

(1993) 01 MAD CK 0068

In the Madras High Court

Case No : T.C. No. 1580 of 1981 (Revision No. 630 of 1981)

State of Tamil Nadu

APPELLANT

Vs

Parle Products (P.) Ltd.

RESPONDENT

Date of Decision : 07-01-1993

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1993) 01 MAD CK 0068

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader, for the Appellant; Janarthana Raja for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

Abdul Hadi, J.—The Revenue has preferred this revision against the order dated August 11, 1981 of the Tamil Nadu Sales Tax Appellate Tribunal, Second Additional Bench, Madras, in Tribunal Appeal No. 208 of 1981, setting aside the assessment made on the respondent-assessee, which was confirmed by the Appellate Assistant Commissioner, in relation to the assessment year 1973-74.

2. The assessee-respondent is Parle Products (P) Limited, 134, Thambu Chetty Street, Madras. It is not in dispute that the assessee's abovesaid office at Madras is a liaison office. Admittedly, Parle Products (Private) Limited carried on the business of manufacture and sale of Parle biscuits and confectioneries from its head office situated in Maharashtra and it sold the biscuits and confectioneries to several dealers, some of them were in the State of Tamil Nadu also. But, the question in the present case is not regarding those sales. On the other hand, the question is regarding the supplies of calendars to those dealers in Tamil Nadu, through the abovesaid liaison office (assessee) and at the instruction of the abovesaid head office at Bombay of Parle Products (Private) Limited. The actual question is whether those supplies are sales exigible to tax under the Tamil Nadu General Sales Tax Act for the assessment year 1973-74.

3. By the original common assessment order dated December 7, 1979 in relation to five assessment years, that is, 1973-74 to 1977-78 in respect of such supplies of calendars made in those assessment years, the assessing officer treated those supplies as sales exigible to tax under the Tamil Nadu General Sales Tax Act and assessed them to tax. But the Appellate Assistant Commissioner by his common order dated March 14, 1980, set aside the assessments for those five years and remanded the cases back to the assessing officer for fresh assessment. Accordingly, a fresh common assessment order was passed by the assessing officer by his order dated June 16, 1980 in respect of those five years, holding once again that the abovesaid supplies of calendars were sales exigible to tax under the Tamil Nadu General Sales Tax Act. The said assessments were also subsequently confirmed by the Appellate Assistant Commissioner by his common order dated October 27, 1980.

4. But, in the second appeal filed by the assessee before the Tribunal, the Tribunal by its common order dated August 11, 1981, has set aside the abovesaid assessment for the abovesaid five years, holding that those supplies were not sales. The Tribunal has even held that the assessee was not "doing business of sales of calendars in Tamil Nadu". It has also held that the assessee is not a dealer, within Tamil Nadu and that the incidental circulation of calendars in Tamil Nadu "cannot be taken as doing any business", making the assessee, a dealer "within Tamil Nadu".

5. As against this common order of the Tribunal in Tribunal Appeal Nos. 150, 151, 152, 184 and 208 of 1981, the Revenue has preferred this revision only with reference to one assessment year involved in T.A. No. 208 of 1981. In this revision petition, the said assessment year is stated to be 1973-74. Further, in the revision petition, all that is stated is, "the order of the Tribunal in so far as it related to the finding that the appellants are not a dealer within the State or Tamil Nadu is not correct and it requires revision on the following among other grounds". So, it appears the Revenue is only aggrieved by the finding of the Tribunal that the assessee is "not a dealer within the State of Tamil Nadu". However, on reading the questions of law raised for decision by this Court, as set out in the revision petition, it appears that the Revenue is aggrieved even with regard to the other findings of the Tribunal and with regard to the final conclusion reached by the Tribunal, holding that the abovesaid supplies, are not exigible to tax under the Tamil Nadu General Sales Tax Act. So, in this revision, we propose to deal with all the abovesaid findings and conclusions reached by the Tribunal. However, since the revision relates to the assessment year 1973-74 only, our conclusion reached here will only to the said assessment year.

6. The amount on which tax has been levied in respect of the abovesaid assessment year 1973-74 is Rs. 37,111 and short question is whether this amount could be treated as taxable turnover of the assessee as determined by the first two authorities and whether the Tribunal, in setting aside the said finding of the first two authorities, is correct.

7. The learned counsel for the Revenue refers to the decision in *Jenson & Nicholson (India) Ltd. v. State of Tamil Nadu* (1992) 13 SISC 1, but argues that the said decision would not apply to the present facts and that the facts therein being a little different, the said decision is distinguishable. There, the question was whether "charges received by the assessee for printing, packing, freight etc., of the calendars supplied to the distributors free of costs" could be charged to tax under the Tamil Nadu General Sales Tax Act and the Bench has held that those charges are only expenses for sale promotion and there is no "sale" with reference to those charges and that, therefore, not exigible to tax. On the other hand, the learned counsel for the respondent argues that the said decision squarely applies to the present case.

