

**(1991) 04 MAD CK 0078**

**In the Madras High Court**

**Case No : Tax Case No. 502 of 1979**

Deputy Commissioner (Ct), Coimbatore Division, Coimbatore

APPELLANT

Vs

Anamallais Bus Transport (P.) Limited

RESPONDENT

**Date of Decision : 04-04-1991**

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3, 32

**Citation : (1991) 04 MAD CK 0078**

**Hon'ble Judges : Raju, J;A.S. Anand, J**

**Bench : Division Bench**

**Advocate : R. Lokapriya, for the Appellant;**

## **Judgement**

Raju, J.—The State has filed the above revision against the order of the Sales Tax Appellate Tribunal, Coimbatore, dated May 29, 1978, setting aside the order of the Deputy Commissioner of Commercial Taxes, Coimbatore, dated December 3, 1977 and remitting the matter back to him for disposal afresh according to law and in the light of the observations of the Tribunal contained in the order challenged before us.

2. The respondent/assessee was assessed on a total and taxable turnover of Rs. 64,842.74 and Rs. 52,063.52, respectively, for the assessment year 1971-72 by an order of the assessing authority dated January 31, 1973, to a tax of Rs. 1,806.12. Subsequently it was found out that exemption was allowed in respect of a turnover of Rs. 12,779.22 being the sale value of condemned tyres and scrap batteries. Consequently, a notice dated November 30, 1976, was issued proposing to assess the entire turnover including the turnover wrongly exempted. Since in the meantime, the Tribunal in a similar case took the view in favour of the assessee, the proposals were dropped on November 3, 1977, leaving a note to that extent in the assessment file. It may be noticed at this stage that pursuant to the notice issued, the assessee filed objections in which he sought for revision of the entire assessment claiming deduction of the whole of the turnover from the net of taxation and inasmuch as the proposals issued for

revision were dropped, the assessee filed a revision petition u/s 32 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as "the Act", before the Deputy Commissioner of Commercial Taxes.

3. The Deputy Commissioner, while considering the revision of the assessee, rejected the claim on the basis of the decision of the Supreme Court reported in [1973] 31 STC 426 (State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.). The turnover of Rs. 64,842.74 was held to be liable to tax at 4 per cent multi-point. Aggrieved, the assessee filed an appeal before the Sales Tax Appellate Tribunal, Coimbatore. The Tribunal, while distinguishing the decision reported in [1973] 31 STC 426 (State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.) applied the ratio of the decision of the Andhra Pradesh High Court reported in [1971] 27 STC 42 (Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer) and came to the conclusion that the assessee was not a dealer in any commodity and consequently he will not come within the purview of the decision of the Apex Court in [1973] 31 STC 426 (State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.). On that conclusion, the Tribunal set aside the order of the Deputy Commissioner and directed consideration of the matter afresh by him. As against this, the above tax revision case has been filed.

4. Mr. R. Lokapriya, learned Government Advocate appearing on behalf of the petitioner, contended that the transactions in question are subject to tax under the Act, they being sales by a dealer in the course of his business and the view taken by the Tribunal is contrary to the judgment of the Supreme Court reported in [1976] 37 STC 423 (District Controller of Stores, Northern Railway v. Assistant Commercial Taxation Officer) and of this Court reported in [1978] 41 STC 105 (State of Tamil Nadu v. The Hindu). In spite of notice having been served, there was no appearance on behalf of the assessee to defend the same.

5. In Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer [1971] 27 STC 42, a Division Bench of the Andhra Pradesh High Court had an occasion to consider the question of taxability of the sales of scrapped vehicles, old tyres, old containers and other unserviceable materials effected by the Andhra Pradesh State Road Transport Corporation under the Andhra Pradesh General Sales Tax Act, 1957. The court held therein that the Corporation was not a dealer and, therefore, it could not be assessed to sales tax since it was not carrying on the business in old or scrapped vehicles and other scrap. The court further held that in order that an incidental or ancillary transaction or activity may amount to "business" within the meaning of the provisions of the said Act, it should be in connection with the trade or commerce or, adventure carried on by the assessee and should itself partake of the nature of trade, commerce, manufacture, adventure or concern. After referring to the provisions of the Road Transport Corporation Act, 1950 and the object of the Corporation as disclosed from the terms of its incorporation, the court came to the conclusion that it was not one of its objects to carry on the business of purchase or sale of any

scrapped vehicles or other types of scrap. It was in that context and the nature of the provisions contained in the Andhra Pradesh Act, the Corporation was held not liable to tax.

