

(1984) 04 MAD CK 0046

In the Madras High Court

Case No : Tax Case No"s. 237 and 238 of 1978 (Revision No"s. 55 and 56 of 1978)

The Deputy Commissioner (C.T.), Coimbatore Division,
Coimbatore-2

APPELLANT

Vs

Cheran Transport Corporation Limited

RESPONDENT

Date of Decision : 03-04-1984

Acts Referred:

Citation : (1985) 59 STC 95

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader I, for the Appellant; C. Natarajan, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case is M/s. Cheran Transport Corporation Limited. It was assessed by the Deputy Commercial Tax

Officer, Pollachi East, on a taxable turnover of Rs. 1,07,426 for 1972-73 and by the Joint Commercial Tax Officer, Coimbatore Rural, on a

turnover of Rs. 11,06,061 for the year 1973-74. The assessments were questioned before the Appellate Assistant Commissioner concerned but

without success. Thereafter the matter was taken on appeal before the Sales Tax Appellate Tribunal. Before the Tribunal the assessee's main

contention was that it is not a dealer and that the sales which were subjected to tax were not incidental or ancillary to the transport operations

carried on by the assessee. It was not contended that their transactions were similar to those of the Andhra Pradesh Road Transport Corporation

which has been held by the High Court of Andhra Pradesh as not a dealer in Andhra Pradesh State Road Transport Corporation v. Commercial

Tax Officer [1971] 27 STC 42. The Tribunal, after considering the assessee's contention and after referring to the said decision of the Andhra

Pradesh High Court relied on by the assessee, held that the assessee is not liable to tax in respect of the sales of the various scrap items in both the

years, 1972-73 and 1973-74. Aggrieved by the said decision of the Tribunal the State has filed this revision petition.

2. It is seen from the assessment orders that for the assessment year 1972-73 the assessee had sold the following scrap items :

1. Condemned tyres and tubes Rs. 11,544.00 @ 3 1/2%

2. Waste wood 231.00

3. Empty gunny bags 246.00

4. Unserviceable iron materials omission 9,692.00

Omission 3,462.00

5. Waste oil 495.00

6. Empty barrels 15,161.00

7. Omission 65.00

8. Tender forms 135.00

9. Wooden cases 145.00

10. Waste tickets 181.00

11. Waste mud 13.00

12. Canteen sales 62,061.00

13. Cocoanuts 135.00 (exempt)

14. Second sales of radios 75,620.00

15. Second sales of tyres 1,459.00

Total turnover 1,84,640.00

Less Exemption 77,214.00

Taxable turnover determined 1,07,426.00

For the year 1973-74 the scrap items sold were as follows :

1. Empty barrels with waste oil 34,295.00
2. Wooden pieces 4 boxes 2,332.84
3. Old batteries 11,606.90
4. Tender forms 380.00
5. Brakelining and fan belts (old) 402.00
6. Tarpaulin and rexins 261.00
7. Spring plates (condemned) 12,796.15
8. Aluminium scraps 7,125.80
9. Gunny bags 2,602.90
10. Iron scraps 10,200.00
11. G.I. sheets 2,975.99
12. Paint tins 540.00
13. Tyres, tubes, flaps (old) 1,88,099.51
14. Waste papers 4,933.65
15. G.I. break drums (condemned) 3,585.69
16. Unclaimed articles 22.25
17. Second sales of radios and transistors 4,146.00
18. Canteen sales 83,795.61
19. Sales of old unserviceable buses 92,799.00
20. Machineries transferred to Cheran
Engineering Corporation Private Ltd. 7,31,915.14

Total turnover 11,94,003.04

DEDUCTION ALLOWED :