8. We shall first deal with the question whether there is sale in the present case, and then, also deal with the other aspects dealt with by the authorities below as to whether the assessee carried on "business" and whether it is a "dealer". As per the abovesaid order dated October 27, 1980 of the Appellate Assistant Commissioner, the assessee offered to its customers-dealers for placing orders for the supply of calendars and in turn, they placed their orders with the assessee, specifying the quantity they required, at the specific price per calendar (for example Re. 0.60 per calendar as per the value as on August 26, 1978), in the requisition forms, enclosing therein the demand draft or paying cash otherwise and that, therefore, there was contract for sale of calendars by the assessee to its abovesaid customers.

9. No doubt in this regard, the appeal grounds raised before the Appellate Assistant Commissioner appear to have stated that the abovesaid customers-dealers "paid 50 per cent of the cost (of the calendars) directly to the printer and the rest was paid by the head office (at Bombay), directly". However, in view of the abovesaid finding of the Appellate Assistant Commissioner that the amount was paid by the abovesaid customers to the assessee by way of demand draft or otherwise by cash, we have to take it that it has not been established that the amount was directly paid by the abovesaid customers to the printer. At any rate, whether the customers paid directly to the printer or the assessee, the decision on the question involved is not going to be altered, since the printer, even if he directly received the payment from the customers, the payment by the customers to the printer would only be payment on behalf of the assessee since admittedly the assessee only directed the printers to print the calendars and supplied them to the customers. Further, even on the footing that 50 per cent of the cost of the calendars alone was paid by the abovesaid customers, it cannot be said that there was no sale by the assessee to the customers of the said calendars. It is enough if there is a money consideration for the sale transaction and adequacy of the money consideration paid is immaterial, in view of the fact that what was paid in the present case is towards the cost of the calendars - though only 50 per cent thereof was paid by the customers, unlike in the decision cited above, where, what was paid was "for printing, packing, freight, etc., of the calendars supplied to the distributors free of cost". Therefore, we

have to conclude that the above cited decision turned very much on its peculiar facts and cannot be applied to the present facts, where it is found actually that 50 per cent of the cost of the calendar had been paid by the customer to the assessee. Therefore, we hold that the abovesaid amount of Rs. 37,111 represents the amount for which those calendars have been sold and accordingly represents "turnover" and also "taxable turnover" under the Tamil Nadu General Sales Tax Act. Therefore, the Tribunal erred in setting aside the assessment made by the assessing authority and confirmed by the first appellate authority. The Tribunal erred in not approaching the question in the proper perspective, but proceeded to discuss the question with confused and wrong ideas about the terms "business", "casual trader", "place of business", and "dealer" as per clauses (d), (e), (l) and (g) respectively of section 2 of the Tamil Nadu General Sales Tax Act.

10. The assessee, which is said to be liaison office of Parle Products (Private) Limited, is not a different entity from its head office at Bombay, which admittedly carried on "business" in the manufacture and sale of biscuits and confectioneries. While so it cannot be said that the assessee is not carrying on "business". It cannot also be said that the assessee is not carrying on "business" at Madras in relation to the abovesaid calendars. It is well-known that as per the definition of the term "business", u/s 2(d), the requirement of profit-motive or actual accrued of profit, is not necessary for "business". So, even though calendars are supplied at 50 per cent cost and thus without any profit-motive or any accrual of profit, the supply of calendars would constitute "business". Further, it is well-known that even an adventure or a solitary transaction could be "business". So, simply because the calendars were supplied only once in a year, that is, either in March or in December, the activity cannot be termed as not coming within the definition of the term "business". Further, even though, the abovesaid supplies of calendars were incidental to the main business of the assessee's head office at Bombay in biscuits and confectioneries, the supplies would constitute "business", since as per section 2(d)(ii) such transactions also would constitute "business". No doubt, the assessee cannot be termed as "casual trader" as has been held by the assessing officer and the first appellate authority, since the assessee has a fixed place of business in Madras also. In this connection, it must be noted that "placed of business" as defined u/s 2(1) would include even a place where a dealer keeps his books of account. It is in evidence in the present case that the assessee which is the liaison office at Madras, though not having other books of accounts, is keeping at Madras, registers showing the supply of calendars to its customers and the Appellate Assistant Commissioner has also found that there was no evidence to show that those books really belonged to Bombay head office as those registers from the year 1975, did "not bear evidence of production before the sales tax authorities of the other State".

11. The Tribunal has also erred in holding that the assessee is not a "dealer". As per section 2(g) even a local branch of a company situated outside the State would also come under the term "dealer". So, since admittedly the abovesaid

head office of the assessee was carrying on business of manufacturing and selling biscuits, etc., its local branch at Madras also would come within the definition of the term "dealer", even assuming it did not carry on business of sale of those biscuits, etc., in Tamil Nadu and it sold, only calendars in Tamil Nadu as stated above.

12. Therefore, the revision is allowed with costs, the order of the Tribunal in so far as it relates to the assessment year 1973-74, is set aside and the order of the assessing authority, as confirmed by the Appellate Assistant Commissioner, will stand restored.

This petition having been set down on this day, for being mentioned, in the presence of the said advocates, the court delivered the following judgment :

"Originally when the judgment was delivered on October 14, 1992, by oversight counsel fee was not specifically provided. Hence it is posted once again today. In the presence of both the counsel, counsel fee is fixed at Rs. 250."

13. Appeals allowed.