressed at Dindigul. But the question, still is, is that earned in Dindigul, or is it the result of the management of the Tinnevelly Cotton Press Co. Ltd., by the plaintiff company in Madras, where all the operations in the Madras Presidency of the Tinnevelly Cotton Press Co., are controlled in such a way as to make the place, where the plaintiff company trades, Madras and not Dindigul,

Pacts very similar have been dealt with by the House of Lords in *San Paulo (Brazilian) By. Co. v. Carter* [1896] A.C. 31. In that case it was held

that where a trade is carried on either wholly in the United Kingdom or partly within and partly outside the tax to be levied is to be computed on

full amount of the balance of the profits or gains of the trade and not only upon the actual sums annually received in the United Kingdom. Lord

Halsbury in his judgment on p. 38, after stating that it is probably a question of fact where the trade is carried on and that it may be true to say that

the phrase may be understood in two different senses, says that it may be the locality of the goods or the land which are the subjects of the trade,

or it may be the place in which the conduct and management, the head and brain of the trading adventure, are situated, and proceeds to examine

the facts of the case under appeal with regard to these principles and states.

If it were a mine, as in the *Casena Sulphur Co. v. Nicholson* [1876] 1 Ex.D. 428, or a jute mill, equally with the railway, the person who governs

the whole commercial adventure, the person who decides what shall be done in respect of the adventure, what capital shall be invested in the

adventure, on what terms the adventure shall be carried on, in short, the person who, in the strictest sense, makes the profits by his skill or industry,

however distant may be the field of his adventure, is the person who is trading. That person appears to me, in this case, to be the appellant

company. Every one of the tests I have applied are applicable to its proceedings. A shipowner or indeed a ship broker, may not have any one of

the ships or the charterparties which he negotiates in England; but by correspondence or by agency he may have both charterparties and ships, not

necessarily British ships, all over the globe. But if he lives in London, and by his direction governs the whole of this commercial adventure, could it

be properly said that he is not carrying on his trade in London.

13. In this case, if those tests laid down by Lord Halsbury are applied, I think it is clear that it must be held that although certain profits are earned

in Dindigul for the plaintiff company, the business is controlled from Madras, and that is where the profits must be held to be earned, that is where

the plaintiff company's business is being carried on and it is there that the plaintiff company is to be assessed in respect of its profits, if at all.

Another important case upon this point is *Smith & Co. v. Greenwood* [1920] 3

K.B. 275. In that case the appellants were a Danish firm resident in Copenhagen manufacturing and dealing in cement-making and other similar machinery which they exported all over the world. They had an office in London, in charge of a qualified engineer who was their whole time servant. He received enquiries for machinery such as the appellants could supply, sent to Denmark particulars of the work which the machinery was required to do, including samples of materials to be dealt with, and when the machinery was supplied he was available to give the English purchaser, the benefit of his experience in erecting it. The contracts between the appellants and their customers were made in Copenhagen and the goods were shipped F.O.B. Copenhagen. The Commissioners held that the appellants exercised their trade within the United Kingdom and were assessable to Income Tax. It was held by Rowlatt, J., that the place where a trade was exercised was the place where the transactions forming the alleged business were closed, in the case of a selling business by the sale of the commodity and the profit, thereby realized, and that therefore the appellants exercised their trade in Denmark, and that they could not in respect of the same profits and gains exercise their trade elsewhere. On p 286, Rowlatt, J., said:

Trading is buying or making and selling, and if I am right in supposing that one single place has to be treated as the place where the trade is exercised, it seems to me that it must be where the profit bearing transactions are closed.

14. This case possibly has a more important bearing on the earlier part of the case than it has on this part. In the former cases referred to on this point it is true that those were decisions under the Income Tax Act, whereas this is a case not of a tax upon income, because in *Commissioner of Income Tax v. Nedungadi Bank the companies* tax was held not to be so. But whatever its nature the tax can only be imposed upon a company transacting business for profit within the limits of the municipality. "Transacting business for profit" are the words of Section 92 of the Act and both Rule 16 and its proviso must be subject to those words in Section 92. In my view, "transacting business for profit" is carrying on a trade.

15. I can see no reason and I therefore held that the plaintiff company was transacting its own business and that of managing agent for the

Tinnevely Cotton Press Co. in Madras and that its profits were earned in Madras and that it is liable to be assessed in Madras and not in

Dindigul.

16. There are two further points raised by the defendant. The first is that the suit is barred by limitation and the other is that the suit is not

maintainable. But Section 350 deals with suits for damages and compensation and in my view this is not such a suit. The claim in this suit is for the

return of companies' tax alleged to have been overpaid. That is not a claim for damages, nor is it a claim for compensation and I agree with the

view of Waller, J., in C.S. 269 of 1923 upon this point.

17. With regard to the latter point Section 354, Madras District Municipalities Act, says that:

No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act, or to recover damages on account of

any assessment or collection of money made under the said authority, provided that the provisions of this Act have been in substance and effect

complied with.

18. That section, it is argued by the defendant, renders the suit not maintainable because it is argued that the money collected was collected under

the authority of this Act and that the provisions of this Act have been in substance and effect complied with. In *Municipal Council, Cocanada v.*

The Standard, Life Assurance Co. [1901] 24 Mad. 205 where the plaintiff company brought a suit to recover the amount levied under the Madras

District Municipalities Act of 1884 and which they had paid under protest, it was contended by the municipality that the suit was not maintainable

because the provisions of that Act had been complied with. It was held that the suit was maintainable as a company not liable to the tax had been

taxed and the provisions of the Act had therefore not in substance and in effect been complied with and that the municipality was not protected

from action. In *Municipal Council of Mangalore v. Cordial Ball Press* [1904] 27 Mad. 547 in which the same objection was taken by the Municipal

Council, namely, that by reason of Section 262 (2), District Municipalities Act of 1884, which was a similar section to Section 354 (2) of the

present Act, the suit was not maintainable by reason of that section, it was held that the Municipality which had assessed a person on his estimated

gross income had wrongly assessed him because the word income"" was not income and consequently the provisions of the Act had been not in substance and effect complied with and that the Court could entertain a suit to recover the amount of tax paid under the assessment. It seems to me that if a Municipality levies a tax upon a person or corporation not liable to pay that tax, it cannot be argued that what has been done has been done in compliance either in substance or in effect with the provisions of the Act, and these two cases are direct and binding authority upon this point.

19. I have now disposed of the points raised in this case. There is only one other matter to which I desire to refer and that is to a letter written by the plaintiff company's agent to the defendant Municipal Council in which he assumes that the company is liable to be assessed upon its profits.

Having regard to what I have already stated this was an incorrect view to take and it cannot be argued that the plaintiff company is thereby prevented from raising the point that they are not liable to be assessed at all under the Act.

20. For all these reasons the plaintiff's claim succeeds and there must be a decree for Rs. 1,500 with interest at the Court rate of 6 per cent, per annum from the date of the filing of the plaint and costs.