
(1988) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 234 and 236 of 1985 and 237 of 1986

State of Andhra Pradesh

APPELLANT

Vs

Bhramaramba Mallikarjuna Swamy Devasthanam

RESPONDENT

Date of Decision : 05-08-1988

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 15, 2(22), 2(26), 27, 38
Andhra Pradesh General Sales Tax Act, 1957 — Section 2(1)

Citation : (1989) 73 STC 321

Hon'ble Judges : M.N. Rao, J; A. Seetharam Reddy, J

Bench : Division Bench

Advocate : Government Pleader for commercial Taxes and Panchayat Raj, for the Appellant; T. Ramam, for the Respondent

Judgement

Seetharam Reddy, J.—Sri Bhramaramba Mallikarjuna Swamy Devasthanam, Srisailam, which is one of the most prominent Hindu religious temples in the State, is the respondent herein and the State has come in revision aggrieved against the order made by the Sales Tax Appellate Tribunal, setting aside the order made by the Assistant Commissioner of Commercial Taxes confirming the order of the Commercial Tax Officer, holding that the said Devasthanam cannot be said to be a "dealer" within the meaning of section 2(1)(e) of the Andhra Pradesh General sales Tax Act (for short "the Act").

The three items in respect of which the sales tax was sought to be levied are :

(a) Sales of food and drink in the canteens run by Devasthanam during the assessment years in question which are for six years from 1970-71 to 1975-76 and also purchase of paddy for running the canteens.

(b) Sales of motor parts as scrap.

(c) Sales of human hair.

2. The contentions advanced on behalf of the revisionist herein by the learned

Government Pleader are that though the assessee-Devasthanam may not be carrying on in the main any business activity but running of canteen has no nexus nor is it incidental to the main activity and that being the business activity where food is sold for consideration to those who visit the canteen, must attract the sales tax. Likewise, for the same reasons, the motor parts which are sold as scrap and also the human hair which is collected after being removed and sold thereafter, are parts of business activities and, therefore, such sales must be exigible to tax. The said Devasthanam must be held to be a dealer which is engaged in the activity of business and so to that extent these activities must necessarily be subjected to sales tax.

3. The counter contentions are that the Devasthanam which is governed by statutory enactment is a religious and charitable institution and the predominant activities are nothing but religious and charitable in nature and, therefore, merely because it is catering to the needs of pilgrims who come over to Devasthanam for the purpose of having darshan and for whose facility the canteen is run, wherein eatables are supplied for reasonable prices, the Devasthanam cannot be termed as a dealer and such activity cannot be termed as business activity within the meaning of the Act.

4. Before the questions raised and debated are to be adjudicated, the nature and object of the Devasthanam may be noticed.

5. Admittedly, the assessee-Devasthanam is governed by the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act (for short "the Endowments Act"). Section 2(22) defines "religious institution", as a math, temple or specific endowment and includes a brindavan, samadhi or any other institution established or maintained for a religious purpose. Section 2(26) defines "temple", as a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsava mantapas, tanks and other necessary appurtenant structures and land.

6. The administration of the said Devasthanam is entrusted to a Board of Trustees constituted u/s 15 of the Endowments Act and the Executive Officer appointed u/s 27 is the executive head. Admittedly, the said institution has been registered u/s 38 of the Endowments Act. u/s 50 of the Endowments Act, the budget is prepared for various purposes enumerated thereunder which are all admittedly of religious and charitable, in nature. Section 67 of the Endowments Act provides for utilization of surplus funds for all or any of the following purposes :

(i) propagation of the religious tenets of the institution or endowment;

(ii) establishment and maintenance of schools for the training of archakas, adyapakas, and vedaparayanikas and for the study of divya prabhandams and the like and for furthering education in Sanskrit;

(iii) establishment and maintenance of, any institution in which special provision is made for the study of Hindu religion, philosophy or sastras or for imparting instruction in Hindu temple architecture, and for setting up libraries in connection with such study;

(iv) grant of aid to any other Hindu religious institution or endowment which is in poor or needy circumstances or which required renovation;

(v) establishment and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the religious institutions;

(vi) construction and maintenance of choultries and rest-houses for the use and accommodation of the pilgrim;

(vii)

(viii)

(ix)

(x) payment to the common good fund and so forth.

