(1956) 10 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 74 of 1955

Davanagere Cotton Mills Ltd. APPELLANT

Vs

State of Mysore and Another RESPONDENT

Date of Decision : 10-10-1956

Acts Referred:
Factories Act, 1948 — Section 46

Citation : (1957) 8 STC 793

Hon'ble Judges : Sreenivasa Rao, J;H. Hombe Gowda, J

Bench : Division Bench

Advocate : V.L. Narasimhamurthy, for the Appellant; D.M. Chandrasekhar, for The Advocate-General, for the Respondent

Judgement

Sreenivasa Rao, J.—This writ petition challenging the legality of the levy of sales tax from the petitioner mills in respect of the transactions in the canteen run by the mills has arisen under the following circumstances :

2. The Sales Tax Officer, Chitaldrug, assessed the petitioner to sales tax during the quarters ending June, 1952, September, 1952, March, 1953 and June, 1953, in respect of the sales effected in the canteen attached to the mills. The assessee preferred a review petition before the Deputy Commissioner of Sales Tax, Mysore, that the sales in the canteen did not represent business done by the mills in the course of their trade or business. This contention was upheld by the Deputy Commissioner and he directed the Sales Tax Officer to reduce the demand to a corresponding extent. The Commissioner of Sales Tax sought suo motu to revise the orders of the Deputy Commissioner and notified the assessee. After hearing the assessee the Commissioner took the view that the levy of sales tax on the sale of articles of food and drink in the canteen was in order and restored the assessment made by the Sales Tax Officer in that regard. This decision of the Commissioner of Sales Tax is challenged as being outside the scope of the Sales Tax Act.

3. The main ground urged by the petitioner is that it is only the sales effected in

the course of business or trade that are amenable to the levy of sales tax as under the Act a dealer is a person who carries on the business of buying and selling goods. It is contended that it is only an activity carried on for commercial purposes with a view to earn profit whether actually profit is earned or not, that can be regarded as a sale under the Act. This view did not commend itself to the Commissioner of Sales Tax. It appears to us to be quite clear that the Act does not seek to levy sales tax on all sale transactions but only on such transactions as are effected in the course of business. In this view we are supported by three decisions of the madras High Court : Gannan Dunkerley and Co. (Madras) Ltd. Vs. State of Madras, in which it was held that the sale of foodgrains by an engineering firm to its workmen which was carried on as an ameliorative measure and without any profit motive was not a sale within the meaning of the Madras General Sales Tax Act; Deputy Commercial Tax Officer, Deputy Commercial Tax Officer, Triplicane Division, Mount Road, Madras and Another Vs. Cosmopolitan Club, , in which it was held that the sale of refreshments by a club to its members was not a sale within the meaning of the Madras General Sales Tax Act, as the club was an association not designed for making a profit nor striving after profit and as there was no intention of making profit by sale of refreshments to members. It may also be mentioned that in the present case in addition to there being no intention on the part of the petitioner mills of making profit by running a canteen the mills are bound to run a canteen on a "no profit, no loss" basis by virtue of a statutory obligation imposed u/s 46 of the Factories Act and rules thereunder. Sree Meenakshi Mills Ltd. Vs. State of Madras, was a case wherein an identical question arose. There also the assessee mills were assessed to sales tax in respect of sales effected by them in canteens run by them for the benefit to their employees in conformity with the requirements of the Factories Act. The Madras High Court held that such sales could not be regarded as sales effected in the course of business and amenable to the levy of sales tax. We respectfully agree with the view. We may also add that in the second of the cases mentioned above, the Madras High Court held that the High Court had ample jurisdiction to grant relief to the petitioner by the issue of a writ though the petitioner in that case had not exhausted his remedy under the Madras General Sales Tax Act. In the case on hand it will be remembered that the order challenged has been made by the Commissioner of Sales Tax setting aside the order of the Deputy Commissioner of Sales Tax. We consider this an appropriate case to issue a writ.

4. We accordingly direct that a writ certiorari quashing the orders of assessment passed by the Commissioner of Sales Tax in Mysore be issued as prayed for in the writ petition. Respondent 2 will pay the petitioner''s costs. Advocate''s fee Rs. 100.

5. Petition allowed.

