

(1995) 01 BOM CK 0042

In the Bombay High Court

Case No : Sales Tax Reference No. 43 of 1987 in Reference Application No. 317 of 1984

Morarji Brothers (Import and Export) Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-01-1995

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2, 2(35), 2(5A), 2(6), 3

Citation : (1995) 01 BOM CK 0042

Hon'ble Judges : D.K. Trivedi, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.S. Gaitonde and K.B. Bhujle, for the Appellant; N.T. Saraf, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, the Maharashtra Sales Tax Tribunal, Bombay, has referred the following question of law to this Court for opinion at the instance of the assessee :

"Whether, on the facts and circumstances of the case and on a true and proper interpretation of section 2(5A) of the Bombay Sales Tax Act, 1959, the Tribunal was justified in confirming the levy of tax on the sales of three used motor cars, which were not purchased by the applicants from registered dealers in Maharashtra State ?"

2. The assessee is a manufacturer of chemicals and other products and is registered as a dealer under the Bombay Sales Tax Act, 1959 ("the Act"). During the calendar year 1980, the assessee had effected the following sales of four used motor cars :

While assessing the assessee under the Bombay Sales Tax Act, the Sales Tax Officer held the assessee liable to pay tax on the above sales of used motor cars on the ground that these were made in the course of business of the assessee and accordingly levied tax on the amounts received on the sales thereof at the

rates applicable at the material time, which was 12 paise in a rupee. This was done by him in view of the definition of the word "business" in section 2(5A) of the Act inserted with effect from January 15, 1975, by the Maharashtra Act 62 of 1974 by which business was defined to include not only trade, commerce or manufacture or any adventure in the nature of trade, but also any transaction connected with or incidental or ancillary thereto. Aggrieved by the above order of the Sales Tax Officer, the assessee appealed to the Assistant Commissioner of Sales Tax on the ground that he was not a dealer in respect of sales of cars or used cars as he neither carried on the business of buying or selling of cars nor buying or selling cars was a transaction connected with or incidental or ancillary to his business. The Assistant Commissioner did not accept the above contention of the assessee and dismissed the appeals. The assessee went in further appeal to the Maharashtra Sales Tax Tribunal ("the Tribunal"). It was contended before the Tribunal on behalf of the assessee that the authorities below erred in levying sales tax on the sales of used cars inasmuch as he was a manufacturer of chemicals, etc., and was engaged in selling and supplying the same and his business did not comprise of buying or selling cars used or unused. It was submitted before the Tribunal that even after the insertion of the definition of the word "business" in clause (5A) of section 2, sales of capital goods could not be subjected to sales tax under the Act. The case of the assessee before the Tribunal was that the cars had been purchased by it for use of its directors and employees and not with the intention to resell the same. The sale of these cars, when they became old and unserviceable, as used cars was, therefore, neither in the course of the business of the assessee nor in connection with or incidental to or ancillary to the business carried on by the assessee. According to the assessee, these sales were casual sales of unserviceable capital goods, which could not be subject-matter of levy of sales tax under the Act. The Tribunal, however, did not accept any of the above contentions of the assessee and held the sales of the four used cars by the assessee as sales in connection with or incidental or ancillary to the business of the assessee. While arriving at this conclusion, the Tribunal took into consideration the fact that the cars were purchased by the assessee from its own funds and were shown in books of account as its assets and depreciation had been claimed in respect thereof. The Tribunal, however, accepted the alternate contention of the assessee that in any event no tax could be levied in respect of the car bearing No. MMF 9184, which was claimed by the assessee to have been purchased in the State of Maharashtra on payment of tax under the Act. The assessee applied for reference. Hence this reference at the instance of the assessee.