Second sales of radios and transistors 4,146.00

Canteen sales 83,395.61

87,941.61

Taxable turnover 11,06,061.00

This said turnover relating to the sales of scrap items was brought to charge by the assessing authorities on the basis of the decision of the Supreme Court in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, . The Tribunal, relying on the decision of the Andhra Pradesh High Court in *Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer* [1971] 27 STC 42 and the decision of this Court in *State of Madras v. Trustees of the Port of Madras* [1974] 34 STC 135, has held that the assessee not being a dealer its sale of the scrap cannot be treated as ancillary or incidental to the business of transport carried on by the assessee. In *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, the Supreme Court had held that whatever might have been the position before, after the amendment of the definition of "business" in 1964 in section 2(d) of the Tamil Nadu General Sales Tax Act, any transaction which is incidental or ancillary to the trade or commerce even when there was no profit-motive is liable to be taxed. The judgment of the Supreme Court in that case was rested on the second limb of the definition in connection with or incidental or ancillary to such trade, commerce, manufacture or any adventure or concern. In *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, the Supreme Court, while dealing with the question as to whether the sales of unserviceable materials and scrap of the Northern Railway, Jodhpur, were exigible to sales tax, held that even the first limb of the amended definition of "business" will make the sale of unserviceable materials as part of the business of the assessee, the Northern Railway Jodhpur. The Court also held that the definition of "dealer" also takes in a Central or State Government or any of their departments, and therefore, the Northern Railway, Jodhpur, which is run by the Central Government should be taken to be a dealer and the sale of unserviceable articles by it should be taken to fall within the expression "business" as amended by Act 9 of 1965 amending section 2 of the Rajasthan Sales Tax Act, 1954. In *State of Tamil Nadu Vs. Binny Ltd., Madras*, the Supreme Court reiterated the principle laid down in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, . In that case the activity

of selling provisions to the workmen of the assessee carrying on business of manufacture and sale of textiles in the stores maintained by it was held

incidental to the business of manufacture of textiles and that such sales were transactions falling within the definition of "business" in section 2(d)(iii)

of the Tamil Nadu General Sales Tax Act and therefore, the assessee carried on business of selling provisions in the stores and those sales

attracted the liability to tax under the Act as amended in 1964. Thus the Supreme Court has been taking a consistent view that if the assessee is

carrying on a business, any sale ancillary or incidental to the business effected by him in the course of carrying on of that business is liable to be

taxed. However, the Andhra Pradesh High Court has taken the view in Andhra Pradesh State Road Transport Corporation v. Commercial Tax

Officer [1971] 27 STC 42 that since the Andhra Pradesh State Road Transport Corporation is not a dealer, its sale of scrapped vehicles, old

tyres, old containers and other unserviceable materials effected was not liable to be assessed, that the Andhra Pradesh State Road Transport

Corporation is primarily constituted for operating an efficient road transport service and it could not be held to be carrying on business of selling

discarded materials which have come into its possession in the course of its activities and therefore it could not be assessed to sales tax. In State of

Madras v. Trustees of the Port of Madras [1974] 34 STC 135 a similar view has been taken by this Court. In that case the Port Trust which sold

unclaimed and unserviceable articles through auctioneers and the turnover relating to such sales was held to be not taxable on the ground that the

Port Trust had not effect the sales in the course of a business activity or with a profit-motive, and therefore, it was not taxable. The Court observed

that the Port Trust is a statutory body constituted by the Madras Port Trust Act, 1905 and though it is subject to certain control by the Central

Government under the provisions of that Act, it cannot be said to be a department of the Central Government and therefore, the Port Trust cannot

be treated as a dealer, unless it carries on the business of buying and selling. In that case the decision of the Andhra Pradesh High Court in Andhra

Pradesh State Road Transport Corporation v. Commercial Tax Officer [1971] 27 STC 42 was referred to. In Board of Trustees of

Visakhapatnam Port Trust v. Commercial Tax Officer [1979] 43 STC 36 the earlier decision of the Andhra Pradesh High Court in Andhra

Pradesh State Road Transport Corporation v. Commercial Tax Officer [1971] 27 STC 42 has been affirmed and it has been held that the Port

Trust. Visakhapatnam, was not a dealer within the meaning of section 2(e) of the Andhra Pradesh General Sales Tax Act, 1957 and therefore, the

