(1954) 04 MAD CK 0035

In the Madras High Court

Case No : Tax Revision Case No''s. 46 and 211 of 1953

Sree Meenakshi Mills Ltd. APPELLANT

Vs

State of Madras RESPONDENT

Date of Decision : 05-04-1954

Acts Referred:

Factories Act, 1948 — Section 46
Madras General Sales Tax Act, 1939 — Section 2

Citation : AIR 1954 Mad 1143 : (1954) 67 LW 804

Hon'ble Judges : Satyanarayana Rao, J;Rajagopalan, J

Bench : Division Bench

Advocate : Alladi Kuppuswami, for the Appellant; Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana Rao, J.—The assessees in these cases are Sri Meenakshi Mills Ltd., Palanganatham, Madurai taluk and Messrs. Thiakesar All, Manaparai. The turnover in dispute relates to the sales effected by the assessees in canteens run by them for the benefit of their employees, the amounts of such sales being Rs. 28020-12-6 and Rs. 23079-10-6 respectively. The question debated is whether the assessees are liable to pay sales-tax on these amounts. The department & the Tribunal held that the assessees were liable to pay the tax. The learned Advocate for the assessees contends this view is .erroneous. u/s 46 of the Factories Act, which applies to these concerns, the assessees are under a duty to maintain canteens for the benefit of their employees. The Madras Factories Rules provide for the manner in which canteens should be run by factories and for the management of such canteens by a managing committee constituted under the rules consisting of representatives of the workers and the employers. The price for the food-stuffs sold in the canteens are to be fixed by the managing committee and the sale of food and refreshments in the canteens must be on non-profit basis. In view of these provisions, it is contended by the learned counsel for the assessees that it is impossible to consider the assessees as "dealers" in respect of these turnovers, as they do not carry on business and they are not sales in the course of any trade or business of the assessees within the meaning of the Madras General Sales-tax Act. In --Gannan Dunkerley & Co. v. state of Madras'', AIR 1954 Mad 1130 (A), we considered the meaning of the word "business" used in the definition of "dealer" in the Act and we reached the conclusion that the word "business" was used in the Act in the commercial sense, an integral part of which is the motive to make profits by sales or purchases, and if this is wanting, a person buying or selling would not be a "dealer". Following that decision, we hold that in these cases the assessees were not dealers in respect of the turnovers in dispute and they cannot be validly assessed to tax under the Act.

2. The tax revision cases are, therefore, allowed with costs, Rs. 250 in one.