3. We have heard the learned counsel for the assessee, who submits that the Tribunal committed a manifest error of law in confirming the levy of sales tax on the amount received by the assessee from sale of three used cars. According to him, the Tribunal misinterpreted and misunderstood the scope and ambit of the expression "business" defined in section 2(5A) of the Act and reached an erroneous conclusion that the transactions of sales of the three used cars were

transactions in connection with, or incidental or ancillary to the business of the assessee. His submission is that on a proper construction of section 3 and clauses (11) and (5A) of section 2 of the Act, in the absence of any material to show that the assessee was a dealer in cars or used cars, levy of tax on sales of used cars by the assessee cannot be sustained. In support of this contention reliance is placed on the decision of the Supreme Court in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1. Counsel for the Revenue, on the other hand, relied on the definition of "business" as introduced by Maharashtra Act 62 of 1974, which was applicable at the time the sales of the three used cars took place, in support of his contention that the sales in question amounted to transactions incidental to the business of the assessee. According to him, after the introduction of the definition of "business" in clause (5A) of section 2, it is immaterial whether the goods sold are the goods dealt in by the assessee or subsidiary or by-products of such goods or capital goods because sales of all of them would be exigible to tax under the Act. In support of this contention, reliance is placed on the decisions of the Madras High Court in *State of Tamil Nadu v. Thermo Electrics* [1977] 39 STC 317 and *Deputy Commissioner (C.T.) v. Vijayalakshmi Mills Limited* [1977] 40 STC 463. Reference was also made to the decisions of the Madhya Pradesh High Court in *Commissioner of Sales Tax v. Project Automobiles* [1978] 42 STC 279 and *Commissioner of Sales Tax v. Commercial Automobiles* [1988] 71 STC 137. He, therefore, submits that the authorities below rightly levied tax on the amounts received on the sale thereof and the Tribunal correctly confirmed the same.

4. Before we proceed to deal with the rival contentions of the counsel for the parties, it would be expedient to refer to the scheme of the Bombay Sales Tax Act, 1959. This Act was enacted with a view to provide for levy of tax on the sale or purchase of certain goods in the State of Maharashtra. Section 3 of the Act, which is the charging section, makes every "dealer", whose turnover of sales or purchases made during a year exceeds the monetary limits specified therein, liable to pay tax on such turnover. "Dealer" has been defined in clause (11) of section 2, which at the material time, read :

""dealer" means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State and includes the Central Government, or any State Government which carries on such business and also any society, club or other association of persons which buys goods from or sells goods to its members."

The expression "turnover of sales" has been defined in clause (36) of section 2 of the Act to mean the aggregate of the amounts of sale price received and receivable by a "dealer" in respect of any sale of goods made by him during a given period. Similarly, the expression "turnover of purchases" has been defined in clause (35) of section 2 to mean the aggregate of the amounts of purchase price paid and payable by a "dealer" in respect of any purchase of goods made by him during a given period. It is obvious from section 3 that the liability under

the Bombay Sales Tax Act is on a dealer to pay tax on the amount received and receivable by him in respect of sales of goods made by him "as a dealer". In other words, tax will be levied only on the turnover of such commodities in which he carries on business. The amount received by him from sale of any other commodity will be included in his turnover only if he carried on the business of selling that other commodity also. Mere sale of a commodity which had been purchased by the dealer for his business cannot justify an inference that a business of selling that commodity was intended. A person is a dealer of those goods only of which he carries on the business of buying and selling. It cannot be said that once a person is a dealer in respect of certain goods, he would be a dealer in respect of all goods sold by him, irrespective of the fact whether he carries on business of buying or selling those goods or not. Such a construction would run counter to the very scheme and purpose of the Act.

5. An identical controversy came up for consideration before the Supreme Court in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1. The assessee in that case carried on the business of manufacturing and selling cotton textiles. In the year 1953-54, besides selling cotton cloth, it sold (i) old containers, discarded stores, machinery and iron scrap and miscellaneous discarded items; (ii) kolsi, waste caustic liquor; (iii) coal. The sales tax authorities brought the turnover from sales of those commodities to tax under the Bombay Sales Tax Act, 1953. The Tribunal confirmed this action as it was of the view that "a cotton textile mill manages to collect unserviceable articles in the course of manufacture of cloth" and since these articles have to be sold if it is to survive as an economic unit, sales of those articles must be regarded "as part of the business of the textile mill" if the transactions of sale are large and frequent. On reference, the High Court reversed the above finding of the Tribunal. The matter having been taken by the revenue to the Supreme Court, it was held :

"Under the Bombay Sales Tax Act, 1953, the aggregate of the price received and receivable by a person carrying on business of selling goods is liable to be included in his taxable turnover. It follows as a corollary that in the turnover of a person carrying on the business of selling one commodity will not be included the price received by him by sale of another commodity unless he carries on the business of selling that other commodity. That is so because within the meaning of section 2(6) of Bombay Act 3 of 1953 to be a dealer a person must carry on the business of selling those goods, price whereof is sought to be included in the turnover. In other words, he must carry on the business of selling a commodity before his turnover from sale of that commodity is taxable."

