
(1969) 12 MAD CK 0007
In the Madras High Court

Sree Meenakshi Mills Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 05-12-1969

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 2

Citation : (1970) 2 MLJ 609

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—Sree Meenakshi Mills Limited, a company incorporated under the Indian Companies Act, has branches of its

own at Paravai and Usilampatti, within the State of Tamil Nadu. It deals in cotton, yarn, etc. Apart from the goods manufactured by it, it

purchases, annually various sundry articles, such as building material, electrical goods and other items. In fact, such miscellaneous items or articles

purchased by it form part of its capital assets. It is said that The Mills regularly, continuously and frequently supplied such items at cost price, either

from its Head Office or from its branches, to other incorporated companies in which the mills were interested, as also to third parties. It is common

ground that all the transactions involved in the disputed turnover of Rs. 1,19,257. 35 were inter-State in character. This turnover was noticed by

the assessing authority, when the mills' eligibility to Central Sales Tax was being examined for the assessment year 1960-61. In fact, in the course

of assessment proceedings under the Central Sales Tax Act, 1956, the above turnover was noticed and hence a part of it was subject to the

minimum rate of 1 per cent. and the other part at the optimum rate of 7 per cent, (which were the prevailing rates of tax during The assessment

year 1960-61, the year with which the case is concerned) due to the non-availability or defective " C" forms produced by the Mills before the

assessing authority. As against the order of the assessing authority bringing to tax the above turnover, an appeal before the Appellate Assistant

Commissioner was unsuccessful. The Mills, however, produced a break up statement of the turnover relating to the sales in question before the

Appellate Assistant Commissioner. The Appellate Authority observed that they are not casual sales and in fact certain sales were of workshop

material consisting of angles made to specification of the buyer and it never doubted that the petitioner was not a dealer in such materials. The

Appellate Tribunal, on second appeal, found as follows:

As and when the sister concerns require any such articles they were supplied by the appellants at the cost price without any profit under a Debit

advice for the amount which would be entered in the accounts. So the original idea of purchasing the goods by the appellants was not only to utilise

the purchased articles for the requirements of the appellants but also to sell the same to the sister concerns without any profit, but at the cost price

only. The very purpose of having excessive quantity of articles was to sell to the sister concerns without profit as and when required. There is a

significant distinguishing feature in these transactions. These transactions related to sales of new unused articles to the sister concerns.

The Tribunal also noticed that the transactions by the petitioner to its sister concerns were not isolated transactions but regular, continuous and

frequent and that the original intention at the time of purchase of the goods was not only for meeting the exact requirements of the petitioner but

also for selling to others, though not with a profit motive. The alternative plea of the petitioner that the sales, if found liable to tax, may be subject to

the concessional rate of tax provided the " C " forms were available, was also accepted by the Tribunal.

2. It is with the above background that the contentions of Mr. C. S. Chandra-sekara Sastry for the petitioner have to be considered. His case is

that the petitioner is not a dealer carrying on a business in the articles in question. The sales being the outcome of necessity or exigency between

two concerns in which there are common Directors, they cannot be characterised as sales. In any event it is said that there was no intention to sell

the surplus capital goods when they were purchased.

3. Though the Central Sales Tax Act, 1956, does not define a "dealer" in extenso as was undertaken by the Legislature in the Madras General

Sales Tax Act, 1959, yet in the context in which the word appears in both the enactments and in the light of the definition of a "sale" in such Acts

and what business ordinarily means, it appears to us that the word "dealer" appearing in both the Acts should be interpreted harmoniously. Then

it is necessary to find what exactly "business" means. It is a word whose importation is indefinite in scope. A "dealer" u/s 2 (b) of the Central

Sales Tax Act, 1956 means "" any person who carries on the business of buying or selling goods...."". The definition of a "dealer" in the Madras

General Sales Tax Act, 1959, means ""any person who carries on the business of buying, selling, supplying or distributing goods, directly or

otherwise, whether for cash or for deferred payment...or other valuable consideration."" A "sale" therefore, as apprehended in both the enactments,

would take into its fold the word "supply" provided such supplies are made by a dealer. All sales or supplies by a dealer are commercial activities.