7. In fact, the Sales Tax Appellate Tribunal while dealing with the aforesaid three activities has stated as under :

"Thus the Devasthanam while functioning for the welfare of the pilgrims and worshippers of the temple is protecting the Hindu religion and also serves the needs of the pilgrims who visit the temples for the darshan of Sri Mallikarjuna Swamy and Bhramaramba. It is common knowledge, which can be taken judicial notice of, that the pilgrims who visit the temples of the Devasthanam pay their homage by submitting in the hundi kept in the temples their mite and such collections some times in addition to the coins and currency notes include silver, gold and other valuable articles. Thus the hundi collections and donations received by the Devasthanam form an asset of the Devasthanam, which they utilise for the purpose of protecting Hindu religion and for serving the various objects for which the Devasthanam has been founded.

It is the case of the appellants-Devasthanam that with the prior approval of the Government the Devasthanam has been using its surplus funds for providing all necessary facilities to the pilgrim worshippers visiting the temples of Devasthanam to fulfil their vows. One of the amenities provided by the Devasthanam to the pilgrims during the years 1973-74 and 1974-75 was running of canteens in the temple premises to serve thousands of pilgrims. These canteens serve food and snacks to the pilgrims on comparatively cheap rates all by way of service so as to save the pilgrims from exploitation by private hoteliers. The Devasthanam had absolutely no eye on commercial aspect while running the canteen and their entire object was to serve the pilgrims in the better possible manner. Further it is not the case of the department that the pilgrims had any right to carry away the food served in the canteens. It is the transaction of service and not a transaction of sale. The dominant object was for

rendering of service to the pilgrims. It is for the purpose of providing food in the canteens the Devasthanam has been purchasing paddy to be utilised for catering to the needs of the pilgrims. It was contended on behalf of the Devasthanam that even otherwise the service of meals to the pilgrims in the canteens run by the Devasthanam is not taxable as it is not a sale as defined under the Act.

Further it has been the case of the appellants-Devasthanam that the Devasthanam had an obligation to maintain transport for providing amenities to the pilgrims and that for maintaining the said transport department certain purchases had to be made by the Devasthanam for use of buses and other vehicles and that in that process there was accumulation of unserviceable parts and material which had to be disposed of by the Devasthanam as scrap. According to them the disposal of the unserviceable material as scrap by the Devasthanam is not sale because the Devasthanam does not deal in purchase of motor parts or scrap.

As regards the sales of human hair it has been the case of the Devasthanam that the pilgrims have been giving their hair in fulfilment of their vow and that human hair so received had to be disposed of by the Devasthanam periodically for the purpose of avoiding the problem of storage of such hair and consequential problems and also for the post of keeping the premises of the temple in clean and healthy conditions"

and, thereafter, it held thus :

"Judged in the light of these facts and circumstances which are not in dispute and objects for which the Devasthanam stands we proceed to determine the question whether Sri Bhramaramba Mallikarjuna Swamy Devasthanam, Srisailam, can be held to be a dealer within the meaning of section 2(1)(e) of the Act."

8. Eventually, the finding arrived at by the Tribunal was that the assessee-Devasthanam is not a dealer in supply of food and drinks to the pilgrims as defined under the Act and such transactions cannot be transactions of sale.

Dealing with the sale of motor parts as scrap, it has stated thus :

"We, therefore, hold that even otherwise the transactions of the Devasthanam in selling scrap, unserviceable and surplus materials not connected with the functions and activities of the Devasthanam cannot be held as the appellants carrying on business of selling scrap and the Devasthanam cannot be held to be "dealer" within the meaning of the Act. On the undisputed facts of the present case, we do not think that there was any intention on the part of the Devasthanam to carry on business in transport much less unserviceable and surplus materials."