The Supreme court observed :

"..... Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive."

Referring to disposal of fixed assets or discarded goods by a dealer in the course of his business, it was stated :

"..... 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. To infer from a course of transactions that it is intended thereby to carry on business ordinarily the characteristics of volume, frequency, continuity and regularity indicating an intention to continue the activity of carrying on the transactions must exist."

The Supreme Court referred to a number of decisions of different High Courts and observed :

"It is clear from these cases that to attribute an intention to carry on business of selling goods it is not sufficient that the assessee was carrying on business in some commodity and he disposes of for a price articles discarded, surplus or unserviceable. It was urged, however, on behalf of the State that where a dealer with a view to reduce the cost of production disposed of unserviceable articles used in the manufacture of goods and credits the price received in his accounts, he must be deemed to have a profit-motive, for it would be uneconomical for the business to store unserviceable articles and to survive as an economic unit. But the question is of intention to carry on business of selling any particular class of goods. Undoubtedly from the frequency, volume, continuity and regularity of transactions carried on with a profit-motive, an inference that it was intended to carry on business in the commodity may arise. But it does not arise merely because the price received by sale of discarded goods enters the accounts of the trader and may on an overall view enhance his total profit, or indirectly reduce the cost of production of goods in the business of selling in which he is engaged. An attempt to realize price by sale of surplus unserviceable or discarded goods does not necessarily lead to an inference that business is intended to be carried on in those goods, and the fact that unserviceable goods are sold and not stored so that badly needed space is available for the business of the assessee also does not lead to the inference that business is intended to be carried on in selling those goods."

Referring to the decision of the Kerala High Court in *Gosri Dairy v. State of Kerala* [1961] 12 STC 683, the Supreme Court observed :

"..... we are unable to agree with the view expressed by the High Court that "as regards sales tax all the sales of a dealer in the course of his business attract taxation". Merely because a person is carrying on business of selling a commodity, it cannot be inferred from sale by him of another commodity in the course of that business that he is carrying on business in that other commodity also."

The Supreme Court considered the question whether in disposing of old

discarded machinery, stores and scrap and miscellaneous goods, the assessee in the case before it, which carried on the business of manufacturing and selling cotton textiles, was also carrying on business of selling those items of goods and held :

"..... We are unable to hold that in disposing of miscellaneous old and discarded items such as stores, machinery, iron scrap, cans, boxes, cotton ropes, rags, etc., the company was carrying on business of selling those items of goods. These sales were frequent and the volume was large, but 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. In order that receipts from sale of a commodity may be included in the taxable turnover, it must be established that the assessee was carrying on business in that particular commodity, and to prove that fact it must be established that the assessee had an intention to carry on business in that commodity. A person who sells goods which are unserviceable or unsuitable for his business does not on that account become a dealer in those goods, unless he has an intention to carry on the business of selling those goods."

Dealing with the question whether the assessee could be regarded as a dealer in respect of sale of a part of the coal which had been purchased by it for the purpose of lighting its furnaces and heating boilers, it was held :

"..... Unless there is evidence to show that there was an intention to carry on business of selling coal, the mere fact that coal of the value exceeding Rs. 16,000 was sold will not by itself make the company a dealer carrying on business in coal. We have no evidence on the record as to what the total quantity of the coal purchased by the company was, and what percentage thereof was sold. No investigation has been made as to the circumstances in which the coal came to be sold. Mere sale of a commodity which a company requires for the purpose of its business and which has been purchased for use in that business will not justify an inference that a business of selling that commodity was intended, unless there are circumstances existing at the time when the commodity was purchased or which have come into existence later which establish such an intention. It may be pointed out that the burden of proving that the company was carrying on business of selling coal lay upon the sales tax authorities and if they made no investigation and have come to the conclusion merely because of the frequency and the volume of the sales, the inference cannot be sustained."

