
(2001) 09 MAD CK 0023

In the Madras High Court

Case No : Writ Appeal No's. 92, 93 and 94 of 1999 and C.M.P. No's. 803, 804 and 805 of 1999

Sri Palani Dhandayuthabani Devasthanam

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 2
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 45
Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981 — Section 2

Citation : (2002) 1 LW 318 : (2001) 3 MLJ 649 : (2001) 124 STC 553

Hon'ble Judges : C. Nagappan, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : N. Prasad, for N. Inbarajan, for the Appellant; B. Nedunchezhiyan, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—Sri Palani Dhandayuthapani Devasthanam represented by its Executive Officer filed W.P. No. 5752 of

1991 to 5754 of 1991 praying the Court to issue a writ of certiorarified mandamus to quash the assessment orders made by the Commercial Tax

Officer, Palani Circle II, Palani, for the year 1986-87, 1987-88 and 1988-89 invoking the Tamil Nadu Tax on Luxuries in Hotels and Lodging

Houses Act, 1981 (hereinafter will be referred to as "the Act") and imposing a tax and penalty to the tune of Rs. 13,115, Rs. 16,205 and

Rs.15,444 respectively and to further direct the respondent to forbear him from invoking the provisions of the said Act in so far as the appellant is

concerned.

2. The said writ petition was resisted by the respondent on various grounds. The learned single Judge of this Court dismissed the same on the

ground that the remedy sought for in the writ petition by way of writ is premature and further the petitioner has an alternate remedy under the Act

by way of an appeal to the appellate authority.

3. Being aggrieved by the said order of the learned single Judge, the appellant has preferred this appeal.

4. It may be straightaway mentioned that both the reasons given by the learned single Judge cannot be sustained and which should mean this Court

has to dispose of the writ appeals on the merits. The first ground mentioned by the learned single Judge is that the writ petitions are premature. A

reading of the assessment orders would clearly show that the respondent finally decided after considering the objections to impose a tax and

penalty as mentioned earlier. Of course, the orders mention that the demand notice will be issued accordingly. It can be noticed from the first page

of the respective assessment orders, it is mentioned that as against the said assessment order an appeal would lie to the Assistant Commissioner of

Commercial Taxes, Madurai North. Hence, it cannot be said that the writ is premature. The second reasoning given by the learned single Judge for

dismissing the writ petition is that as against the assessment order, there is a right of appeal u/s 10 of the Act to the appellate authority and as the

effective alternate remedy not having been exhausted, the writ petitions cannot be entertained. Here again, it has to be pointed out that the dismissal

of writ petitions on the availability of alternate remedy should be at the admission stage and not at the stage of final disposal. In this case, the writ

petitions were filed in the year 1991 and the same were dismissed by the learned single Judge in the year 1998. That apart, the question involved

for determination is of legal nature and certain facts alleged by the appellant/writ petitioner with regard to its activities have not been controverted

by the respondent. Inasmuch as the settled legal position is that the court can accept uncontroverted facts put forward by the petitioner as true

(vide Smt. Naseem Bano Vs. State of U.P. and others,) there can be no hurdle for this Court to consider on the merits and dispose of these writ

appeals.

5. The case of the appellant is that the temple is an ancient one and is thronged

by the devotees from different parts of the country. The petitioner provides minimum amenities for the devotees for poojas, for celebrating marriages and also to undergo penances. The appellant gets funds from the devotees by way of voluntary contributions, from hundi collections and also from the income from the agricultural lands and coconut thopes, etc. The temple has choultries either built voluntarily by the devotees or constructed out of the temple funds. The devotees, who come in large numbers found it difficult for accommodation even for temporary stay and now these choultries provide them necessary accommodation.

The further case of the appellant is that the appellant being a religious institution, its financial affairs are managed by an Executive Officer appointed u/s 45 of the Hindu Religious and Charitable Endowments Act, 1959. The funds of the temple are disbursed periodically for various purposes such as maintenance of temple including performance of poojas, rituals, festivals, etc., towards disbursement of salaries of employees; towards incurring expenses for securing health safety to the pilgrims and others ; utilising funds towards performance of Hindu marriages ; feeding of the poor ; construction of building and any excess left for improvement and for repair works from time to time. It is the case of the appellant that the entire financial activities of the temple are subject to Chapter VIII of Tamil Nadu Act XXII of 1959 and that none of the activities of the temple are with profit-motive. The appellant does not carry on any commercial or profit-making activity and maintenance of properties and securing of rents and other income are only to subserve the primary activities of the institution. The entire income of the temple is also exempted from paying Income Tax by the Government of India.

