

**(1990) 10 KAR CK 0047**

**In the Karnataka High Court**

**Case No : S.T.R.P. No"s. 25, 26, 27 and 28 of 1985**

Shankar Vittal Motor Co. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision : 23-10-1990**

**Acts Referred:**

Karnataka Sales Tax Act, 1957 — Section 5, 5 (3) (a)

**Citation : (1992) 86 STC 83**

**Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J**

**Bench : Division Bench**

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## **Judgement**

M. P. Chandrakantaraj Urs, J.—In this batch of sales tax revision petitions relating to 1976-77, 1977-78, 1978-79 and 1979-80 common question of law has been raised for consideration of this Court. That question is, whether sales of buses and the sale of an autorickshaw which was stated to be unserviceable by the assessee which is a company incorporated under the Companies Act carrying on the business of operating buses in South Canara (Dakshina Kannada) District is liable to tax as a seller of a motor vehicle which had not been purchased locally and as such was assessable to tax u/s 5(3)(a) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act").

2. The undisputed facts are that the assessee-company operates its road transport service carrying passengers with its fleet of over 40 buses. The company also runs a garage to carry out repairs and maintenance work of its own fleet of buses as well as buses of other persons similarly operating their buses in the area whenever such buses require repair and maintenance. In the assessment year 1976-77, in the return filed, it was disclosed that four motor vehicles and three buses and one autorickshaw were sold for a sum little over rupees one lakh. But exemption was claimed in respect of those sales. But as no evidence was forthcoming as to whether such purchases had been subjected to tax in this State on its first sale, a notice was issued as to why exemption should not be denied. In response to such notice, the assessee-company produced

purchase invoices of three vehicles which had been sold in that assessment year evidencing the tax suffered on their first sales in the State. In that circumstance, exemption came to be allowed in respect of those vehicles, the turnover of which amounted to Rs. 96,000 and odd. A sum of Rs. 4,000 realised from the sale of an autorickshaw which was claimed, had been bought for the personal use of the assessee-company at Hyderabad was, however, subjected to tax as the first sale in the State of Karnataka in terms of section 5(3)(a) read with corresponding entry 70 of the Second Schedule to the Act. Similarly in the succeeding assessment years, a bus or two were sold in order to maintain the reputation of the assessee-company as a competent transport operator as at the time of the sale, the vehicles were not serviceable.

3. But we find from the orders of the Commercial Tax Officer and the explanation given by the assessee-company, the orders of the appellate authorities, i.e., the first appellate authority as well as the Tribunal that it was never the stand of the assessee-company that the vehicles sold were not to be considered as motor vehicles. It was nobody's case that the vehicles were sold as scrap notwithstanding the fact that they were sold in the relevant years for sums which cannot be said to be attractive or commensurate with the value as motor vehicles. In fact we have no details as to the model of the bus, the year of its manufacture, the number of miles it had run and such other details which would assist the court or the assessing authority to determine as to the nature and condition of the goods sold. The question which really falls for consideration is whether such sales could be treated as sales in order to keep up the reputation of the assessee-company as the buses were sub-standard and were sold incidental to the business or such sales were not incidental or part of the business or financial turnover of the assessee-company. In all the cases the Revenue has held that it was not incidental to the business and it therefore could not be related to the business of the company which was to operate passenger transport services and not sale of motor vehicle (sic).

4. Learned Government Pleader appearing for the respondent drew our attention to the decision of the Supreme Court in the case of Member, Board of Revenue, West Bengal Vs. Controller of Stores, Eastern Railway, Calcutta and Others, In the said case what fell for consideration was the sale of unclaimed goods by the said railway and unserviceable materials sold as scrap. It was held that such sales would attract the tax under the provision of the Bengal Finance (Sales Tax) Act, 1941. The facts of the case were that the railway had applied for registration as dealer for those commodities and, therefore, the Supreme Court came to the conclusion that the sales were part of the business of the railway. That position had already been stated in the case of The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another, . What fell for consideration in the latter mentioned case by the Supreme Court was definition of the word "business" u/s 2 of the Rajasthan Sales Tax Act, 1954, which was that -

"(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;

but does not include activities of sale, supply or distribution of goods carried on without any profit-motive by -

(i) any charitable or religious institution in the performance of its functions for achieving its avowed objects; and

(ii) an educational institution, where such sale, supply or distribution is made to its students."

5. With the result, the activities of the Northern Railway were considered to be included in its business of transporting passengers and goods by train, and sale of all unclaimed goods, etc., to be incidental to such business of transporting goods and passengers. We may state that the transport business of the assessee is no different.