The Supreme Court, however, held that different considerations would arise in dealing with the liability to pay tax on the price received from sale of "Kolsi" (cinders) and "waste caustic liquor" and observed :

"..... This "kolsi" is discharged from the furnaces regularly and continuously day after day. The company collects that "kolsi" and sells it to intending purchasers in bulk. "Kolsi" would be appropriately regarded as a subsidiary product in the course of manufacture. "Kolsi" results from coal which remains unburnt : it is on that account a subsidiary product. When such subsidiary product is turned out in the factory regularly and continuously and is being sold from time to time, an intention to carry on business in "kolsi" may be reasonably attributed to the company."

Similarly, about "waste caustic liquor" it was observed :

""Waste caustic liquor" is also regularly and continuously accumulated in the tanks in the process of mercerisation of cloth This waste material which is called "waste caustic liquor" has still a market amongst other manufacturers or launderers. For reasons which we have already set out in dealing with "kolsi", we are of the view 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."

6. The following propositions emerge from the above decision of the Supreme Court in Raipur Manufacturing Co. [1967] 19 STC 1 :

1. To be a dealer, a person must carry on the business of selling those goods, price whereof is sought to be included in the turnover. In other words, he must carry on the business of selling a commodity before his turnover from sale of that commodity is taxable.
2. In the turnover of a person carrying on the business of selling one commodity will not be included the price received by him by sale of another commodity unless he carries on the business of selling that other commodity.
3. To infer from a course of transactions that it is intended thereby to carry on business ordinarily the characteristics of volume, frequency, continuity, and regularity indicating an intention to continue the activity of carrying on the transactions must exist.
4. Mere sale of a commodity which the assessee requires for the purpose of its business and which has been purchased for use in that business will not justify an inference that a business of selling of that commodity was intended unless there are circumstances existing at the time when the commodity was purchased or which has come into existence later which establish such an intention.
5. The burden of proving that the assessee was carrying on the business of selling the particular item is upon the sales tax authorities.

6. Such transactions must ordinarily be entered into with a profit-motive.

7. 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 his business, an inference that he desired to carry on the business of selling his fixed assets or discarded goods would not ordinarily arise.

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 items, but on that account disposal of those goods cannot be said to become part of or incidence of the main business of selling the manufactured goods.

8. Different considerations would however apply to the sale of products which may be regarded as a by-product or subsidiary product turned out in the course of manufacture and the sale thereof is incidental to the business of the company. When such subsidiary or by-product is turned out in the factory regularly and continuously and it being sold from time to time, an intention to carry on business in such product may be reasonably attributed to the assessee.

7. Sale of used or discarded cars by the assessee in the present case would be governed by proposition No. 7. Following the same, such sales cannot be held to be part of or incident of the main business of the assessee, which in the present case comprised of manufacture and sale of chemicals. No sales tax can, therefore, be levied under the Act on such sales.

8. Learned counsel for the Revenue, however, submits that the ratio of the decision of the Supreme Court in Raipur Manufacturing Co. [1967] 19 STC 1 would not be applicable to sales effected after the introduction of the definition of "business" in clause (5A) in section 2 of the Act with effect from January 15, 1975 and the propositions emerging from the said decision would be no more relevant in deciding the taxability of sales of goods made by a dealer after that date.

9. We have perused the definition of "business" contained in clause (5A) of section 2 of the Act as inserted by Maharashtra Act 62 of 1974 with effect from January 15, 1975, which reads as follows :

"(5A) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern."

By the above definition of "business", which was operative in the same form during the material period when the sales of the three used and discarded motor cars were made by the assessee and thereafter till June 30, 1981, the law laid down by the Supreme Court in Raipur Manufacturing Co.'s case [1967] 19 STC 1 is affected only to the extent that in the turnover of a person carrying on the business of selling one commodity, the turnover of any transaction (i) in

connection with or (ii) incidental or (iii) ancillary to such business could also be included. The word "such business" refers to the main business of the assessee of selling goods. It is obvious from the above definition that it has not nullified the decision of the Supreme Court in Raipur Manufacturing Co. [1967] 19 STC 1. It has merely affected some of the propositions emerging from the said decision, viz., proposition Nos. 2, 3 and 8 to some extent. As a result thereof, if any transaction of sale of certain goods is held to be a transaction in connection with or incidental or ancillary to the main business of selling goods, the turnover thereof would form part of the taxable turnover of the dealer. It would no more be necessary for that purpose to establish "intention to carry on business" in those goods by showing regularity, continuity, volume, etc. But proposition No. 7, which is relevant for the present purpose, is in no way affected by the above definition. Sales of fixed assets or discarded goods acquired in the course of business, obviously, are not sales in connection with or incidental or ancillary to the business of manufacture and sale of goods. The ratio of the decision of the Supreme Court in Raipur Manufacturing Co. [1967] 19 STC 1 would, therefore, apply with full force to such sales despite insertion of clause (5A) in section 2. Sale price of such goods, therefore, would not be includible in the turnover of the dealer even after the insertion of definition "business" in clause (5A) in section 2 of the Act.