It is the definite case of the appellant that it is only a religious establishment and not a commercial establishment or business venture and in fact the respondent in its order squarely conceded that the appellant is not a dealer. The provision for the rest place is considered devout duty and the contributions of the devotees, though at a specific rate is only to meet the cost of maintenance of the structures and buildings. The rates charged to the devotees are only towards maintenance of the building matching of the overheads of the establishment and even this is clearly achieved.

According to the appellant, there is no profit-motive in collecting rents from the

devotees even though occasionally surplus may occur in the overall perspective of the accounts.

6. The respondent, inter alia, resisted the writ petitions by filing counter-affidavits wherein it is stated that the rental charges collected by the appellant attracted liability to tax under the Act. According to the respondent Section 2(f) of the Act defines "hotel", which means building or part of the building where residential accommodation with or without Board is by way of business provided for a monetary consideration and includes a lodging house. In the definition of hotel in Section 2(f), the expression "business" is included as an activity without profit-motive. It is enough if residential accommodation is provided for a monetary consideration, it will come within the purview of Section 2(f) since profit-motive has been expressly omitted. Whether or not there is profit-motive, the residential accommodation provided for a monetary consideration will come within the definition of Section 2(f). It is further contended that the contention that the entire income of the temple is exempt under the Income Tax Act is not relevant for the purpose of determining the liability of the petitioners under the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981. The specific case of the respondent is that since profit-motive is exclusively excluded in Section 2(f), the liability of the appellant under the Act cannot be challenged. It is further stated therein that the contention that the rate charged is only to meet the cost of maintenance of structure and buildings is not acceptable when the rate is above Rs. 50 per day per room and the question of profit-motive does not arise since it has been expressly excluded in the definition.

7. The learned single Judge, as already mentioned, dismissed the writ petition only on the ground of maintainability and not on the merits.

8. The Act in question is called the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981. The object and reasons for enacting the said Act have been stated as under :

Act No. 6 of 1981--The Tamil Nadu Taxes on Luxuries in Hotels and Lodging Houses Act, 1981 was enacted to levy tax on luxuries provided in hotels and lodging houses where the rate of tax for accommodation of residents (including charges for air-conditioning, television, radio, music, extra beds and the like but excluding charges for food, drink and telephone calls)

is twenty rupees or more but is less than fifty rupees per person per day.

Section 2(f) defines the term "Hotel" as under :

Hotel means a building or part of a building where residential accommodation with or without board is by way of business provided for a monetary consideration and includes a lodging house.

9. As far as the appellant is concerned, the respondent has treated it as a lodging house. For the appellant to come under the definition of "hotel", it must be that the appellant must rent it out by way of business. Then the question is how the term "business" has to be understood. The Act does not define the term "business". The question would be then as to whether the term "business" as defined in Section 2(d) of the Tamil Nadu General Sales Tax Act, 1959 can be applied.

10. The Tamil Nadu General Sales Tax Act has been enacted with a view to consolidate and amend the laws relating to the levy of a general tax on the sale or purchase of goods in the State of Tamil Nadu. As far as the Act now in question is concerned, the object is to provide for the levy and collection of a tax on luxuries provided in hotels and lodging houses. Inasmuch as the object in these two Acts cannot be said to be one and the same, it would not be correct to read the definition of the term "business" as given in the Tamil Nadu General Sales Tax Act, 1959 into the

Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981. This issue can be examined from another angle as well. The Tamil Nadu

General Sales Tax Act was enacted in the year 1959, whereas the Act in question was enacted in the year 1981. If really the Legislature desired

the definition as given in Sales Tax Act as amended by the Amendment Act, 1964 to be adopted, that would have been certainly made clear in this

present Act by indicating sufficiently (i.e.,) by introducing an explanation clause mentioning the same. But that has not been done. For the above

reasons we are of the view that the definition of the term "business" as given in the Tamil Nadu General Sales Tax Act, 1959 cannot be applied.

11. Then the question is how the term "business" has to be understood in the common parlance. We get the answer to this from the ruling of the

Supreme Court reported in [1964] 15 STC 644 (State of Andhra Pradesh v. H. Abdul Bakshi and Bros.) where the court, while considering

certain provisions of the Hyderabad General Sales Tax Act, 1950 and the Rules framed thereunder, observed thus,

.....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.....

The above view was affirmed later in the ruling reported in Hindustan Steel Ltd. Vs. State of Orissa,

12. As far as the present case is concerned, in the affidavit filed in support of the writ petition, the appellant has in paragraphs 3 to 5 has given

details with regard to the source of income and its activities. It has to be pointed out that these averments with regard to the activities of the

appellant have not been disputed in the counter-affidavit filed by the respondent. In such an event, applying the ruling of the Supreme Court

reported in Smt. Naseem Bano Vs. State of U.P. and others, we proceed on the basis that the averments have been admitted by the respondent.