9. Finally, dealing with the turnover relating to human hair, it was held that "it was the specific case of Devasthanam that the pilgrims who visit Sri Bhramaramba Mallikarjuna Swamy Devasthanam, Srisailam, give their hair after

it becomes the property of the Devasthanam has necessarily to be disposed of in the interest of public health and also to keep the premises neat and clean. Such disposal of the human hair by the Devasthanam, cannot by any stretch of imagination be regarded as an activity of a dealer. If the hair is not disposed of periodically then the Devasthanam shall have to face storage and consequential problems leave alone the problem of hazard to the health of the pilgrims."

10. Before advertng to the case laws cited across the Bar, the relevant statutory provisions under the Andhra Pradesh General Sales Tax Act, be set out :

Section 2(1)(bbb) defines "business" as :

"(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 or undertaken with a motive to make gain or profit and whether or not any gain or profit accrues therefrom; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern."

Section 2(1)(e) of the Act defined "dealer" which reads as follows :

"(e) "dealer" 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 for commission, remuneration or other valuable consideration, and includes -

(i) the Central Government, a State Government, local authority, a company, a Hindu undivided family or any society (including a co-operative society), club, firm or association which carries on such business;

(ii) a society (including a co-operative society), club, firm, or association which buys goods from, or sells, supplies or distributes goods to its members;

(iii) a casual trader, as hereinbefore defined;

(iv) a commission agent, a broker, a del credere agent, and auctioneer or any other mercantile agent, by whatever name called who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal or principals."

11. Now coming to the case law, in Hyderabad Asbestos Cement Products Ltd. v. State of A.P. [1972] 30 STC 26 (AP), wherein the assessee-company maintained a canteen for the use of its workers in compliance with the statutory provisions of the Factories Act, 1948, and the question was whether the turnover relating to the supplies of food and drink to the workers at the canteen could be charged to sales tax under the Andhra Pradesh General Sales Tax Act, it was held, that in view of the definition of "business" as amended by the Amendment Act of 1966, proof of profit-motive is unnecessary to constitute business and that the

transactions of supply of food and drink to the workmen in the canteen maintained by the assessee, in pursuance of the Factories Act and the Rules, were sales and constituted business for the purposes of the Act. Further, it was held :

"We do not think that it is permissible to hold that there was no "business" in the commercial sense of "business" with a motive to make profit, when such motive has been expressly declared unnecessary by the legislature. We think that under both parts of the definition, profit-motive is now immaterial and the concept of "business" in the commercial sense put forward and accepted in the earlier cases must now be abandoned."

It was also held :

"The company and the workmen come together every time when an article of food or drink is sold and the price is paid for it. There is a privity of contract between the company and the workmen whenever an article of food or drink is supplied and the price for it is received."

"It is thus seen from the Act and the Rules that while the occupier of a factory is obliged to maintain a canteen and serve food and drink on a non-profit basis, there is a large amount of discretion in all other matters such as the choice of food and drink to be served, the prices at which they may be served, the time when they may be served, etc. In these matters, the voice of the managing committee, half the members of which are the occupier's own nominees, is to be that of an adviser only. Having regard to these circumstances, we are of the opinion that the transactions of supply of food and drink to workmen in the canteen maintained by the company, in pursuance of the Indian Factories Act and the Rules, are sales and do constitute business for the purposes of the Andhra Pradesh General Sales Tax Act."

12. In *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, , the question that fell for determination was whether the company which was carrying on the business of selling petroleum products and while so, selling of scrap material was incidental or not. In this case, while approving the decision laid down in *Hyderabad Asbestos Cement Products Ltd. v. State of A.P.* [1972] 30 STC 26 (AP) it was held :

"In the view we hold the scrap sold is certainly connected with the business of the company and the turnover in respect of this commodity is liable to tax. It cannot also be said that the turnover in respect of the sale of the assessee's advertisement materials at cost price or less than cost price is not connected with the business of the assessee. Calendars, wallets and key chains are all given by the dealers to its customers for purposes of maintaining and increasing the sales of the products of the assessee and is therefore connected with the business. What the assessee is doing is to facilitate the dealers to acquire at their cost such advertising materials of a uniform type approved by the assessee-company which, instead of allowing each of them to have these separately

printed or manufactured, itself undertook to do so and supplied them to its dealers. The supply of such material is in our view being connected with the business is liable to be included in the turnover of the assessee."

