

(1978) 04 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 557 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

Project Automobiles

RESPONDENT

Date of Decision : 14-04-1978

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 44(1)

Citation : (1978) 42 STC 279

Hon'ble Judges : A.P. Sen, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : J.M. Sood, for the Appellant; D.M. Dharmadhikari, for the Respondent

Judgement

A.P. Sen, C.J.—This is a reference u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, by the Board of Revenue, Madhya Pradesh, at the instance of the Commissioner of Sales Tax, M. P., referring to the court the following question for its opinion, namely :

Whether, in the facts and circumstances of the case, the sale price of the Ambassador car should be included in the taxable turnover of the assessee? (The car was purchased for office use after full payment of Central sales tax, namely, 10 per cent.)

2. The assessee, M/s. Project Automobiles, Bhilai, is a distributor of Ambassador cars and is a registered dealer in automobiles and their accessories. The assessee purchased one Ambassador car for its office use after payment of full Central sales tax at 10 per cent and later on sold it for Rs. 10,500. The assessee's contention was that this was a casual sale, not connected with its business. The Assistant Commissioner of Sales Tax, Raipur, as well as the Deputy Commissioner of Sales Tax, Raipur, in the first appeal, held the sale of the office car to be taxable on the ground that the sale of the car was a transaction in connection with the assessee's business essentially, when it was a dealer in motor cars. In second appeal, the Board of Revenue held that this was not a sale

that was taxable in the hands of the assessee.

3. In accepting the assessee's contention, the Board of Revenue observed:

It seems that in Clause (ii) of the definition of "business", the "connection" contemplated is proximate and not remote. Naturally there may be scope for legitimate difference of opinion as to where to draw the dividing line. Compared to the instances cited above in this paragraph (vegetables and canteen), the sale of used materials or discarded assets has a closer connection with the main business. But even in this, if a sugar factory disposed of old furniture of its office, the connection with the business is not so close, as the disposal of, say, a truck regularly used in the transport of raw materials, waste products or the manufactured product. The statement of objects and reasons of the amending Act No. 16 of 1966 refers to the decisions of some of the High Courts that transactions of sale which are only incidental or ancillary to the main business of the dealer cannot be assessed to tax. No particular ruling has been mentioned as having occasioned the amendment. The sale of discarded assets has also not been specifically mentioned. In the Supreme Court ruling in the case of State of Gujarat Vs. Raipur Manufacturing Company Ltd., , it is stated that "waste caustic liquor may be regarded as a by-product or a Subsidiary product in the course of manufacture and the sale thereof is incidental to the business of the company and the turnover in respect of both kolsi and waste caustic liquor would be liable to sales tax". In the same judgment it is stated that "where a person in the course of carrying on a business is required to dispose of what may be called his fixed assets or his discarded goods acquired in the course of the business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise.

Then it concludes saying :

In the light of the above discussion, I think the sale of an Ambassador car by Project Automobiles, Bhilai, should not be liable to sales tax. It is true that the business of Project Automobiles, Bhilai, is to sell Hindustan Ambassador cars. But car for office use may be purchased by any business house, whether the business is of selling cars or anything else. If a dealer in the car business were to purchase cars purporting to be for office use and sell them again and again with a view to extra profit or to avoid the normal priority of allocation or due to any other move, the frequency of such transactions might legitimately lead to the inference that they are in fact a part of the normal business. But in this case there is no such evidence.

4. While stating the case, the Board of Revenue observes :

In the present case, the fact that the dealer's business in supplying cars slightly complicates the argument. If his business was of other commodities, the argument would be that since it was not his business to buy, sell or supply cars, the sale of a car purchased for office use is not in the course of his business. The further extension of the argument in the present case is that even though the

assessee's business is of selling cars, this fact is not relevant for determining whether the purchase and sale of a car for office use, should be included in the taxable turnover.

Then it goes on to say :

It can be fairly argued that the purchase and sale of a car for office use is not itself directly actuated by the profit-motive. But the definition of "business" makes the profit-motive or actual accrual of profit irrelevant. Clause (ii) of the definition includes in "business" any transaction in connection with, or incidental or ancillary to, such trade, commerce, etc. It means that transactions in connection with or incidental or ancillary to the main line of business are included in the definition of "business". Even so, it will be necessary to determine where to draw the line. For instance, a businessman may maintain a guest house for which some articles might be purchased and occasionally the guest house may even sell meals or snacks. A dealer, particularly a factory owner, maintains a canteen. In fact, a factory employing more than a certain number of workers has to maintain a canteen under the law. The question would be whether canteen sales are to be included in the dealer's turnover. Another question is that while by products or waste-products which are produced regularly might be included in the turnover, the sale of discarded assets which arises only occasionally may not be fairly so included since it is not an essential part of the business. The present case is confined to a single instance of the purchase and sale of a car for office use. But the other points are mentioned to illustrate the point involved in interpreting the definition of "business". There is apparently no ruling yet of the Supreme Court, nor of our High Court on this point.

5. Various High Courts had held that the expression ""carries on business" used in the definition of "dealer" implies a profit-motive and that where there is no profit-motive, a person cannot be held to fall in the category of dealer. It had also been held by some of the High Courts that the transactions of sale, which are only incidental or ancillary to the main business of a dealer, cannot be assessed to tax. In *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*,), the Supreme Court observed that the sale of miscellaneous old and discarded items, such as stores, machinery, iron scrap, cans, boxes, cotton ropes, rags, etc., cannot be said to be part of, or incidental to, the main business of selling textiles. The court further observed:

It cannot be presumed that when the goods were acquired there was an intention to carry on the business in those discarded materials; nor are the discarded goods, by-products or Subsidiary products of or arising in the course of the manufacturing process. They are either fixed assets of the company or are goods which are incidental to the acquisition or use of stores or commodities consumed in the factory. Those goods are sold by the company for a price which goes into the profit and loss account of the business and may indirectly be said to reduce the cost of production of the principal item, but on that account disposal of those goods cannot be said to become part of or an incident of the

main business of selling textiles.

