
(1973) 06 MAD CK 0009

In the Madras High Court

Case No : Tax Case No. 330 of 1969 and Revision No. 205 of 1969

The State of Tamil Nadu

APPELLANT

Vs

Indian Express (Madurai) Limited

RESPONDENT

Date of Decision : 27-06-1973

Acts Referred:

Citation : (1974) 34 STC 231

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader Tax, for the Appellant; A.R. Ramanathan and P. Vedavalli, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—In the assessment year 1965-66, the assessees in this case sold unsold newspapers and other waste for a turnover of Rs.4,57,747.29. The assessing authority treated the said turnover as taxable and brought it to charge under the Madras General Sales Tax Act, 1959. That was questioned by the assessees before the Appellate Assistant Commissioner, but without success. There was a further appeal to the Tribunal. The Tribunal held that the sale of unsold newspapers and other unserviceable articles as waste or scrap by the assessees could not be treated as sales in the course of their business, and, in that view, it set aside the assessment on the said turnover. Aggrieved against the decision of the Tribunal the State has filed this revision.

2. It is contended on behalf of the State that the sales in question of unsold newspapers and other unserviceable materials are clearly connected with the main business of the assessees, which is one of publication and sale of newspapers, that whatever might have been the position before, after the amendment of the definition of "business" by Madras Act 15 of 1964, which came into force on 1st September, 1964, the transactions in question will clearly fall within the charging section and that the view taken by the Tribunal that the assessees are not carrying on business in unsold newspapers or other waste,

that unsold newspaper is not a by-product and that such transactions could not be taken as sales effected by the assesseees in the course of their business, is not legally tenable. The learned Government Pleader also brings to our notice the application filed by the assesseees before the registering authority for registering themselves as dealers under the Madras General Sales Tax Act for the year 1965-66. In that application the assesseees have claimed that they are carrying on business in: (1) old newspapers unsold, (2) waste, (3) reel ends, (4) cores, (5) kachada, (6) jelly.

3. On the basis of this application submitted by the assesseees, they were registered as dealers in those articles. It is pointed out by the revenue that, in the face of the said application for registration, wherein the assesseees themselves have claimed to be carrying on business in unsold newspapers and waste, it is not open to the Tribunal to hold that the assesseees are not doing business in those commodities.

4. On a due consideration of the matter, we are inclined to agree with the contention advanced by the State. Obviously, the Tribunal has overlooked the aspect that the assesseees themselves have applied voluntarily for registration under the Madras General Sales Tax Act as dealers in unsold newspapers and other waste. If this fact had been taken note of by the Tribunal, we are sure that it would not have held that the assesseees are not dealers in unsold newspapers or other waste. The learned Counsel for the assesseees would, however, contend that the mere fact that the assesseees applied for and got themselves registered as dealers in unsold newspapers and other waste products will not make them dealers in those goods, for the main business of the assesseees is only printing, publishing and sale of newspapers. Though the learned Counsel may be right in contending that the main and substantial business of the assesseees is only printing, publishing and sale of newspapers, still it will not rule out the possibility of the assesseees carrying on the incidental or ancillary business in other products, which have been acquired in connection with their main business but, subsequently, became useless and unserviceable. It is not in dispute that paper was acquired by the assesseees for the purpose of carrying on their business of printing, publishing and sale of newspapers. In the course of such business, if the paper procured by them or the newspapers published by them remain unused or unsold, as the case may be, they will be regularly selling those articles for the best possible price. In such circumstances, it is not possible to hold that the sale effected by the assesseees of unsold newspapers and other waste products is not connected with their main business.

5. The learned Counsel for the assesseees also points out that the unsold newspaper is not a by-product, and that the view taken by the Tribunal that the sale of such unsold newspaper, which is not a by-product, cannot be brought to charge is right. We are not concerned here strictly with the question whether unsold newspaper is a by-product. We are concerned here only with the question whether the article sold by the assesseees as waste in the assessment year in

question can be said to be connected with their main business or ancillary business mentioned by them in their application for registration, as dealers, which they themselves voluntarily submitted. It is true that some of the earlier decisions rendered by this court and some other courts have held that the transactions of this kind cannot be brought to charge, unless it is established that the seller intended to do business in the articles sold. With a view to get over the effect of those decisions, the definition of business has been amended by Madras Act 15 of 1964. While dealing with the scope of the amended definition, the Supreme Court in a recent decision in *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Company of India Limited* [1973] 31 S.T.C. 426 has held that though before the amendment of the definition of "business" in 1964, transactions which were incidental or ancillary to the assessee's main trade or business were not liable to tax where there was no profit-motive, transactions of sale effected after the said amendment will be liable to tax, if they were incidental or ancillary to, or connected with, the main business. As a matter of fact, in that case, the sale of certain articles of scrap such as unserviceable oil drums, rubber hoses, jerry cans, rims, unserviceable pipe fittings and old furniture sold by the assessee, which was a company dealing in petroleum products, was held to be taxable under the Madras General Sales Tax Act for the reason that the scraps were connected with the business of the assessee. Following the principle laid down in the above case, we hold that the transactions in this case are liable to tax. In this view, the order of the Tribunal is set aside, and the tax case is allowed with costs. Counsel's fee Rs. 150.