But all commercial activities may not be sales, and even if they are, they should be "" in the course of business "" of a dealer and should be integrated

with such continuous trading activity of his. This leads onto the understanding of the expression "business". This is not defined in the Central Sales

Tax Act, but has been included in the definitions u/s 2 of the Madras General Sales Tax Act. According to Section 2 (d) of the Madras General

Sales Tax Act, 1959.

"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 or 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.

This is no doubt a special definition under this Act. We are not strictly concerned with the application of this definition whilst dealing with a subject

under the Central Sales Tax Act, 1956"" ; but as the concept of "business" is

universal, the inclusive definition in Section 2 (d) has an impact, over subject coming within the purview of the Central Sales Tax Act as well. Under the local Act it is sufficient if a business is carried on with a motive to make gain or profit notwithstanding the accrual of such profit from such trade.

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....The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer...the buying of the commodity...must be for sale or use with a view to make profit out of the integrated activity of buying and disposal." See *State of Andhra Pradesh Vs. Abdul Bakhi and Bros.,* .

It is now clear that notwithstanding a regular or continuous conduct on the part of a dealer to buy and sell and in spite of the presence of a motive to make profit, yet these components by themselves do not decide the question whether a person is a dealer under the Act. As stated in *Deputy Commissioner of Commercial Taxes v. Thirumagal Mills Ltd. (1967) 20 S.T.C. 287* , to which one of us was a party, the primary requisite of "business" is that it should be a trade or commerce or adventure or concern in the nature of trade or commerce. Unless the transaction is in the course of business understood in a commercial sense, it would cease to be so. If, therefore, the profit motive or regular feature of an activity or its volume and frequency may not be decisive on the question whether a particular transaction is a sale by a dealer, the real point is whether at the point of purchase of the goods in question, the person concerned entertained the object of selling them or supplying them in a commercial way and if such an intention is discernible in the conduct of the buyer even at the inception and if the goods so purchased are dealt with by him in the commercial course of his business and ultimately integrates the same with a sale, then such a transaction would come within the net of taxation. This is because, his primary intent to sell the same when he purchased it, lends support and colour to the transaction as a sale by a dealer within the meaning of taxation laws. The Supreme Court, in *State of Gujarat v. Vivekanand Mills (1967) 19 S.T.C. 103*, was considering the case of a

dealer who was carrying on the business of manufacturing cotton fabrics and who agreed to purchase under user's import licence a large quantity

of California cotton. In the expectation that the shipment might arrive late, the dealer made arrangements to purchase equally a large quantity of

similar cotton to meet his immediate requirements. The Californian cotton however, arrived unexpectedly earlier. The dealer thus blocked up a

large slice of his capital and he was constrained to sell his surplus stock to two other mills in which the dealer was interested. In those

circumstances the Supreme Court held that in selling the cotton with a view to avoid locking up of funds, it could not be inferred that the

respondent sold the goods with intention to carry on the business of selling cotton. There the Supreme Court factually noticed that the dealer was

not deliberately purchasing large quantities of cotton in excess of its normal requirements and had sold the quantities not required for its

manufacturing schedule. Sole reliance was placed on the intention which could be gathered on a totality of the assessment of the facts therein. Even

so, in *State of Madras Vs. K.C.P. Ltd.*, , it was found that the sale of unsuitable or unserviceable goods which may form part of either fixed assets

or discarded goods could not be included in the assessable turnover of a dealer for the purpose of determining its liability to sales-tax under the

Central Sales Tax Act, 1956. There the Supreme Court observed at page 177:

Where a person came to own in the course of his business of manufacturing or selling a commodity, some other commodity which is not a by-

product or a subsidiary product of that business and he sold that commodity, cogent evidence that he had the intention to carry on the business of

selling that commodity would be required. It was further observed that where a person in the course of carrying on the business was required to

dispose of what might be called his fixed assets or his discarded goods acquired in the course of business, an inference that he desired to carry on

the business of selling his fixed assets or discarded goods would not ordinarily arise.