6. In *State of Andhra Pradesh v. Andhra Pradesh State Road Transport Corporation* [1989] 74 STC 336, a Division Bench of the Andhra Pradesh High Court once again considered the very same question and following its earlier view in the decision reported in [1971] 27 STC 42 (*Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer*) rejected the revision filed by the Revenue reiterating its view that the Andhra Pradesh State Road Transport Corporation was not a dealer in transport vehicles or any unserviceable vehicles or material and the Revenue had not shown that the said Corporation was carrying on business in purchase or sale of such articles. This was once again on the view that the activity of the Andhra Pradesh State Road Transport Corporation was only to provide road transport service in the State as per the terms of its incorporation under the Road Transport Corporation Act, 1950. The court also relied upon the decisions of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.* [1973] 31 STC 426 and *Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road Transport Corporation*, . It may be noticed that in *Commissioner of Income Tax, A.P. Vs. Andhra Pradesh State Road Transport Corporation*, , the Supreme Court dealing with the Andhra Pradesh State Road Transport Corporation under the Income Tax Act, held that its activities are of general public utility and, therefore, they are charitable in nature and consequently exempted from levy of Income Tax. As a matter of fact, the Andhra Pradesh High Court chose to distinguish the decision of the Supreme Court in *District Controller of Stores, Northern Railway v. Assistant Commercial Taxation Officer* [1976] 37 STC 423 mainly on the ground that merely because the Andhra Pradesh State Road Transport Corporation's activities are commercial in nature it does not cease to be a charitable organisation. The Andhra Pradesh High Court in sustaining the claim of the Andhra Pradesh State Road Transport Corporation held as follows :

"It is, therefore, evident that merely because the undertakings" activities are commercial in nature APSRTC does not cease to be a charitable organisation. In *District Controller of Stores v. Assistant Commercial Taxation Officer* [1976] 37 STC 423, the Supreme Court was not quite clear as to what were the main objects of the railways, its activities, its constitution, its share in profit-making and whether the surplus revenues to be diverted for the main activity or to be distributed as profits and so forth. Therefore, we find it very hard to treat the aforesaid decision analogous to the case on hand, and so, the ratio laid down in that case may not be applicable to the case of the corporation in question. Secondly, the ratio laid down by this Court in *Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer* [1971] 27 STC 42 directly dealt with the corporation in question, its nature and activity which received the approval of the Supreme Court. Although the decision in *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer*

and Another, is later in point of time but as the earlier judgment in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, is pronounced by a Bench comprising three learned Judges being larger one as against two Judges" Bench which delivered the judgment in The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another, we, therefore, follow the earlier decision."

That apart, the said High Court concurred with the categorical findings of the Tribunal rendered on the nature of its activity and having regard to the terms of its constitution under the enactment referred to supra.

7. In State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd. [1973] 31 STC 426, the Supreme Court had an occasion to deal with a case under the provisions of the Tamil Nadu General Sales Tax Act, 1959, with special reference to the amendments introduced to the same by the amending Acts of 1961 and 1964. The State was the appellant before the Apex Court. The respondents who were the assesseees are oil companies and they were obliged under the Factories Act to supply tea and edibles to its workmen in the canteen established by it. It also supplied to its agents calendars, purses and key chains. The assesseees also periodically sold as scraps, unserviceable oil drums, rubber hoses, jerry cans, rims, etc. The High Court sustained the plea of the assessee on the ground that the company did not engage itself in trade of publicity material, and that sale of scraps and canteen sales were not liable to tax in view of its earlier judgment reported in Deputy Commissioner of Commercial Taxes v. Sri Thirumagal Mills Ltd. [1967] 20 STC 287. In the light of the amendments introduced to the Madras Act in 1961 and 1964 and also in distinguishing Andhra Pradesh State Road Transport Corporation Vs. The Commercial Tax Officer, the Apex Court held the transactions of the assessee before the said Court subsequent to the period of amendment to be subject to sales tax in the following terms :

