
(1973) 05 OHC CK 0009
In the Orissa High Court
Case No : S.J.C. No's. 124 to 135 of 1971

National Press

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 02-05-1973

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 2(c), 24(1)

Citation : (1973) 32 STC 341

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : A.N. Ray, for the Appellant; Standing Counsel (S.T.), for the Respondent

Judgement

R.N. Misra, J.—These references have been made by the Member, Additional Sales Tax Tribunal, Orissa, u/s 24(1) of the Orissa Sales Tax Act (hereinafter called the Act) referring the following questions for determination of this court:

(1) Whether, on the facts and in the circumstances of the case, transactions made by M/s. National Press owned and managed by the All Orissa Primary Teachers' Federation are commercial in nature and as such liable to be taxed under the Orissa Sales Tax Act ?

(2) Whether in view of the aims and objects of the All Orissa Primary Teachers' Federation, the petitioner can be said to be carrying on business within the meaning of Section 2(c) of the Orissa Sales Tax Act?

2. The following are the relevant facts and features appearing in the statement of facts drawn up by the Tribunal. The All Orissa Primary Teachers' Federation (hereinafter called the Federation) is an association registered under the Societies Registration Act (21 of 1860). The objects of the association as available from its memorandum are, inter alia, to unite the teachers working in the primary schools throughout Orissa with a view to fostering a spirit of brotherhood and co-operation; to print and publish journals and reviews and

bring out other publications in the general interest of and to support the cause of, education.

The assessing officer being of the view that the business run under the name and style of "Messrs. National Press" owned by the Federation is liable to tax under the Act issued notice u/s 12(5) thereof. Accounts were produced which showed that rubber stamps, forms, leaflets, invitation cards, etc , have been sold by the press. Sales were not confined to the members of the Federation but had been freely done to outsiders. Before the assessing officer it was contended that the press was not a dealer and, therefore, it was not liable to be proceeded against under the Act. The assessing officer negated such contention and on a finding that liability under the Act had accrued, completed assessments for the quarters ending June, 1962, to March, 1965, treating the assessee as an unregistered dealer.

The first appellate authority annulled these assessments upon a finding that the Federation as per its constitution and memorandum of association was not intended to be commercial in character and, therefore, in regard to the business run by the press, the activities cannot also be said to be commercial. He further found that there was no profit-motive in the transactions undertaken by the press.

The State of Orissa appealed to the Tribunal and the Member, Additional Tribunal, held :

...whatever be its objects in the articles of association, the dealer must be held liable to tax because it obviously sells goods to its members as well as to outsiders and students and its activities as such appear to be of commercial nature.

A further finding of fact was recorded that in the memorandum of association activities "like selling of forms, rubber stamps, which apparently were of commercial character, were not contemplated. Accordingly, the Tribunal restored the assessments by reversing the decision of the first appellate authority. At the instance of the assessee, the aforesaid questions have been referred to us.

3. "Dealer" has been defined u/s 2(c) of the Act to mean-

any person who carries on the business of purchasing or selling or supplying goods in Orissa, whether for commission, remuneration or otherwise and includes a department of Government which carries on such business and any firm or Hindu joint family and any society, club or association which purchases goods from or sells or supplies goods to its members and also includes a casual dealer as thereinbefore defined...

Two important elements have got to be established before one can be said to be a dealer under the Act : (i) the person must carry on business; and (ii) the business must be of purchase, sale or supply of goods. The word "business" has not been defined in the Act. In Hindustan Steel Ltd. Vs. State of Orissa, the

learned Judges of the Supreme Court observed:

A person to be a dealer within the meaning of the Act must carry on the business of selling or supplying goods in Orissa. The expression "business" is not defined in the Act. But as observed by this court in *State of Andhra Pradesh Vs. Abdul Bakhi and Bros.*, :

"The expression "business" though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive and not for sport or pleasure."

Emphatic reliance is placed by Mr. Ray on the aforesaid observation and in particular on the last line thereof in support of his contention that the National Press is not a dealer. He also relies on the decision, of the Andhra Pradesh High Court in the case of *Hyderabad Asbestos Cement Products Ltd. v. The State of Andhra Pradesh and Ors.* [1972] 30 S.T.C. 26 for bringing in the comparison between the concept of business in the absence of a statutory definition and the statutory definition excluding the profit-motive as an essential ingredient.