Even in this case the ratio is clear that it is the intention on the part of the dealer which governs and which is the deciding and decisive factor. A

case may arise where the goods sold by a dealer might not have any bearing on his normal, trading activity. In such cases it is difficult to draw the

line as to whether a sale of such a commodity is a taxable sale. Here frequency, volume or repetition or even the presence of profit motive may not tilt the matter. Ultimately, therefore, the question has to be decided on the subjective element of intention on the part of the particular dealer when he bought that commodity or when that commodity became available to him in the course of his normal trade and whether such an acquisition by him and the later dealing of his with reference to that commodity was with the intention of sale with all its grammatical variations and cognate expressions. In all such cases, it is not in dispute that there is a transfer of property in the goods by one to the other and it is in the course of a trading activity for cash or other valuable consideration. But, as has been repeatedly pointed out by this Court and the Supreme Court, it is the commercial nature of the transaction and the positive intent behind the deal that ultimately weighs and decides the issue.

4. If, therefore, the above principles of law are borne in mind, it is easy to comprehend the nature and purport of the transactions of the petitioner in the instant case. It may be that the commodities which it supplied or sold to its sister concerns or others did form part of its capital assets at onetime. But yet the goods being not useless or unserviceable articles, and the transactions of the petitioner not being isolated, but regular, continuous and frequent and supported by consideration, the findings given by the Tribunal and the Revenue when they noticed them, are indeed relevant for ascertaining the intention of the petitioner when it purchased the goods. It may be by accident that such surplusage of capital goods may occur. It may also be that such commodities are held by an assessee resulting in the blocking of his capital. There may be other cases of emergency as well. But in all such cases it cannot be said that when the commodity or goods were acquired and so held by the assessee, he subjectively intended that he should deal with them in a commercial way and ultimately, subject them to a sale as is popularly understood. The fact that such a supply or sale is to a sister concern or to a stranger, or the frequency or volume of it may not conclude the matter. Where in a given case an assessee deliberately secures surplus capital goods with the objects of supplying them in the course of the accounting year to persons of his choice or in whom he is interested, then such a transaction and conduct on the part of the assessee very much highlights his intention to deal with

those goods in a commercial way resulting in a sale. In the instant case the Tribunal which is the fact finding authority, found that the original idea of purchasing the goods by the petitioner was not only to utilise the purchased articles for the requirement of the petitioner, but also to sell the same to others though without any profit. The finding of fact is that the very purpose of having excessive quantities of articles was to sell to the sister concerns and strangers without profit as and when required. Mr. Chandrasekara Sastry, however, would say that this finding is without any basis.

We do not agree. As already stated, the supplies or sales made by the assessee constitute a regular feature of its business. Undoubtedly, they were not isolated and it did not deal with unserviceable articles or scrap. It is also in evidence that in so far as the workshop material, a break-up of which has been given to us, is concerned, the assessee fabricated the same in its own workshop and supplied the same to others. The very fact that a process was indulged in so as to convert a commodity in its godowns to suit the needs of another is yet again an instance to show that the deal in question was motivated from its inception and that the assessee intended to deal with them in the course of business and it is in such an integrated activity of buying and selling that the transactions in question are caught. We are unable to "agree that the finding of fact arrived at by the Tribunal is not supported by any legal evidence nor is it an irrational conclusion on the relevant facts noticed by the Tribunal. The Tribunal has decided that the intention of the assessee was to indulge in a transaction which is in the nature of a sale. Accepting, therefore, the finding of fact by the Tribunal below that the transactions related to sales of new unused articles to the sister concerns of the petitioner and others, we have no hesitation in holding that the order of the Tribunal and the findings rendered therein are correct. It is not as if the surplusage of the goods occurred by inevitable accident or in the usual course. It appears to us that such surplus capital goods were acquired with a definite purpose of supplying the same to its sister concerns, and such an intention being inhered in the conduct of the petitioner, the turnover brought to tax has been rightly brought to tax as assessable turnover. This* Tax Revision Case therefore fails and is dismissed with costs. Counsel's fee Rs. 100.