13. In Commissioner of Commercial Taxes, Board of Revenue Vs. Evangelical Literature Service, , the assessee-Evangelical Literature Service purchased Bibles and other Christian literature at a discount and sold them at the price marked in the books, thereby making a profit which was utilised for the propagation of the objects of the assessee and dissemination of Christian literature, and adverting to this aspect, it was held :

"The aim of the respondent-assessee in buying and selling books was to make a profit and that alone was material for the purpose of assessment to sales tax and it ought not to be confused with the ultimate object of the society which was to propagate Christian literature. The assessee was, therefore, liable to sales tax."

14. In State of Tamil Nadu v. Binny Ltd., Madras [1982] 49 STC 17, the Supreme Court was concerned with a situation where the assessee, a dealer carrying on the business of manufacture and sale of textiles, maintained the stores wherein provisions were supplied to the workers and adverting to that, it has held :

"The sales which were effected in the store were to the workmen employed in the factory where textiles were being manufactured and the provision of this facility to the workmen was certainly incidental to the carrying on the business of manufacture of textiles."

15. In this case, it referred to a decision of the Supreme Court in Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation, where the question was whether a canteen maintained by a cinema owner in the premises of the cinema building could be said to be incidental to the business of running the cinema, and the observation of Krishna Iyer, J., was thus :

"A thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either."

Further, it has held :

"Applying this test the court held that it was impossible to contend that a canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre."

16. In Base Repair Organisation v. State of A.P. [1983] 53 STC 223 a Division Bench of this Court was concerned with a situation where a "Naval Dock Yard" maintained by the Defence Ministry was for repairing and servicing the ships of the Indian Navy and also maintained a canteen for the benefit of its employees and adverting to this aspect it was held :

"We are, however, inclined to agree with Mr. Venkatarama Reddy on the alternate contention, viz., that, inasmuch as the running of the canteen constitutes an

integral and inseparable part of the activity carried on by the assessee, it is not possible to isolate or insulate it from the main activity, and treat it as business for the purpose of the Act. It should be noticed that the canteen is not only being run in discharge of a statutory obligation, but that it constitutes an infinitesimal and insignificant part of the entire activity of the assessee. Having regard to the nature of the functions and the purpose for which the Naval Dock Yard is established, and also because of the fact that the canteen subserves the main object and purpose of the assessee, and is an integral and inseparable part of it, it would be unrealistic to separate the said activity and treat it as a business. We must make it clear that there is a definite distinction between an activity which is ancillary or incidental to the main activity, and an activity which is an integral part of the main activity. In the first case, the incidental or ancillary activity is a distinct activity, though it is incidental or ancillary to the main activity; whereas, in the latter case, it is one single activity."

17. In *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, Mathew, J., speaking for the court, in respect of the assessee-appellant, which was Northern Railway, Jodhpur, wherein the question was whether unserviceable materials, etc., sold during the period in question was liable to sales tax or not, held :

"We think that the activity of the appellant in the selling of unserviceable material and scrap-iron, etc., would be "business" within clause (i) of the definition of the word "business" introduced by the amending Act. The word "business" according to clause (i) of that definition would include any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not it is carried on with a motive to make gain or profit. So even if it be assumed that the activity involved in selling unserviceable material and scrap-iron, etc., would not amount to carrying on business in the normal connotation of that term, it would be "business" within clause (i) of that sub-clause as introduced by the amending Act.