The learned standing counsel for the taxing department, however, relies upon the case of *Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd.*, where Shah, J. (as he then was), spoke for the court thus:

By the definition in Section 2(g) a "dealer" is a person who carries on the business of buying, selling, supplying or distributing goods, whether for cash, or for deferred payment, or for other valuable consideration. The expression "business" is defined in Section 2(d) as meaning any trade, commerce or manufacture, whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern. A scheme for supplying goods to its members by a society for price may partake of the activity of the nature of adventure or concern in the nature of trade, even if the activity is not actuated by a profit-motive.

Mr. Ray for the assessee contended that the definition of the word "business" in the Madras General Sales Tax Act, by which the element of profit has been excluded from consideration led to the decision in *Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd.*, Thereupon the learned standing counsel referred us to a decision of this court in *Indal Employees' Co-operative Society Ltd. v. State of Orissa and Two Ors.* [1968] 22 S.T.C. 460. At page 469 of the report this court has said ;

For the petitioner, it was contended that in the Madras Act, the expression "business" had been defined as meaning any trade, commerce or manufacture whether or not any profit accrued from such trade, etc., but in the absence of

such definition in the Orissa Act, the observations of the Supreme Court will not govern the present case. Here also, we are unable to agree with the petitioner's contention. It is true that the expression "business" had not been defined in the Orissa Act, but the question is whether to satisfy the definition of "dealer", the profit-motive in the activity is essential. In the aforementioned decision, the Supreme Court were interpreting Section 2(g) of the Madras Act defining the expression "dealer" and in that context held that even in the absence of a profit-motive an activity by a society of supplying goods to its members for a price may be in the nature of trade. Therefore, existence of profit-motive is not essential for creation of a taxable entity (event).

It is true what has been said above directly supports the stand of the revenue, but this court overlooked the fact that the definition of the word "business" to include activities without profit-motive had led the Supreme Court to come to its conclusion in Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd., But for the definition of "business" what has been said in Hindustan Steel Ltd. Vs. State of Orissa, would be apposite.

4. Even if time is occupied, labour and attention are devoted, the activity in the absence of a profit-motive may not become "business". Bhagwati, C.J., in Commissioner of Sales Tax v. Anil Co-operative Credit Society [1969] 24 S.T.C. 180, has indicated the unanimous view of the court that profit-motive was essential to make a systematic or organised course of activity a "business". The Calcutta High Court in the case of Indian Iron and Steel Co. Ltd. v. Member, Board of Revenue [1971] 27 S.T.C. 373, has also taken a similar view. These are cases where in the corresponding State Act, the word "business" by definition is not sans the "profit-motive".

5. If it became necessary for the disposal of this case to decide as to whether "profit-motive" was the real criterion, we would certainly have proceeded to examine whether in view of the later pronouncement of the Supreme Court Hindustan Steel Ltd. Vs. State of Orissa, and the overlooking of the importance of the definition of "business" in the Madras Act for coming to the conclusion in Deputy Commercial Tax Officer, Saidapet and Another Vs. Enfield India Ltd., Co-operative Canteen Ltd., the decision in Indal's case [1968] 22 S.T.C. 460 was either not good law or this case was to be heard by a larger Bench to examine the correctness of the judgment in Indal's case [1968] 22 S.T.C. 460. That, however, does not seem to be necessary as we notice that there is a clear finding of fact recorded by the Tribunal that the assessee carried on a trade for earning profit. This is what the Tribunal concluded in its appellate decision :

The respondent (assessee) whatever be its object in its articles of association (memorandum) must be held liable to tax because it obviously sells goods to its members as well as to outsiders and students and its activity as such appears to be of commercial nature.... The activities, e. g., selling forms, rubber stamps, etc., which are commercial in character are nowhere contemplated. I do not think such activities can be considered as anything otherwise than a business.

True it is that the Tribunal referred to Indal's case [1968] 22 S.T.C. 460 and noticed the fact that profit-motive was not an essential element; yet in what has been said above we find that the Tribunal came to a factual conclusion that the activities of the press were commercial in character and the assessee entered into the field for carrying on a business as popularly understood.

6. On the findings of the Tribunal, no question of law arose for determination of this court and what has been referred to us are questions of fact which the Tribunal as the duly constituted final fact finding authority was competent to find. Accordingly, we decline to answer the question. We make no order as to costs.

B.K. Ray, J.

7. I agree