

(1968) 06 GUJ CK 0002
In the Gujarat High Court
Case No : Sales Tax Reference No. 2 of 1965

The State of Gujarat

APPELLANT

Vs

Surat Panjarapole

RESPONDENT

Date of Decision : 17-06-1968

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2(11), 22, 52, 61

Citation : (1969) 23 STC 57

Hon'ble Judges : R.B. Mehta, J; B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, -General and H.V. Chhatrapati, instructed by Bhaishanker Kanga and Girdharlal, for the Appellant; K.S. Nanavati, for I.M. Nanavati, for the Respondent

Judgement

Mehta, J.—This reference u/s 34 of the Bombay Sales Tax Act, 1953, and u/s 61 of the Bombay Sales Tax Act, 1959, raises two questions as under :

(1) Whether on the facts and in the circumstances of the case the opponent is a dealer within the meaning of section 2(11) of the Bombay Sales Tax Act, 1959, and if so, whether it is not liable for registration u/s 22 of the said Act ?

(2) Whether on the facts and in the circumstances of the case the sales by the opponent of carcasses of animals, meaning cotton, milk and dung as fertilizer are liable to tax under the Bombay Sales Tax Act, 1959 ?

2. The short facts which have given rise to these two questions are as under :

The opponent, namely, Shri Surat Panjarapole is a public charitable institution which was founded in or about 1796 A.D. with the object of keeping and preserving the lives of stray dogs, stray cattle and other stray animals. In 1950, the trustees had entered into an agreement with the Government of Bombay for breeding pedigree cattle. Even after the scheme was abandoned by the Government of Bombay, the opponent continued to maintain the pedigree cattle farm. The Panjarapole had applied for registration under the Bombay Sales Tax

Act, 1953, and a registration certificate was issued to it and from the year 1953 till 1959 it was assessed as such. After the Act of 1959 it applied for registration under the latter Act and a registration certificate was issued to it. The opponent had agricultural lands which it cultivated personally through its servants. Cotton grown on these lands had been sold. The opponent gave contracts for removal of carcasses of animals dying in the institution at billed price. The institution also sold unginned cotton grown on the land, milk from the pedigree cattle and the dung for use as fertilizer. The opponent had given two applications under the two Acts-under section 27 of the Act of 1953 and u/s 52 of the Act of 1959 - for determining the relevant questions as to its being a dealer and as to its liability to pay sales tax on these items. In both these applications the learned Deputy Commissioner of Sales Tax by the order, dated 26th March, 1963, held that the opponent was a dealer and was liable for registration as and when the turnover exceeded the prescribed limit and it was estopped after registration from denying that it was a dealer. It was further held that it was liable to pay tax on these various items. In the two appeals against the said two orders the Tribunal held that the opponent was not a dealer and it was not liable for registration subject to the reservation it had made that its order would not apply to transactions made prior to the date of the judgment. The Tribunal further held that the sales of these items could not be taxed under the two Acts subject to the same reservation. The Tribunal has thereafter made the reference stating the aforesaid two questions under both the Acts in identical terms.

3. u/s 2(6) of the Act of 1953 a "dealer" is defined as any person who carries on the business of selling or buying goods in the pre-reorganisation State of Bombay, excluding the transferred territories, whether for commission, remuneration or otherwise ... The exception provides that an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause. Similarly, under the Act of 1959, section 2(11) defines a dealer to mean any person who whether for Commission, remuneration or otherwise carries on the business of buying or selling goods in the State ... The same exception is provided that an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally shall not be deemed to be a dealer within the meaning of this clause. Thus, in both the definitions of the term "dealer", a person must be carrying on the business of buying or selling goods in the State. Therefore, it is not sufficient that mere buying or selling of goods is done in the State. It must be further shown that the person carries on the business of buying or selling the goods in the State. The essential character of the activity must be a business activity. Mere buying or seeking of goods otherwise than in the course of a business activity would not constitute a person who buys or sells goods a dealer. In *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 S.T.C. 1. their Lordships of the Supreme Court followed the earlier decision in *The State of Andhra Pradesh v. Abdul Bakshi and Bros.* [1964] 15 S.T.C. 644. and held at page 5 that to be a dealer a person must be engaged in the business of buying