10. It may be pertinent to mention that Mr. N. T. Saraf, learned counsel for the Revenue, also drew our attention to the statement of objects and reasons to show that clause (5A) was inserted with a view to providing for levy of tax on sales of old machinery, unserviceable goods, etc., and strenuously urged that we should construe the same in a manner which would effectuate that object. We have given our careful consideration to the above submission. We, however, do not find any force in the same because of the well-settled legal position that the Statement of Objects and Reasons appended to a Bill should not be used as an aid to the construction of a statute. As observed by S. K. Das, J., in *The Central Bank of India Vs. Their Workmen*, "the Statement of Objects and Reasons is not admissible for construing the section; far less can it control the actual words used". The Statement of Objects and Reasons cannot be used to determine the meaning and effect of the substantive provisions of the statute.

11. It may also be expedient to deal with some of the decisions referred to by the learned counsel for the Revenue. We may first refer to decision of the Madras High Court in *State of Tamil Nadu v. Thermo Electrics* [1977] 39 STC 317 where it has been held that no distinction can be made for the purpose of levy of sales tax between sales of capital goods effected by a dealer and the sales of stock-in-trade of such dealer. We have carefully considered the above decision. It appears that the finding of the Madras High Court in the above case goes counter to the law laid down by the Supreme Court in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1 which, as stated above, does not stand nullified by insertion of the definition of "business". In the above case, the Madras High Court has held that if an assessee is a dealer, with reference to the business

carried on by him, every transaction of sale, whether it is of a capital asset or a stock-in-trade, would be liable to be included in the turnover of the assessee. It has been observed that the question whether it is a capital asset or a stock-in-trade is foreign to the taxability under the Sales Tax Act and may be relevant only for the purpose of applying the provisions of the Income Tax Act. We find that the Supreme Court has held just the contrary in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1. In that case the Supreme Court has said that a person, who sells his fixed assets or discarded goods acquired in the course of his business, does not on that account become a dealer of those goods unless he has intention to carry on the business of selling those goods. It has also been held by the Supreme Court in that case that merely because a person is carrying on business of selling one commodity, it cannot be inferred from sale by him of another commodity in the course of that business that he is carrying on business in that other commodity also. Later, in *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.* [1973] 31 STC 426, also, the Supreme Court held the sale of scrap to be liable to tax in view of its finding that it was "certainly connected with the business of the company". The Supreme Court, in the above case, was, however, not required to deal with sale of used or discarded fixed or capital assets. Similarly, in *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, the sales of unserviceable materials and iron scrap were held to be taxable in view of the finding that such sales were in connection with or ancillary to the activity of transportation carried on by the railway. This decision is not an authority for the proposition that sales of fixed or capital assets by a dealer are sales connected with or incidental to the business of selling goods. In view of the above, with utmost respect, we find it difficult to agree with the broad proposition of law laid down by the Madras High Court in *State of Tamil Nadu v. Thermo Electrics* [1977] 39 STC 317.

12. We have also considered the decision of the Madhya Pradesh High Court in *Commissioner of Sales Tax v. Project Automobiles* [1978] 42 STC 279. In that case, sales by the assessee of an Ambassador car purchased for office use after payment of full Central sales tax at 10 per cent was held to be not only incidental but also ancillary to and connected with the business carried on by it and hence taxable. We have carefully considered the above decision which was rendered on consideration of the definition of the word "business" in section 2(bb) of the Madhya Pradesh General Sales Tax Act, 1958, as inserted by Amendment Act No. 16 of 1965 whereby profit-motive was rendered immaterial in the definition of "business". On careful reading of the above decision, it is obvious that the court arrived at the above conclusion in view of the fact that the assessee, who sold the Ambassador car purchased for its office use, happened to be the distributor of Ambassador cars and registered dealer in automobiles and their accessories. It was in that context that the above finding was arrived at. This decision is not an authority for the proposition that sales of capital assets or unserviceable machineries, cars, etc., by an assessee, can be regarded as sales in connection

