

(1971) 02 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No's. 6677 of 1969 and 691 of 1970

Motor Industries Co. Ltd.

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 17-02-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 46

Citation : (1971) 2 MysLJ 240 : (1971) 27 STC 379

Hon'ble Judges : Jagannatha Shetty, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : D.R. Venkatesh Iyer, for the Appellant; H.K. Vasudeva Reddy, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—These are two writ petitions preferred under article 226 of the Constitution of India by the Motor Industries Co. Ltd., Bangalore, and are directed against the assessment orders made by the Commercial Tax Officer, 8th Circle, Bangalore (respondent No. 2) for the years 1964-65 and 1965-66 under the Mysore Sales Tax Act, 1957, hereinafter called "the Act". The common question that arises for decision in these writ petitions is whether the proceeds of the sales made through the canteen run by the petitioner-company for the benefit of its employees are exigible to tax under the Act.

2. The petitioner-company has its factory in Bangalore, wherein it employs more than 4,000 workers. The business of the petitioner-company is the manufacture and sale of automobile parts. Its memorandum and articles of association do not empower it to carry on any business in food and drinks. u/s 46 of the Factories Act, 1948, a statutory obligation is imposed on the petitioner-company to run a canteen for its employees as a labour welfare measure. The petitioner-company has been running such a canteen where food and drinks are served only to its employees on a subsidised basis.

3. In *Davanagere Cotton Mills Ltd. v. State of Mysore* [1957] 8 STC 793, this

court held that the Mysore Sales Tax Act, 1948, does not seek to levy sales tax on all sale transactions but only on such transactions as are effected in the course of business and that where the assesses mills maintained a canteen on a no profit and no loss basis for the benefit of its employees in conformity with the requirements of the Factories Act, 1948, the turnover relating to sales effected in the canteen was not liable to be taxed under the Mysore Sales Tax Act, 1948. In assessments made under the Act, which came into force on 1st October, 1957, the canteen sales were not assessed following the decision in Davanagere Cotton Mills [1957] 8 S.T.C. 793. The Act was amended by Mysore Act No. 9 of 1964 with effect from 1st April, 1964, by which the definition of the word "business" in section 2(1)(f-2) was amended to include "any trade, commerce or any adventure or concern in the nature of trade or commerce, with or without profit-motive in such trade, commerce, adventure or concern". The said amendment, in the opinion of the Commercial Tax Department, brought about a fundamental change in the concept of "business" so as to render the canteen sale proceeds of the petitioner-company and similar concerns exigible to tax. Therefore, while making the assessment on the petitioner-company for the year 1965-66, the second respondent who is the assessing authority, included in the taxable turnover, its canteen sales amounting to Rs. 1,70,759.02 on which a sum of Rs. 3,415.18 was levied as sales tax by the assessment order dated 30th September, 1969. Against the said order of assessment and notice of demand, the petitioner-company has preferred Writ Petition No. 6677 of 1969 on 22nd November, 1969. When the said writ petition was pending, the second respondent made another assessment order on 3rd December, 1969, for the year 1964-65. Under the said assessment order, the canteen sale proceeds of the petitioner-company were determined at Rs. 1,54,410.67 on which a sum of Rs. 3,088.21 was levied as tax. On the basis of the said assessment order, the second respondent issued a demand notice dated 19th January, 1970. Against the said order of assessment and notice of demand, the petitioner-company preferred Writ Petition No. 691 of 1970 on 13th February, 1970.

4. The undisputed facts are : That the petitioner-company is running a canteen attached to its factory for the exclusive benefit of its employees where free lunch is supplied, and that in addition, food and drinks are sold at concessional rates; that its memorandum and articles of association do not empower it to carry on business in food and drinks and its business is the manufacture and sale of automobile parts; that the canteen sales were not exigible to tax before 1st April, 1964; that with effect from 1st January, 1966, the State Government has exempted the canteen sales from sales tax. The controversy therefore relates to the period from 1st April, 1964, to 31st December, 1965. The question is, whether the amendment of the definition of the word "business" in section 2(1)(f-2) has materially altered the law as to levy tax on the canteen sales.