Port Trust is not liable to pay sales tax as none of the activities of the Port Trust such as disposal of unserviceable or surplus materials by auction

amounted to carrying on business either under its constitution or as defined in section 2(1)(bbb) of the said Act. The same view has been taken by

the Orissa High Court in State of Orissa v. Orissa Road Transport Co. Ltd. [1983] 53 STC 329. There the Orissa Road Transport Company,

engaged in transport business had sold some unutilised spare parts from its stores when it found that there was no demand for the same for its

vehicles. When those transactions were brought to charge it was resisted by the company contending that it was not a dealer and there was no

scope for raising any tax demand on it. The Orissa High Court took the view that the assessee's main business was running of buses and providing

transport facilities to the travelling public and though one of the objects related to disposal of its own discarded parts, that certainly was only an

annual event and the assessee did not devote its time and attention for the purpose of having the transactions of disposal of spares and scrap and

therefore, the transaction relating to disposal of scrap (and) new parts which were no more necessary for the business of the assessee did not

constitute business and the assessee could not be treated as a dealer in respect of such transactions. The question is whether the Tribunal is right in

holding that the assessee is not a dealer and therefore its ancillary transaction of sale of scrap and unnecessary materials could be held to be not

taxable.

3. As already pointed out in The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and

Another, the Supreme Court has held that the Railway whose main object is to provide transport facilities for the public was dealer and that the

sale of its scrap materials will come within the first limb of the definition of ""business"". That being a decision of the Supreme Court it has to be given

its due weight. It is no doubt true in that case the Railway being a department of the Central Government was taken to come within explanation 2 in

section 2(g) (sic) defining "dealer". In this case the assessee-Corporation though not a department of the Government it will come within the expression "company" occurring in explanation (2) to section 2(g). It cannot be disputed that the assessee is a company registered under the Companies Act. Therefore the assessee will automatically come within the inclusive definition of "dealer" even though it may not carry on the business of buying and selling as contemplated by section 2(g). It is not in dispute that the memorandum of association of the assessee-Corporation enables it to carry on the business of buying and selling. Therefore the principle laid down by the Supreme Court in *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, squarely applies to the facts of this case. The decision relied on by the Tribunal are in conflict with the said decision of the Supreme Court and as such they cannot govern the case. Therefore, following the decision of the Supreme Court in *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, we hold that the assessee is a dealer u/s 2(g) of the Tamil Nadu General Sales Tax Act and therefore, its transactions of sales of unserviceable or excessive material are liable to be taxed, as per the decision of the Supreme Court in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*, .

4. The learned counsel for the assessee then contends that even assuming that the sales of unserviceable and scrap materials are liable to be taxed as held by us, still the assessing authority was not justified in assessing the sum of Rs. 7,31,915.15 representing the value of the machineries transferred to Cheran Engineering Corporation Private Ltd. by the assessee. The learned counsel contends that if part of the business is transferred the same is not liable to be taxed under the provisions of the Act. The Tribunal, dealing with this aspect of the case has found that the sum of Rs. 7,31,915.15 is a turnover relating to the machinery transferred to Cheran Engineering Corporation and that the transfer came to be made because the assessee closed down the engineering workshop and transferred the assets of that workshop to a newly formed Corporation and therefore, the said transfer of assets arising out of the closing down of a portion of the business of the assessee cannot be treated as a sale at all in the course of

its business. It has been held in *Monsanto Chemicals of India (P.) Ltd. v. State of Tamil Nadu* [1982] 51 STC 278 that if a person is carrying on

several lines of business and if there was a sale of one line of business as a whole, then the assessee will not be liable to be taxed either on the

general principle that there was no sale in the course of business as closure of a line of business could not be incidental or ancillary to its carrying on

or on the alternative basis of application of rule 6(d) of the Tamil Nadu General Sales Tax Rules which provides that all amounts realised by a

dealer by the sale of his business as a whole will not form part of the taxable turnover of a dealer. In this case the assessing is not only carrying on

business in transport but was also carrying on a workshop. But it decided to close down the workshop and transfer it to another Corporation.

Therefore the amounts for which the workshop was transferred will not form part of the taxable turnover. Hence the assessee will not be liable to

pay tax on the said sum of Rs. 7,31,915.15 which represents the value of the articles transferred to another company as a result of the closing

down of the workshop of the assessee.

5. The results is the tax cases are partly allowed to the extent indicated above. There will, however, be no order as to costs.