We also think that there is no fallacy in thinking that the Railway since it is concerned in the activity of transportation is engaged in commerce within the meaning of clause (i) of the definition and that the sale of unserviceable materials and scrap-iron, etc., is transaction in connection with or ancillary to such commerce within the clause (ii) of that definition."

18. In *Indian Express (P.) Ltd. v. State of Tamil Nadu* [1987] 67 STC 474 (SC), the question arose was whether surplus copies of newspaper sold by a publisher of a newspaper constitutes a sale attracting thereby the sales tax is answered as under :

"It seems to us clear that when newspapers are sold to the reading public they are sold as a medium containing information regarded as news. They are purchased by members of the public to acquaint themselves with the current news. Information is news when it is fresh and new. With the lapse of time it

ceases to be news. So when newspapers become old, they carry information which is no longer news, and therefore they lose their character as newspapers. When they are disposed of as waste paper, their sale cannot be regarded as the sale of newspapers What is exempt from sales tax is the turnover of newspapers and not the turnover of old newspapers or waste paper."

Further, it was held :

"It is also clear from the material on the record that the transactions of sale of the surplus copies must be regarded as a business carried on by the appellant. It was an activity which he pursued regularly, and the motive was to earn a profit. It was incidental to the business carried on by the appellant of printing and publishing newspapers. In the course of carrying on the business of printing and publishing newspapers, it is inevitable that a number of copies should remain surplus and that they should, therefore, be sold as waste paper."

19. The above principle is reiterated by this Court in T.R.C. No. 70 of 1985 and batch by its judgment dated 14th June, 1988 (Andhra Prabha Private Ltd. v. State of Andhra Pradesh [1989] 73 STC 260).

20. This Court also followed in W.P. No. 5189 of 1977 and batch dated 9th February, 1981 the ratio laid down in The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another, .

Now to the case-laws cited for the assessee-Devasthanam.

21. In Tirumala Tirupati Devasthanam v. State of Madras [1972] 29 STC 266, a single Judge of the Madras High Court considered the question whether the silver and other valuable articles found in the hundis in the temples of the Tirumala Tirupati Devasthanam form an asset of the Devasthanam and when the Devasthanam converts the same into cash by holding public auctions whether the same could be said to be a business or indulging in a commercial activity and held as under :

"It follows from this definition that in order to characterise a person as a dealer, the primary prerequisite is that he should carry on business. Such a business may be in myriad ways, such as buying, selling, etc. But he should carry on business before he could be terminologically called a dealer within the meaning of section 2(g) of the Act. If a person, therefore, does not carry on business, he is not a dealer. It is in the perspective of this annotation of these two definitions that the facts in the present case have to be noticed.

The Tirumala Tirupati Devasthanam, besides being a charitable institution, is a Hindu institution of age-old antiquity, which has gained importance for the way in which the Devasthanam is functioning and propagating the Hindu religion and serving the needs of those who often visit the Hills for getting the darshan of the Lord. It is common knowledge, which can be taken judicial notice of, that the pilgrims, who visit Lord Venkateswara, pay their homage by submitting in the hundi kept in the temples their mite, and such collections, sometimes include

silver and other valuable articles. These hundi collections form an asset of the Devasthanam, which they utilise for the purpose of propagating the religion and for serving the various objects for which the Devasthanam has been founded, which I have already referred to. It therefore becomes necessary for the Devasthanam to convert such valuable metals which find their place in the hundi into cash, so that such cash may be utilised for the objects for which the institution has been founded and for which it is existing. It is with this sole and unambiguous object in view that the Devasthanam auctions such valuable metals such as silver, etc., at appointed places according to their discretion, and secure their money equivalent in public auctions held for the purpose. It is difficult to hold the view that in such cases, where the Devasthanam justifiably disposes off the metallic substances or metallic goods in their custody the same being the realisations in the hundi, either by private negotiation or by public auction, it could be said that the Devasthanam was doing a business or was indulging in a commercial activity, though not for a profit-motive. Business, which is intricately connected with commerce, is unknown to the Devasthanam, and it is impossible to conceive that while they dispose of their articles of silver, etc., found in the hundi, they were doing a business. Their object is something very different from doing business. Their objects are not only enumerated by the Legislature of the Andhra Pradesh State, but their accredited objects are more salutary and more important to the community and to the country than mere commercial activity as thought of by the respondent. In this view, the action of the respondent is absolutely illegal and without jurisdiction."