"..... It was pointed out at the very outset that in view of the pronouncements of the Supreme Court, the A.P. State Road Transport Corporation which is primarily constituted to provide an efficient, adequate, economical and properly co-ordinate system of road transport service could not be held to be a dealer carrying on the business in old and scrapped vehicles and other scrap and it could not be assessed to sales tax. The Commercial Tax Officer was not, therefore, right in holding that the assessee-corporation was a dealer. The chargeable section, viz., section 3, makes every dealer liable to pay tax in respect of the turnover for the year and consequently the assessee not being a dealer cannot be assessed to tax under the Act. The sales of scrap in these appeals, which as we have said earlier, consisted of spoiled drums, hose pipes, etc., were all held to be connected with the business of the company. This finding is a finding of fact but even otherwise the very nature of the particular scrap, prima facie, would indicate that they are connected with the business of the company. The assessee being an oil company has to use oil drums, hose pipes,

jerry cans, etc., as part of its trading activity and any sale of these unserviceable goods as scrap is a transaction connected with its trade or commerce. It is contended by the respondent that in *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*, this Court had observed at page 9 that the miscellaneous, old and discarded items such as stores, machinery, iron scrap, cans, boxes, cotton ropes, rags, etc., were held to be not part of or incidental to the main business of selling textiles. This contention, in our view, does not take into account the context in which that finding had been given. In that case, as already pointed out, what was held under the analogous Bombay Sales Tax Act, which was similar to that under the Madras Sales Tax Act, prior to its amendment in 1964, the sale of scrap does not necessarily lead to an inference that business which was an element in determining the liability of the dealer for the turnover in such goods was intended to be carried on in those goods. This Court had observed, it cannot be presumed, that when the goods were acquired, there was an intention to carry on business in those discarded materials nor are the discarded goods, by-products or subsidiary products or are produced in the course of manufacturing process; that 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 and that when these go into the profit and loss account of the business and may indirectly be said to reduce the cost of production of the principal item, the disposal of those goods on the account cannot be said to be part of or incidental to the main business of selling textiles. As the scrap in that case was not held to be incidental to the acquisition or use of stores or commodities consumed in the factory, the turnover was not included but in the case of caustic liquor which is regularly and continuously accumulated in the tanks in the process of mercerisation of cloth, this Court held that that being a waste material it has still a market amongst other manufacturers or launderers as by-products or subsidiary products in the course of manufacture, and the sale thereof is incidental to the business of the company.

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. It cannot also be said that the turnover in respect of the sale of the assessee's advertisement materials at cost price or less than cost price is not connected with the business of the assessee."

8. In *District Controller of Stores, Northern Railway v. Assistant Commercial Taxation Officer* [1976] 37 STC 423, the Apex Court had an occasion to consider the taxability of transactions involving sale of unserviceable materials and scrap by the Railway Department of the Union of India under the Rajasthan Sales Tax Act. The court expressed its view as hereunder in holding the transactions to be liable to sales tax :

"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.

We also think that there is no fallacy in thinking that the Railway since it is concerned in the activity of transportation is engaged in commerce within the meaning of clause (i) of the definition and that the sale of unserviceable materials and scrap-iron, etc. is transaction in connection with or ancillary to such commerce within the clause (ii) of that definition."

9. In *Indian Express (P.) Ltd. v. State of Tamil Nadu* [1987] 67 STC 474, the Apex Court was concerned with the levy of sales tax under the Tamil Nadu General Sales Tax Act on sales of surplus copies of newspaper by weight as waste paper by the Indian Express (P.) Ltd. and it was held as follows :

"It is also clear from the material on the record that the transactions of sale of surplus copies must be regarded as a business carried on by the appellant. It was an activity which he pursued regularly, and the motive was to earn a profit. It was incidental to the business carried on by the appellant of printing and publishing newspapers. In the course of carrying on the business of printing and publishing newspapers, it is inevitable that a number of copies should remain surplus and that they should, therefore, be sold as waste paper. The business of selling the surplus copies as waste paper attracted sales tax, having regard to the terms of clause (d) of section 2 of the Act, which defines the expression "business" as it stood at the relevant time.

In our opinion, the High Court is plainly right in maintaining the sales tax assessment on the turnover of the surplus copies of newspapers sold as waste paper.

Learned counsel for the appellant relies on the decisions of this Court in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1 and *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.* [1973] 31 STC 426. Having regard to the state of the law at the relevant time, these decisions do not, in our opinion, assist the appellant."

10. In *Member, Board of Revenue v. Controller of Stores, Eastern Railway* [1989] 74 STC 5, the Apex Court was once again concerned with the levy of sales tax on sales of unclaimed goods by the Railway Department under the Bengal Finance (Sales Tax) Act, 1941 and following its earlier decision in *District Controller of Stores, Northern Railway v. Assistant Commercial Taxation Officer* [1976] 37 STC 423, the Bench consisting of three learned Judges of the Apex Court rendered its conclusions as follows :

"In these appeals the question is whether the assessee-railway in each case is a "dealer" for the purpose of assessment under the Bengal Finance (Sales Tax) Act, 1941. In the case of the assessee, South Eastern Railway, what were sold were unclaimed goods. The railway was a carrier of the goods and if at the stage of delivery goods remained unclaimed for a period the railway was entitled to dispose them of. There can be no doubt that the activity of so disposing of the goods was adjunctive to the principal activity of the carriage of goods by the railway. 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.