6. It was considered necessary that such a transaction of sale should be regarded as having been made in the course of business. "Dealer" as defined in Section 2(d) of the M. P. General Sales Tax Act, 1958, means a person who carries on the business of buying, selling, supplying or distributing goods. The original Act did not define the term "business". To obviate the difficulty created by the decisions of the various High Courts, including that of the Supreme Court in *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*, and of this court in *Commissioner of Sales Tax v. Ram Dulare Balkishan and Bros* [1963] 14 S.T.C. 202 and *Commissioner of Sales Tax v. Perfect Pottery Co. Ltd* [1970] 26 S.T.C. 214, the State Legislature inserted an enlarged definition of the word "business" by the Amendment Act No. 16 of 1965, which reads as follows:

(bb) "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.

It would be noticed that under the enlarged meaning of the term "business" as defined in Section 2(bb), under both the parts of the definition, profit-motive is now immaterial and the concept of business in respect of matters falling under Clause (ii) thereof in the commercial sense, put forward and accepted in the earlier cases, has been abandoned. Similar changes were made in the Madras General Sales Tax Act, 1959, as well as the Rajasthan Sales Tax Act, 1954 and a new definition of business was Substituted so as to do away with the motive for making profits as an element in determining what constitutes business. The amended definitions contained in Section 2(d) of the Madras General Sales Tax Act, 1959 and Section 2(cc) of the Rajasthan Sales Tax Act, 1954, were in pari materia with the definition of "business" as contained in Section 2(bb) of the M. P. General Sales Tax Act, 1958, as inserted by the Amendment Act No. 16 of 1965. Those provisions came up for consideration before their Lordships of the Supreme Court in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, and *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*,

7. In view of the enlarged definition of the word "business" contained in Section 2(d) of the Madras General Sales Tax Act, 1959 and Section 2(cc) of the Rajasthan Sales Tax Act, 1954, their Lordships held that the sales of unserviceable material and scrap-iron by the Burmah Shell Oil Storage and Distributing Co. and by the Northern Railway, Jodhpur, were exigible to sales tax,

even though the sale of such unserviceable material and scrap-iron was not in the course of their usual business.

8. In *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, their Lordships of the Supreme Court disapproved of the view expressed by the Madras High Court in *Deputy Commissioner of Commercial Taxes v. Sri Thirumagal Mills Ltd.* [1967] 20 S.T.C. 287, laying down that unless the transaction is connected with trade, that is to say, it has something to do with trade or has the incidence or elements of trade or commerce it will not come within the definition, stating:

This decision does not take note of the word "such" in the second Sub-clause, which, in our view, imports by reference the definition in Sub-clause (i) into that of Sub-clause (ii).

Their Lordships then reviewed with approval the contrary view expressed by the Andhra Pradesh High Court, interpreting an analogous provision of the Andhra Pradesh General Sales Tax Act, in *Hyderabad Asbestos Cement Products Ltd. v. State of Andhra Pradesh* [1972] 30 S.T.C. 26(ap), holding that in view of the definition of "business" as amended by the Amendment Act of 1966, proof of profit-motive is unnecessary to constitute business and observed:

Dealing with the case of *Deputy Commissioner of Commercial Taxes v. Thirumagal Mills Limited* [1967] 20 S.T.C. 287, the learned Judges said that they were unable to agree with that case as the Madras High Court had not paid sufficient attention to the word "such" occurring in the second part of the definition, which according to them obviously referred to the "trade, commerce, manufacture, adventure or concern" mentioned in the first part of the definition, that is to say, "trade, commerce, manufacture, adventure or concern" of which a motive to make gain or profit is not an essential requisite, nor was it permissible to hold that there was no "business" in the commercial sense of "business" with a motive to make profit, when such motive has been expressly declared unnecessary by the legislature. In their view under both parts of the definition, profit-motive is now immaterial and the concept of business in respect of matters falling u/s 2(d)(ii) in the commercial sense put forward and accepted in the earlier cases must be abandoned. We think the view adopted by the Andhra Pradesh High Court is in consonance with our own reading of the section, which we have indicated earlier.

Their Lordships accordingly held :

In the view we hold the scrap sold is certainly connected with the business of the company and the turnover in respect of this commodity is liable to tax.

9. In *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, , the Supreme Court reiterated the same view, stating as follows:

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.

These two decisions of the Supreme Court really conclude the point against the assessee, who admittedly is a dealer in automobiles and the sale of the office car must, on the facts and in the circumstances of the case, be held to be not only incidental but also ancillary to and connected with the business that it carries on. In *Spheroidel Castings Ltd. v. State of Tamil Nadu* [1977] 40 S.T.C. 596, the Madras High Court has taken the same view.

10. For the reasons aforesaid, the reference is answered in favour of the Commissioner of Sales Tax and against the assessee. It must accordingly be held that the Board of Revenue was not justified in holding that the sale price of the Ambassador car, purchased by the assessee for its office use and then sold, was not liable to be included in its taxable turnover. There shall be no order as to costs.