Once we arrive at such a conclusion, inasmuch as the appellant has not been carrying on this activity of providing accommodation to the pilgrims

who come in large numbers with profit-motive, it cannot be said that the appellant did any act by way of business.

13. Even assuming for a moment that Section 2(d) of the Tamil Nadu General Sales Tax Act, 1959 as amended by Amendment Act, 1964 where

the term ""business"" has been defined as

business includes--(i) any trade or 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

has to be applied, we are inclined to hold that inasmuch as temple is doing only

service to the pilgrims and letting out is not a business or incidental

or ancillary to main business, there is no scope of application of the Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981.

14. In respect of another Devasthanam, similar question arose and a learned single Judge of this Court in C.R.P. Nos. 1154 and 1155 of 1998

took a similar view and upheld the claim of the Devasthanam and held that the Act would not apply (ref: Arulmigu Ramanathaswami Devasthanam

rep. by its Executive Officer v. Principal Commissioner and Commissioner of Commercial Taxes, Chennai). We are informed that as against this

order a SLP was preferred, but however the same was dismissed.

15. At this juncture we are also inclined to refer a ruling of this Court reported in [1998] 108 STC 114 (Arulmigu Dhandayuthapani Swami

Thirukkoil v. Commercial Tax Officer-II, Palani). That was again a writ appeal filed by the present appellant. In that case what happened was, the

appellant-Devasthanam for the purpose of giving prasadam to the devotees, purchased some ingredients for preparing the prasadam and the

sales tax authorities raised a demand u/s 7-A of the Tamil Nadu General Sales Tax Act, 1959, on the purchase of jaggery and that was questioned

by the appellant by way of writ petition and as it failed, the writ appeal was filed. The division Bench of this Court, after elaborately considering

various aspects of the matter held thus :

As rightly pointed out by the learned counsel for the appellant, the sale of panchamirtham prasadam. was not a commercial activity undertaken by

the appellant in the course of any business of theirs and though prima facie a sale is involved, it is not in connection with the business of the

appellant and much less as a dealer under the provisions of the Act. In order to characterise a person as a dealer, the primary pre-requisite is that

he should carry on business within the meaning of the Act. If a person does not carry on business, he is not a dealer. The business which is

intricately connected with commerce is unknown to the appellant and therefore it is impossible for us to conceive that while the appellant sell

panchamirtham to the devotees who come to the temple, the appellant is doing a business. The object of the appellant is something very different

from doing business. When the appellant, whose laudable objects have already been enumerated by us, sold some prasadam like panchamirtham

to the devotees, which is purely incidental, it cannot be said that the appellant is indulged in business in a commercial sense. The dominant activity

of the appellant is religious and charitable in nature and not a business activity.

16. That apart we are also inclined to point out one more aspect of the matter. One of the contentions raised by the appellant is that the authorities

are not invoking the provisions of the Act in respect of Rameswaram and Tiruthani Devasthanams. In paragraph 4 of the counter-affidavit, this has

been replied by the respondent in the following lines :

.....The contention that the authorities are not invoking the provisions of the Act in the case of Rameswaram and Tiruttani Devasthanam is

not also relevant for the consideration of the liability of the petitioners in the present case....

17. The respondent should take more pragmatic approach in all these matters. If the respondent is not invoking the Act for Tiruttani Devasthanam

where Lord Muruga is the adorning deity, we are surprised the respondent desires to invoke the Act for the appellant Devasthanam where again

the adorning deity is only Lord Muruga, but affectionately worshiped by the devotees by a different name, viz., Lord Dhandayuthapani. The State

Government should take a consistent and uniform policy. When it considers Tiruttani Devasthanam and Rameswaram Devasthanam are to be

excluded from the purview of the Act, it should have automatically in all fairness without raising an objection that appellant Devasthanam has not

approached u/s 23-A of the Act, suo motu should have granted exemption, when admittedly Arulmigu Dhandayuthapani Temple at Palani is very

ancient one and attracts people all over the country and the financial affairs of the Devasthanam are managed by an Executive Officer appointed u/s

45 of the Hindu Religious and Charitable Endowments Act, 1959 and the budgeting are subject to Chapter VIII of the Endowments Act.

18. In this view of the matter, we allow all the writ appeals and set aside the order of the learned single Judge in W.P. Nos. 5752, 5753 and 5754

of 1991 and quash the assessment orders TNTLH & LH No. 00843/86-87, TNTLH & LH No. 00843/87-88 and TNTLH & LH No.

00843/88-89 dated February 28, 1991 passed by the respondent and further direct the respondent to forbear from invoking the provisions of the

Tamil Nadu Tax on Luxuries in Hotels and Lodging Houses Act, 1981 insofar as

the appellant is concerned. Connected C.M.Ps. are closed.