In the other case, the assessee, Eastern Railway, disposed of scrap and unserviceable material lying with it. The case is covered directly by the decision of this Court in the District Controller of Stores, Northern Railway v. Assistant Commercial Taxation Officer [1976] 37 STC 423."

11. In State of Tamil Nadu v. The Hindu [1978] 41 STC 105, this Court, while following the ratio laid down in The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another, and The State of Tamil Nadu Vs. Indian Express (Madurai) Limited, , held the sales of old newspapers, print waste and cut waste as well as the unrequired glazed newsprint to be liable to sales tax under the Madras Act.

12. In State of Tamil Nadu v. Sri Velan Stores [1984] 57 STC 11, a Division Bench of this Court was concerned with the question of levy of sales tax on the turnover relating to the sale of old car belonging to the assessee who was a dealer in readymade garments and textiles. Applying the ratio of the decision of the Apex Court in [1973] 31 STC 426 (State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.) the Court held therein as follows :

"The learned Government Pleader urged before us that the decision of the Tribunal is erroneous in point of law. He urged that the Tribunal had gone against the principles laid down by the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, . In that case, it was laid down that when once a person is found carrying on a business as a dealer, namely, in the buying and selling of goods of any description, any sale effected by him in the course of trade of any commodity of whatever description would be exigible to sales tax. In that case, used-up drums, rubber hoses, old furniture, and bric-a-brac were sold by the assessee, who however, was a regular dealer only in petrol and oil. The Supreme Court held that the sales turnover other than the turnover in oil and petrol was also properly chargeable to sales tax. The Tribunal in this case was therefore not right in making a point of the fact that the assessee concerned is only a dealer in readymade garments and not a dealer in old cars, overlooking the fact that the old car was a business asset of the assessee and had been sold and realised by the assessee in the course of trade."

13. In *State of Tamil Nadu v. Prem Electrical Conductors (M.) Pvt. Ltd.* [1984] 57 STC 29, again another Division Bench of this Court, while considering the taxability of the turnover relating to the sale of a car by an assessee dealing in electrical conductors, applying the ratio of the earlier decisions referred to above, came to the following conclusions :

"The question for consideration before us is whether the sum of Rs. 14,500 realised by the assessee by the sale of the car is exigible to tax under the Tamil Nadu General Sales Tax Act, 1959. As already stated, the Tribunal has taken the view that the sum of Rs. 14,500, being the sale proceeds of the assessee's car, is not exigible to tax under the Tamil Nadu General Sales Tax Act, relying on the decision in *Board of Revenue and Others Vs. A.M. Ansari and Others*, . We, however, find that the view taken by the Tribunal in this case is contrary to the principle laid down by the Supreme Court in *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Company* [1973] 31 STC 426, wherein the Supreme Court has held that receipts realised by the sales of scraps, like unserviceable oil drums, hose-pipes, jerry cans, etc., were in the course of the business of the company, and therefore the turnover in respect of those commodities, even though they were unserviceable, was liable to tax. In that case, the Supreme Court took into account the definition of the term "business" under the Tamil Nadu General Sales Tax Act, 1959, which was considered to be of the widest scope so as to take in all transactions of sales carried on in the course of business, though the articles sold may not be in the line of business undertaken by the assessee.

The decision in the *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, has been followed by this Court in a series of cases, the latest of them being the decisions in T.C. No. 1321 of 1977, *State by Deputy Commissioner (CT) Madras Division v. Munoth Brothers, Madras* and T.C. No. 890 of 1977, *T. R. Aghoram Iyer Firm, Akkur v. Deputy Commercial Tax Officer, Mayavaram*. The decision of the Supreme Court in *Board of Revenue and Others Vs. A.M. Ansari and Others*, , which has been relied on by the Tribunal in the present case in preference to the earlier decision of the Supreme Court in the *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, has been specifically considered by this Court in *Deputy Commissioner (CT) v. Vijayalakshmi Mills Limited* [1977] 40 STC 463, wherein this Court has held that the decision of the Supreme Court in *Board of Revenue and Others Vs. A.M. Ansari and Others*, does not run counter to the principle laid down by the Supreme Court in the *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, and that therefore the decision in the *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, should be held to continue to hold the field even after the decision in *Board of Revenue and Others Vs. A.M. Ansari and Others*, . The scope of decision in the *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, was again considered by the Supreme Court in a recent decision in *State of Tamil Nadu Vs. Binny Ltd.*,