with or ancillary to the business of a dealer. This opinion of ours is fully supported by the decision of the same High Court in Commissioner of Sales Tax v. Sajjad Hussain Automotive Service [1991] 82 STC 335 where the sales of a second-hand car by a dealer in motor spirit and lubricants was held to be not covered by the term "business" for the purposes of taxation under the Madhya Pradesh General Sales Tax Act, 1958. The above conclusion was arrived at by the Madhya Pradesh High Court on full consideration of its earlier decision in Commissioner of Sales Tax v. Project Automobiles [1978] 42 STC 279.

13. The above decisions, in our opinion, do not in any way support the case of the Revenue.

14. In view of the above, we are of the clear opinion that the sales of three used motor cars by the assessee, who was a dealer carrying on business of manufacturing, selling and supplying of chemicals, did not amount to sale by a dealer within the meaning of section 3 read with clauses (11) and (5A) of section 2 of the Bombay Sales Tax Act, 1959.

15. Before parting with this case, it may be expedient to mention that the definition of "business" in clause (5A) of section 2 of the Act has been amended by the Maharashtra Act 9 of 1988 with retrospective effect from July 1, 1981 and Maharashtra Act 9 of 1989 with retrospective effect from August 16, 1985, with a view to include "transactions in connection with or incidental or ancillary to the commencement or closure of the business and "to do away with the profit motive as an ingredient of business". As the controversy in the present case pertains to a period prior to the coming into force of these amendments, we do not propose to deal with the same or the implications thereof. Suffice it to say that, in our opinion, the insertion of definition of "business" in clause (5A) with effect from January 15, 1975 and the subsequent amendments made by Maharashtra Act 9 of 1988 and Maharashtra Act 9 of 1989 have not nullified altogether the decision of the Supreme Court in Raipur Manufacturing Co. Ltd. case [1967] 19 STC 1. Even now, a person carrying on the business of buying or selling certain goods cannot be regarded as a dealer in any and every goods sold by him without a finding that either he carries on the business of buying or selling such goods or that the sales of such goods are connected with or incidental or ancillary to his "business of buying or selling goods" or that they fall in any of the inclusive clauses of the definition of "business". The legislative intent of the Sales Tax Act and the charging section, as stated above, is not to levy tax on all sales or purchases of taxable goods made by a dealer. It is only the sales or purchases effected by persons who carry on business, within the meaning of clause (5A) of section 2 of the Act, of buying or selling such goods that are liable to tax under the Act. Had the legislative intent been otherwise, it was not necessary to provide in the charging section that tax would be payable only by "a dealer" and to define the expression "dealer" as a person who carries on the "business of buying or selling goods in the State" and to further define the expression "business" for that purpose and to amend the same from time to time with a

view to widening the ambit thereof. All this would be rendered redundant, if "all purchases or sales" of taxable goods by a dealer, per se, are held to be taxable under the Act. Had it been so, section 3 would have provided that every person who is engaged in business and whose turnover of sales and purchases during the given period exceed the specified limits, would be liable to pay tax on the turnover of all sales or purchases made by him. We cannot lose sight of the fact that clause (5A) merely defines "business", whereas in order to be a dealer, a person must carry on the business of "buying or selling goods". The expression "business" in clause (11) is thus qualified by the words "of buying or selling goods" and this qualification cannot be ignored while deciding the liability of a person to pay tax u/s 3 of the Act on the sales effected by him. It is for this reason that, despite the definition of "business" in clause (5A), the Legislature, by Maharashtra Act 24 of 1985, amended the definition of "dealer" in clause (11) with a view to levying tax on the disposal of unclaimed or confiscated goods including unserviceable ,etc., by persons like Bombay Port Trust, Maharashtra Road Transport Corporation, etc., and provided that notwithstanding anything contained in clause (5A) or any other provisions of the Act, the persons specified therein would be deemed to be dealer to the extent of such disposals. In any event, as stated earlier, in the present case, we do not propose to express ourselves on the implication of these amendments as such.

16. In the result, we answer the question referred to us in the negative and in favour of the assessee.

17. Under the facts and circumstances of the case, we make no order as to costs.

18. Reference answered in the negative.