5. Sri D. R. Venkatesh Iyer, learned counsel for the petitioner-company, submitted that the amendment has not altered the law, that even after the amendment it is only the sales effected in the course of trade or business that

are exigible to tax and that in order to constitute a trade or business, the activity must be a commercial activity and that the sale effected in the course of carrying out a welfare measure enforced under the provisions of the Factories Act is not a sale in the course of trade or business nor can the petitioner-company be said to be a dealer in regard to food and drinks. In support of his contention, the learned counsel relied on the decision of the Madras High Court in Deputy Commissioner of Commercial Taxes v. Thirumagal Mills [1967] 20 S.T.C. 287 and the decision of the Calcutta High Court in Fort Gloster Industries Ltd. v. Member, Board of Revenue, West Bengal [1970] 26 S.T.C. 141.

6. Under the Madras General Sales Tax Act before its amendment by Madras Act No. 15 of 1964, the Madras High Court had held that where a canteen is run for the amelioration of the workmen in a factory it was in no sense a business of selling goods within the meaning of the definition of the word "business" and that the word "business" was used in the Act in the commercial sense, an integral part of which is the motive to make profit by sales or purchases and if that is wanting, the person buying or selling would not be a dealer (vide Gannon Dunkerley & Co. v. State of Madras [1954] 5 S.T.C. 216 and Sree Meenakshi Mills Ltd. v. State of Madras [1954] 5 S.T.C. 291.

7. By Madras Act No. 15 of 1964, the definition of the word "business" was amended as follows :

"(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."

8. The effect of the said amendment was considered in Thirumagal Mills case [1967] 20 S.T.C. 287 by the Madras High Court and it was held therein that the primary requisite of "business" as defined even under Madras Act No. 15 of 1964 is that it should be a trade or commerce or adventure or concern in the nature of trade or commerce; that presence or absence of profit will not matter, but the activity must be of a commercial character and in the course of trade or commerce. Where a limited company manufacturing cotton yarn, in order to provide amenity to its workmen ran a fair price shop, it was held that the company was not carrying on the business of selling commodities in the fair price shop in a trade or commercial sense and, therefore, it was not, with reference to the fair price shop, a dealer within the meaning of the Madras Act.

9. In Fort Gloster Industries case [1970] 26 S.T.C. 141, the company was under a statutory obligation to run a canteen for the benefit of its workers u/s 46 of the Factories Act; the memorandum and articles of association of the company did not empower the carrying on the business of selling food and drinks, and the

question was whether the proceeds of the canteen sales were exigible to sales tax under the Bengal Finance (Sales Tax) Act, 1941, as amended by the West Bengal Taxation Laws (Amendment) Act, 1969. Under the said law, the word "business" in section 2(1a) was defined thus :

"In this Act, unless there is anything repugnant in the subject or context, 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 the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, adventure or concern."

10. The definition of the word "business" in the West Bengal Act is similar to its definition in Madras Act No. 15 of 1964. The Calcutta High Court agreed with the view of the Madras High Court in Thirumagal Mills case [1967] 20 S.T.C. 287. P. B. Mukharji, Actg. C.J. (as he then was) stated the reasons for the decision thus :

"Apart from the authority, we now proceed to give our reasons for the view we are taking on the Bengal amendment which is already quoted elsewhere in the judgment. The amended definition of business u/s 2(1a) insists that it must be a trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. That is the first and essential requisite for a business even under that amendment. The second limitation provided by the amendment in this section is the negative aspect to say that there may or may not be the motive to make profit. But even in describing that negative aspect, the basic condition of trade, commerce or manufacture or adventure or concern remains and all that it says is that "such trade, commerce, manufacture, adventure or concern" may or may not be carried with the motive to make profit. Unless, therefore, the turnover relates to trade, commerce, manufacture, adventure or concern there can be no question for its attracting a tax under the Bengal Finance (Sales Tax) Act simply on the ground that it is without profit and that such absence of profit-motive is not a sufficient ground for exemption. If the thing itself is not basically trade, commerce, manufacture, adventure or concern then no further question of the motive for profit or not making a profit arises. The basic test of trade, commerce, manufacture, adventure or concern must be satisfied before any tax can be attracted. Once the basic test is satisfied the further fact that it was not carried on with the motive to make a profit will not matter and will not grant an exemption. That is our view of the interpretation of the amended section 2(1a) of the Bengal Act. Similarly, the incidental or ancillary doctrine formulated in section 2(1a)(ii) is also, in our view, limited to "such trade, commerce, manufacture, adventure or concern" and not otherwise. This test in the present facts of the reference is also not satisfied to attract the tax.