6. The question is, whether in these circumstances replacement of a bus periodically in the relevant assessment year which was not subjected to tax locally at its first sale would be excluded as it was not part of the business carried on by the assessee-company.

7. Mr. Prasad, learned counsel appearing for the assessee-company, did not dispute that the main business of the company was to carry passengers in the stage carriages. In order to maintain its reputation as such a stage carriage operator, the company sold vehicles occasionally to keep its fleet updated and maintain its reputation as an efficient transport operator. If that fact is admitted, the act of replacement of vehicles used in the business would be incidental and has a direct nexus to the carrying on the business of a stage carriage operator. Therefore we cannot hold that sale of buses was for the purpose of replacement and therefore, it was not incidental to the business operating stage carriages under the Motor Vehicles Act.

8. However, our attention was drawn to the case of *State of Gujarat v. Raipur Manufacturing Co.* [1967] 19 STC 1. In the said case a Bench of three learned Judges of the Supreme Court speaking through Shah, J., as he then was held that :

"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."

9. In other words, the learned counsel submitted to us that frequency and volume of the trade should be necessary factors that should be taken notice of to come to the conclusion whether it was a stray sale or replacement of unserviceable goods in connection with the business. We do not find, that decision in any way assists the assessee-company. Undisputedly, the assessee-company replaced the vehicle in order to maintain its reputation except in the case of the sale of autorickshaw which admittedly was sold as unserviceable and the same was not used in connection with the carrying of passengers as submitted by the assessee-company.

10. In such circumstances, we have no hesitation to hold that frequency and the volume and regularity of such replacement would not constitute a necessary ingredient on the facts of the case of the petitioner-company. It is true wherein, during trading in oil or concerned commodities, the dealer occasionally sells his office furniture in order to rationalise his trade or business efficiency or the administration of the business, such sale would not be part of the business of the oil trade. But when a commercial transport company operating, replaces its vehicles in order to maintain efficiency, the same cannot be said to be not incidental to its business.

11. In that view of the matter, we have no hesitation to hold that the sale of buses which had not suffered tax on its first sale in the State could not be excluded for the year 1977-78, 1978-79 and 1979-80 notwithstanding the fact that there were only 1 or 2 buses sold for a sum which may not have been commensurate with the real value of such buses. One must not fail to notice, we have no material in the record to know whether such buses were unserviceable, or the model of the bus, or the year of its manufacture the number of miles they had run. Therefore, we must assume that they were motor vehicles and were sold as such motor vehicles and not as scrap normally so understood, assessed to tax under entry 70 of Schedule II read with sub-section (3)(a) of section 5 of the Act.

12. In that view of the matter we hold that the sale of autorickshaw which was not a vehicle used for transporting passengers but used to assist the management of the company affairs or for personal use of the company director or manager or some other official cannot be said to be a sale which was done for replacement of any vehicle used in the business. Therefore, we hold that that sale was liable to be exempted as not part of the sale turnover of the company on that count. In so far as for the year 1976-77 is concerned, we quash the assessment order and allow S.T.R.P. 28 of 1985 and set aside the orders of the Karnataka Appellate Tribunal and the first appellate authority as well as the Commercial Tax Officer. In so far as the other three assessment years are concerned, we dismiss the petitions for the reason that the assessee sold motor vehicles incidental to the business of the assessee-company and such sales

should form part of the business turnover of the assessee. Therefore, they are dismissed.

13. Before parting with the case, we have to refer to the submissions made by the learned Government Pleader and what the Supreme Court has stated in the case of State of Tamil Nadu Vs. Shakti Estate, Tamil Nadu, . In those cases, the assessee had cut the forest and sold the timber in order to convert the land into coffee plantations and cardamom plantations. Such a sale was held to be incidental to the business carried on by the assessee. We have no doubt that that view is the correct view apart from its being a binding view. In the course of the business of establishing a coffee plantation, elimination of standing trees and conversion of those trees to timber and sale of the same would certainly constitute part of the business of establishing a coffee plantation. We have given the example of the oil trader who sells the furniture in order to rationalise the administration of his business which would stand on a totally different footing. Therefore, on facts, the ruling of the Supreme Court is distinguishable to the facts of the assessee-company for the assessment year in which the autorickshaw was sold.

14. In the facts and circumstances of the case, there will be no order as to costs.

S.T.R.P. No. 28 of 1985 allowed.

S.T.R.P. Nos. 25, 26 and 27 of 1985 dismissed.