Madras, . In that case the question arose whether the sales of provisions effected by Binny Ltd., Madras (a textile manufacturer) to their workmen were exigible to tax under the Tamil Nadu General Sales Tax Act, 1959. The Supreme Court, after referring to their earlier decision in the State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, , held that the activity of selling provisions to the workmen of the assessee, which was a textile mill, was incidental to the business of the manufacture of textiles, and that as such the sales were transactions falling within the definition of "business" under the Act and therefore those sales attracted liability to tax under the Act. Having regard to the fact that the Supreme Court in State of Tamil Nadu Vs. Binny Ltd., Madras, has reaffirmed its earlier view in the State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, , the Tribunal in this case was not right in over-looking the decision of the Supreme Court in the State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, and in holding that the sale of the car by the assessee cannot be taken to be in the course of its usual business and therefore not exigible to tax. The decision of the Tribunal is clearly inconsistent with the decisions of the Supreme Court in the State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, and State of Tamil Nadu Vs. Binny Ltd., Madras, ."

14. So far as State of Andhra Pradesh v. Andhra Pradesh State Road Transport Corporation [1989] 74 STC 336 is concerned, we are of the view that the ratio of the decision of the Division Bench of the Andhra Pradesh High Court has to be confined to the peculiar facts and circumstances of the case and also to the assessee concerned in the said case, namely, Andhra Pradesh State Road Transport Corporation having regard to its peculiar constitution under the Road Transport Corporations Act, 1950. In Joint Director of Food v. State of A.P. [1976] 38 STC 329, the Supreme Court came to the conclusion under the Andhra Pradesh Act itself that the systematic activity of buying foodgrains and fertilisers and selling them by the Central Government, although in fulfilment of a beneficent national policy, would be nevertheless trade or business and inasmuch as profit-motive or profit-accrual was irrelevant under the Andhra Pradesh Act, the Joint Director of Food would be liable to sales tax.

15. After a careful reference to and consideration of the ratio of the various decisions referred to above, we are of the view that the definitions of the term "business" and "dealer" under the Tamil Nadu General Sales Tax Act, 1959, as in force during the relevant point of time, are of wide amplitude so as to take within its fold all transactions of sales carried on in the course of business, though the articles sold may not be in the line of business undertaken by the assessee. That apart, we find that this Court has been consistently taking the view following the ratio of the Apex Court in [1973] 31 STC 426 (State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.), [1982] 49 STC 17 (State of Tamil Nadu v. Binny Ltd.) and [1976] 37 STC 423 (District Controller of Stores, Northern Railway v. Assistant Commercial Taxation Officer) that the transactions of the nature carried on by the respondent/assessee are exigible to sales tax

under the provisions of the Tamil Nadu General Sales Tax Act on the reasoning that such assesseees are dealers and the transactions in question are in the course of its business or incidental or ancillary to its business. We are of the view that there is no comparison between the case considered by the Andhra Pradesh High Court in [1989] 74 STC 336 (State of Andhra Pradesh v. Andhra Pradesh State Road Transport Corporation) and the case on hand before us. The Tribunal, in our view, without reference to the distinguishing features and the peculiar circumstances of the case considered by the Andhra Pradesh High Court in its decision reported in [1971] 27 STC 42 (Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer) mechanically applied the same to the facts of the present case in preference to the decision of the Apex Court in [1973] 31 STC 426 (State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.). This approach, in our view, is not only incorrect and patently illegal but the same runs counter to the several decisions of this Court referred to supra which have been consistently taking a contrary view.

16. On the facts and circumstances of the case before us, we are of the view that the sales of unserviceable articles in question are incidental to its business and that they constitute systematic disposal of articles becoming either surplus or unserviceable in their hands. The Deputy Commissioner of Commercial Taxes was justified in applying to the case on hand the ratio of the decision reported in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, and subjecting the transactions of the assessee to tax and that the Tribunal was not justified in setting aside the orders of the Deputy Commissioner in this regard. Consequently, we set aside the order of the Tribunal, direct the restoration of the order of the Deputy Commissioner and allow the tax revision case; but in the circumstances, there will be no order as to costs.

17. Petition allowed.