22. In Deputy Commissioner (C.T.) Vs. South India Textile Research Association, , the question was where an organisation established solely and exclusively for the purpose of carrying on research, purchases certain products, which are incidental to the said research, and then sells away the resultant product, whether such sales constitute trade or commerce and adverting to this aspect it was held as under :

"However, where an organisation is constituted solely and exclusively for the purpose of carrying on research, the purchase of products by the said organisation for the purpose of carrying on its research and the sale of the resulting products by the said organisation cannot be said to be in the nature of trade or commerce so as to bring it within the definition of the term "business" contained in section 2(d) of the Act."

23. In The Indian Institute of Technology Vs. The State of Uttar Pradesh and Another, , the Indian Institute of Technology, Kanpur was empowered under the Act of providing for instruction and research in various branches of engineering and technology, sciences and arts and was a residential institution where all students, research scholars and research fellows had to reside in the halls of residence and hostels constructed by the institution. One of the hostels also catered the needs of the visitors in the hostel where lodging and boarding facilities were provided to persons who came to the institution in connection with

the educational and academic activities of the institution. The institution had to supply foodstuffs to the inmates of the hostels as also incidentally to the relatives of the inmates and other persons who came and stayed in the hostel in connection with the activities of the institution. The charges for the foodstuffs were paid on the basis of fixed fee for tea, breakfast, lunch and dinner, which had no relationship to the actual quality or quantity of the foodstuffs consumed. So, the question was whether the institution was liable to sales tax for the supply of foodstuffs and it was held :

"It is clear that the petitioner (institution) is essentially a residential institution where all students, research scholars and research fellows have to reside in the halls of residence and hostels built by the Institute and, in that connection, it has to supply foodstuffs to the inmates of the hostels as also incidentally to the relatives of the inmates and other persons who come and stay in the hostel in connection with the activities of the Institute. It is further clear from annexure H to the writ petition that the charges for foodstuffs are paid to the petitioner on the basis of fixed fee for tea, breakfast, lunch and dinner, which has no relationship to the actual quality or quantity of the foodstuffs consumed. Accordingly, it cannot be said that the petitioner's principal activity is doing business in a commercial way of buying and selling foodstuffs. On the other hand, it is apparent that the principal activity of the petitioner is predominantly academic and the supply of foodstuffs in the manner stated above is minor, subsidiary and incidental to the principal activity and is an integral part of its academic activity. Consequently, the petitioner cannot be dubbed as a "dealer" within the meaning of section 2(c) of the U.P. Sales Tax Act. The Sales Tax Officer had accordingly no jurisdiction to initiate proceedings for levy of sales tax on the petitioner."

24. In Commissioner of Sales Tax Vs. Cutchi Dasha Oswal Mahajan Graha Udyog Committee, , a public charitable trust was established with the main object of ameliorating the living conditions of poor and destitute women of a particular community. In order to provide maintenance for the poor and distressed women of the community, who had no source of income, the institution employed them for preparing eatables, which were sold like any other articles in the market and not at a concessional rate or at cost price. The surplus resulting from the sales was utilised for extending its activities so that more destitute women of the community could get relief. So the question was whether the said trust was a "dealer" and it was held :

"The profits have resulted to the respondent in the course of carrying out an activity in direct furtherance of the main purpose of the trust. In these circumstances, the sale transactions, which resulted in these profits, must reasonably be regarded as incidental transactions and these transactions would not convert the activity of getting the eatables prepared and sold into a business activity."

