

(1963) 11 MAD CK 0079
In the Madras High Court
Case No : Tax case No. 5 of 1963

Fiaz Ahmed and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 07-11-1963

Acts Referred:

Citation : (1964) ILR (Mad) 975 : (1964) 77 LW 465 : (1964) 15 STC 201

Hon'ble Judges : Venkatadri, J; Jagadisan, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagdisan, J.—This tax revision petition arises out of proceedings under the Madras General Sales Tax Act, 1959. The question raised is the assessability to tax of the petitioners, and so far as we are able to see, the exact point that arises for determination is not covered by any direct decision of this Court.

2. The petitioners are tanners at Ranipet. For the assessment year 1959-60, the Deputy Commercial Tax Officer, Arcot, assessed them under the Madras General Sales Tax Act, 1959, on a taxable turnover of Rs. 78,708-13, which included the sum of Rs. 74,205-46 being the purchase value of wattle bark and other dyeing and tanning materials. The petitioners contended that they were not dealers in tanning materials and that they would not, therefore, be assessable to tax. This contention was not accepted by the taxing officer, and there was an appeal to the Appellate Assistant Commissioner. The same contention was reiterated but without success. The appellate authority held that the purchase of tanning materials by a tanner like the petitioners is in the course of business and that the definition of "dealer" u/s 2(g) of the Act was satisfied. The assessment was confirmed and the appeal was dismissed. There was a further appeal to the Sales Tax Appellate Tribunal, which took the same view as that taken by the departmental authorities. It is this decision which is now called in question.

3. The petitioners own a tannery at Ranipet and are mere tanners. They do not buy hides and skins and sell them after tanning. It is conceded by the State that the petitioners' occupation is only to tan hides and skins for certain specified charges and that they neither buy nor sell hides and skins or tanning materials as such. For the purpose of tanning, however, they have necessarily to purchase tanning materials, and the cost of such materials would no doubt go to swell the charges obtained by them for tanning the goods entrusted to them by their customers. On these facts, the question arises whether the petitioners are obliged to pay tax on the purchase value of the tanning materials.

4. There can be no dispute that the petitioners should be found to be dealers within the Act, before they can be assessed to tax. We shall now refer to the relevant provisions of the Act. A "dealer" is defined in Section 2(g) . "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration, and includes...." The Act defines also "business" u/s 2(d). That reads:

"Business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern.

5. This is an inclusive definition phrased with the object of bringing in several activities which may not ordinarily be comprehended within the meaning of the expression "business". The first Schedule to the Act prescribes a list of goods in respect of which tax is leviable at a single point in accordance with Section 3, Sub-section (2). Entry 59 relates to the single point levy regarding tanning materials. That reads:

Wattle bark, Avaram bark, Konnam bark, Wattle extract, Quebracho and Chestnut extract.

6. Tax is payable at the rate of 3 per cent. at the point of last purchase in the State. Rule 5(2) of the Madras General Sales Tax Rules, 1959, is as follows:

In the case of the undermentioned goods the total turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by the dealer-

[(a) and (b) omitted.]

(c) wattle bark including dyeing and tanning materials.

7. The petitioners do not dispute the fact that they were the last purchasers in the State of wattle bark and dyeing and tanning materials. Entry 59 of the First Schedule read along with Rule 5(2) of the rules would surely fasten a tax liability upon the purchase value of these materials at the rate of 3 per cent. But the petitioners submit that they are not dealers, and that a mere purchase by them of tanning materials for the purpose of earning remuneration for the services

rendered by them for tanning other peoples" goods would not attract a tax liability. "Business" is a wider term than "trade". The statutory definition u/s 2(d) of the Act makes this position clear. For example, farming or keeping a school is a business but not a trade. But under the Act, business and trade are possible interchangeable expressions. We may at once state that it is not the petitioners' case that there was no profit motive in their activity of tanning goods for others. The view of this Court seems to be that the absence of profit motive would be a circumstance to take a person out of the category of "dealer". We must, however, observe that there is something to be said for the view that the absence of profit motive does not mean that a business is not being carried on. Lord Coleridge," C.J., observed in *Inland Revenue Commissioners v. Incorporated Council of Law Reporting* (1888) 3 Tax Cas. 105:

It is not essential to the carrying on of trade that the people carrying it on should make a profit... or wish to make a profit.

8. That question does not, however, arise in this case, as it is not denied by the petitioners that a profit motive is present.