or selling or supplying goods. The expression "business" though extensively used in taxing statutes, 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 all activity as business there must be a course of dealings, either actually contained or contemplated to be contained with a profit-motive, and not for sport or pleasure. By the use of the expression "profit-motive", their Lordships clarified at page 6 that 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. At page 7 their Lordships pointed out that the question is one of intention to carry on business of selling any particular class of goods. Undoubtedly, from the frequency, volume, continuity and regularity of transactions carried on with a profit-motive, an inference that it was intended to carry on business in the commodity may arise. But it does not arise merely because the price received by sale of discarded goods enters the accounts of the trader and may on an overall view enhance his total profit, or indirectly reduce the cost of production of goods in the business of selling in which he is engaged. An attempt to realise price by sale of surplus unserviceable or discarded goods does not necessarily lead to an inference that business is intended to be carried on in those goods, and the fact that unserviceable goods are sold and not stored so that badly needed space is available for the business of the assessee also does not lead to the inference that business is intended to be carried on in selling those goods. In *Director of Supplies and Disposals, Calcutta v. Member, Board of Revenue, West Bangle, Calcutta*, [1967] 20 S.T.C. 398., their Lordships of the Supreme Court again reiterated the observations in *State of Andhra Pradesh v. H Abdul Bakshi* [1964] 15 S.T.C. 644. that in taxing statutes the word "business" 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. In that case the Director of Supplies and Disposals had disposed of surplus goods purchased on behalf of the Government of India on the conclusion of the last war and for that purpose he had put in a series of transactions with the help of one separate organisation. The question had arisen whether the Director of Supplies and Disposals carried on a business of selling goods and was a dealer. The majority view of Sikri and Ramaswami, JJ., was that the Director was not carrying on the business of buying or selling goods. He was not selling surplus goods for profit but he was merely disposing of the surplus material by way of realisation and the transactions were, therefore, not taxable as sales under the Act. At page 405 in the majority decision it was pointed out 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; there must be some real and systematic or organised course of activity or conduct with a set purpose of making profit. To infer from a course of transactions that it is intended thereby to carry on business, ordinarily there must exist the characteristics of volume, frequency, continuity and system indicating an Intention to continue the activity or carrying on the transactions for a profit. Their Lordships pointed out that no

single test or group of tests was decisive of the intention to carry on the business. It must be decided in the circumstances of each particular case.

4. From this settled legal position it is clear that in order to find out what is business, the term will have to be construed in the State sales tax legislation in its ordinary restrictive meaning by considering the essential nature of the activity. In the present case, the institution before us is a Panjarapole institution and admittedly, its object, as stated in the indenture dated 21st October, 1896, which was made after 100 years is that the institution was established for the purpose of keeping and preserving the lives of stray dogs, stray cattle and other stray animals. The institution is actuated entirely by charitable or religious or philanthropic motive of non-violence by preserving the lives of those voiceless animals. It is this essential activity whose stamp is borne on all the sales which are in dispute before us, except probably the agricultural activity of growing cotton on the lands. The question which has been referred to us is as regards the sales of the milk, dung used as fertilizer and carcasses of dead animals dying in the institution. These animals are brought and kept in the institution to save their lives out of the charitable motive underlying this institution. When these animals die their carcasses have got to be disposed of. Milk from these animals is sold but that does not make it a business activity. The learned Advocate-General emphasised the aspect that this institution had at some stage worked under the Government scheme of breeding pedigree cattle which was subsequently abandoned and still pedigree cattle were continued. Even if the pedigree cattle have been continued in this institution, it cannot be said that the essential character of the activity of this institution which consists of preservation of lives of these voiceless animals has undergone any change. It was in the course of carrying out the purpose of this institution that such animals were kept and incidentally the institution sold these animal products like milk, carcasses of dead bodies and the cow-dung as a fertilizer. The mere sale of these items which would be merely an incidental activity can never amount to a business activity carried on with a profit-motive which would change the essential character of the philanthropic activity or charitable activity of this institution so as to convert it into a business activity. As regards the last item of unginned cotton, the case clearly comes within the exception under both the Acts as per the definition of the term "dealer" as admittedly cotton which is sold is grown on lands of the institution by personal cultivation through servants. Therefore, in respect of the sales of these commodities it has not been established that the Panjarapole institution carried on any business of selling these items. The learned Advocate-General had also relied upon the fact that the balance sheet disclosed the sales at least to the extent of Rs. 60,000 a year right from 1953 to 1959. The learned Advocate-General, therefore, argued that the frequency of sales must be taken into account and it must be held that the sales had grown to such a proportion that a business activity had set in. We cannot agree with this contention of the learned Advocate General for the simple reason that the essential character of this institution is one of maintaining animals to save the lives of these

voiceless animals and it does not carry on any business activity with any profit-motive and merely because incidental sales are done of the animal products, it could not be considered as carrying oil business of selling these goods.

5. In the result the answer to the questions referred to us are as under :-

As regards question (1) our answer to the first part is in the negative, i.e., the opponent-institution is not a dealer. The second part of the first question, therefore, does not arise for our consideration.

6. As regards the second question or answer is in the negative, i.e., that such sales are not liable to tax under either of the two Acts.

7. We dispose of this reference accordingly. The State shall pay the costs of this reference to the assessee.

8. Reference answered accordingly.