The learned Judge also referred to the observations of the Supreme Court in

State of Andhra Pradesh v. Abdul Bakshi and Bros. [1964] 15 STC 644 :

"The observations of the Supreme Court in this decision show that 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. By the use of the expression "profit-motive", their Lordships have clarified, it was not intended that profit must in fact be earned. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity."

25. In Board of Trustees of the Visakhapatnam Port Trust v. Commercial Tax Officer [1979] 43 STC 36, a Division Bench of this Court was faced with the question whether the amounts realised by disposal of unserviceable or surplus material by the Visakhapatnam Port Trust will be liable to sales tax or not and held :

"It is obvious that it must first be found that a particular assessee under consideration is carrying on business and if the assessee is selling scrap materials, the items must have been acquired with the intention of carrying on business. In the instant case, it is not possible for us, in view of what has been discussed above, to hold that the Board of Trustees is carrying on any business or is a dealer and, therefore, it is not possible for us to hold that the sale of surplus material or sale of scrap amounts to carrying on any business and hence the amounts realised by disposal of unserviceable or surplus material by auction will not be liable to sales tax."

It may be stated here that the Visakhapatnam Port Trust was concerned with the activities of :

- (a) supply of water to visiting vessels;
- (b) bunkering of visiting vessels with liquid fuel;
- (c) offering of tender documents for a consideration to prospective contractors;
- (d) supply of water and issue of stores to accepted contractors;
- (e) supply of water and issue of stores to its own engineers and staff; and
- (f) disposal of unserviceable material or surplus material by auction or by inviting tenders.

On the above conspectus, the principles that could be deduced are :

- (a) If the main activity of a juristic person is business or commercial in nature, and in case the subsidiary activity which may not form the integral part of the main but nevertheless, such activity, different in nature, has the indicia of business or commerce, then that activity by itself would constitute a distinct business within the meaning of section 2(bbb) of the Act and would attract sales tax.

(b) If the dominant activity of an institution, like religious or charitable institution, is not of business activity, but if the secondary activity has the elements of commerce or trading activity, then in order to claim exemption from tax, it must be established that it forms the integral part of the main activity.

(c) However, if any religious or charitable institution has any distinct incidental activity which is in the nature of business or commerce and if there is no functional integrality with the main activity, then such business activity will be exigible to tax.

26. Now, bearing in mind the above principles, when we come to the incidental activity of the assessee-Devasthanam, viz., running of the canteen wherein eatables are sold to the pilgrims, it is clear that the main object of the assessee-Devasthanam is neither commercial nor trading in nature and secondly the running of a canteen for the supply of foodstuffs to the visiting pilgrims or devotees is to extend the facilities at reasonable prices, which has, in our judgment, the bearing of functional integrality and, therefore, though such activity by itself constitutes business activity but it must escape sales tax because of the second principle as enumerated above.

27. Coming to the second activity pertaining to disposal or sale of motor parts as scrap, it may be stated that the assessee-Devasthanam was running the motor vehicles for extending the transport facilities to the pilgrims at highly reasonable prices. In that process, it was inevitable that unserviceable motor parts have to be disposed of as scrap, as the retention would cause storage problem, unhygienic condition and so forth. Hence, that activity though in isolation may constitute a business activity, nevertheless in so far as the assessee-Devasthanam is concerned, it does partake the character of functional integrality and, therefore, the turnover on this, must be excluded from tax.

28. The third activity, which should not detain us long in answering, is the sale of human hair. The human hair that is offered by the pilgrims who visit the temple in fulfilment of their vow, is taken by the Devasthanam and the same is sold just as in case of scrap material. The accumulation of the same would cause difficulty in storing and also hazardous to the health. In this case, the Devasthanam disposes of the human hair periodically, which activity cannot by any stretch constitute as commercial. Hence, this item also cannot be held to be exigible to tax.

29. Resultantly, the contentions advanced on behalf of the revisionist are devoid of merits and the same are rejected. Consequently, the tax revision cases are dismissed. No costs. Advocate's fee Rs. 300 in each.

30. Petitions dismissed.