The running of the canteen by the dealer is not ancillary or incidental to its trade, commerce, manufacture, adventure or concern."

11. The learned Government Pleader appearing for the respondents relying on the decision of the Allahabad High Court in *Swadeshi Cotton Mills Company Ltd. v. Sales Tax Officer* [1964] 15 S.T.C. 505 contended that the basic concept of "business" has been fundamentally altered consequent on the amendment of the definition of the word "business" by Act 9 of 1964; and that in order to be a dealer within the meaning of the Act, it is not necessary that the business of buying or selling must be carried on with a profit-motive. The petitioner in *Swadeshi Cotton Mills* case [1964] 15 S.T.C. 505 was running a canteen for serving refreshments on a non-profit basis to its employees. By the U.P. Taxation Laws Amendment Act, 1963 (Act No. 14 of 1963) clause (a) of section 2 of the U.P. Sales Tax Act, 1948, was substituted by a new clause which reads thus :

"(aa) business of buying or selling includes such business carried on without the motive of making of profit."

12. The Allahabad High Court held that by the said amendment, the concept of "carrying on business" in the context of the U.P. Sales Tax Act has been fundamentally changed and its earlier decision has been set at naught and that in order to be a dealer, it is no longer necessary that a business of buying or selling must be carried on with a profit-motive.

13. The Act levies tax on the taxable turnover of every dealer. The word "dealer" has been defined in section 2(1)(k) of the Act to mean any person who carries on the business of buying, selling, supplying or distributing goods. The word "sale" has been defined in section 2(1)(t) as meaning every transfer of the property in goods by one person to another in the course of trade or business. The word "business" has been defined in section 2(1)(f-2) thus :

""business" includes any trade, commerce or any adventure or concern in the nature of trade or commerce, with or without profit-motive in such trade, commerce, adventure or concern."

14. The Act does not seek to levy tax on all persons buying or selling goods but levies tax only on dealers buying or selling goods. A dealer is a person who carries on the business of buying or selling goods. Therefore, the tax is levied only on persons who carry on the business of buying or selling goods. The basic concept of the word "business" is that it must involve trade or commercial transactions. That basic concept, in our opinion, has not been fundamentally altered notwithstanding the fact that under the new definition it is not essential that business should be carried on with a profit-motive. Ordinarily a business activity is one carried on with a profit-motive. The Legislature however has said that a person carrying on business with or without profit-motive is a dealer for the purpose of the Act. The new definition does not dispense with the requirement that it must be a trade, commerce or any other adventure or concern in the nature of trade or commerce. In other words, it must be a

commercial activity. That is the basic requirements for a business. The decision in Davanagere Cotton Mills case [1957] 8 S.T.C. 793 does not rest only on the absence of profit-motive. The absence of profit-motive was an additional ground.

15. The welfare activity of running a canteen by the petitioner not being a commercial activity, the sales effected in the course of performing the statutory obligation do not amount to carrying on the business of buying or selling goods. Consequently, we hold that even after the amendment of the Act by Act No. 9 of 1964, the proceeds of sales made through the canteen by the petitioner-company for the benefit of its employees are not exigible to tax and the said sale proceeds are not to form part of the taxable turnover for the years 1964-65 and 1965-66. The levy of tax on the said sale proceeds not being authorised by law, the assessment orders dated 30th September, 1969, and 3rd December, 1969, and the notices issued pursuant thereto are liable to be quashed. We accordingly allow these writ petitions with costs and quash the impugned assessment orders and the notices of demand reserving liberty to the second respondent to make fresh assessment orders after excluding the proceeds of the canteen sales. Advocate's fee Rs. 100 (one set).

16. Petition allowed.