9. Now, who is a "dealer" within the Act ? He is a person who carries on the business of buying, selling, etc. for cash or for deferred payment or for commission or remuneration. Any person who is engaged in the activity of buying, selling or supplying or distributing, in the course of business answers the statutory definition. There must be a combination of business and one or the other of the several activities of buying, selling or supplying specified in the definition. The presence of one element alone will not do. A business without a specified activity or some activity outside the course of business would not suffice to constitute a dealer. This much seems to be clear. But the question mooted is, whether the activity should be the entire business or whether the activity need only be a part, major or minor, primary or secondary, principal or subsidiary, of a wide range of several activities which together form the business. The former construction of the term "dealer" in the Act is, in our opinion, unduly and needlessly restrictive of the wide meaning of the language of the Act. Following the ordinary rule of reading and understanding the words in the Statute in their plain grammatical sense, we cannot confine their operation to a limited sphere.

10. In cases arising in England under the Income Tax Act, the view has been taken that even an ancillary and perhaps an insignificant part of the activities of an institution may amount to the carrying on of a business; for example, the Young Men's Christian Association running a restaurant on ordinary commercial principles keeping it open to the public as well, was held to carry on business. (See *Grove v. Young, Men's Christian Association* (1903) 4Tax Cas. 613. This was approved. by the House of Lords in *Governors of Rotunda Hospital v. Coman* (1918) 7 Tax Cas. 517. In *Religious Tract and Book Society v. Forbes* (1896) 3 Tax Cas. 415 and *Royal Agricultural Society of England v. Wilson* (1924) 9 Tax Cas. 62 the profit arose from a subordinate activity carried on to assist in the

attainment of the main objective which was "charitable" in the legal sense of that word. But yet, the taxing authorities treated the income as business income.

11. The carrying on of a tannery by the petitioners is undoubtedly carrying on of a business. It cannot be said to be a mere occupation or profession. The course of business consists of tanning goods for: remuneration or charges. In order to carry on that business, it was essential for the petitioners to purchase tanning materials. Therefore the purchase was directly and intimately connected with the carrying, on of the tannery business. The fact that they do not purchase and sell tanning materials would not take them out of the ambit of the Act. A person need not be both a purchaser and a seller. If he purchases goods for the carrying on of a business, and if the Act levies tax at the point of the purchase, he cannot escape taxation. It seems to us that, on a plain reading of the provisions of the Act, the petitioners' assessment on the purchase price of the tanning materials is valid and proper.

12. The decision in *Sadak Thamby and Co. v. State of Madras* [1963] 14 S.T.C. 753 to which one of us was a party, has been relied upon by both the assesseees and the State. That was a case where the assesseees were dealers in tanned hides and skins. They raised the contention that they were not liable to pay tax on the value of the tanning materials purchased by them; That was negatived. It was held that the buying of goods, if it was in the course of business, would be sufficient to constitute a buyer, a dealer as defined u/s 2(g) of the Act. Learned counsel for the assesseees in the present case has attempted to distinguish that case from this case, on the ground that the assesseees there were dealers in hides and skins, while the assesseees here are mere tanners. We do not think that this distinction really affects the ratio of that decision. Learned counsel for the petitioners relies upon the following observation in that judgment in support of their contention :

In so far as the definition is concerned, the buying of the goods must be in the course of business, which decisions have interpreted to mean that it should be associated with the profit motive. It does not appear to be necessary that having bought goods the dealer should sell them as such. It may be that the dealer is engaged in the production of goods in the course of which the goods which he purchased are utilised and converted into other goods or are necessary ingredients in the manufacture of the goods sold. It seems difficult to see why the purchase should be deemed to be devoid of the profit motive in an integrated transaction of that nature.

13. We are at a loss to understand how this observation can at all help the assesseees to advance their present contention. At page 757, the following observation occurs:

The assesseees are undoubtedly dealers in hides and skins. They purchase the tanning materials for the purpose of tanning raw hides (which also they purchase) and selling the tanned product. It is impossible to say that the

purchase of the tanning materials is wholly devoid of profit-making motive. The use of tanning materials in the tanning process contributes to the making of profit as a dealer and it should therefore follow that even the business of purchasing these tanning materials involves the profit motive. If the existence of the profit motive in entering into the transaction brings the series of transactions within the expression "in the course of business, there seems to be no room for doubt that the process of buying had the profit motive as a necessary ingredient.

14. The principle laid down by that decision, with which we respectfully agree, is that a buying activity, even though without a counterpart of a selling activity, in the course of a business, whether it be as a dealer in hides or carrying on of the tannery with profit motive, would be adequate to bring the turnover of purchase price of tanning materials to tax under the Act.

15. In the result, the tax revision petition fails and is dismissed with costs. Counsel's fee Rs. 100.