

(1977) 12 MAD CK 0014
In the Madras High Court
Case No : Tax Case No. 305 of 1975

The State of Tamil Nadu

APPELLANT

Vs

Mettur Beardsell Ltd.

RESPONDENT

Date of Decision : 31-12-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 17, 38

Citation : (1978) ILR (Mad) 133 : (1978) 42 STC 75

Hon'ble Judges : P. Govindan Nair, C.J.;Varadarajan, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; K.J. Chandran, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Final Decision : Allowed

Judgement

Varadarajan, J.—This tax revision case has been filed by the revenue u/s 38 of the Tamil Nadu General Sales Tax Act against the order dated 8th October, 1974, of the Sales Tax Appellate Tribunal, Madras, made in T.A. No. 522 of 1974.

2. The assessee, a public limited company, is a dealer in air-conditioners, chemicals, etc., having its head office at Madras and a branch office at Coimbatore. The assessee undertakes even the erection of air-conditioning plants and thermocol false ceiling On works contract basis. For the assessment year 1969-70, the assessee returned in form A-2 a total and taxable turnover of Rs. 4,87,23,733.10 and Rs. 35,41,643.80 respectively for its head office and branch office, claiming exemption under various heads on a turnover of Rs. 4,51,82,079.30. After a final check of accounts, the assessing officer proposed to allow exemption on a turnover of Rs. 4,33,92,691.69 in respect of the head office and Rs. 17,85,165.32 in respect of the branch office, totalling Rs. 4,51,77,857.01 and ascertained the proposed taxable turnover as Rs. 35,65,984.08 for both the head office and the branch office. After considering the assessee's objections, the assessing officer allowed exemption on a turnover of Rs. 4,33,92,691.69 in respect of the head office and Rs. 18,17,940.46 in respect

of the branch office, totalling Rs. 4,52,10,632.15 and determined the taxable turnover in respect of both the head office and the branch office as Rs. 35,33,208.94. Subsequently, the assessing officer noticed that sales turnover to the extent of Rs. 1,51,727.00 inclusive of canteen sales turnover of Rs. 1,09,619.00 had escaped assessment and he proposed to levy tax thereon at 3 per cent and issued the necessary notice calling upon the assessee to file its objections. The assessing officer considered the assessee's objections and confirmed his proposal to levy tax at 3 per cent on the canteen sales of Rs. 1,09,619.00 u/s 16 of the Tamil Nadu General Sales Tax Act on the ground that the assessee had not proved that it had subsidised 25 per cent of the total expenses of running the canteen and issued a demand notice.

3. In the assessee's appeal to the Appellate Assistant Commissioner it was contended that the assessing officer had no jurisdiction to revise the assessment order u/s 16 of the Tamil Nadu General Sales Tax Act and that canteen sales were not exigible to tax. The Appellate Assistant Commissioner rejected the contention of the assessee and confirmed the order of the assessing officer.

4. In the assessee's further appeal to the Tribunal it was contended that even during the original assessment the turnover relating to canteen sales was noticed and excluded by the assessing officer and that there was no escape of turnover for resorting to reassessment u/s 16 of the Act. The Tribunal rejected that contention and held that the assessing officer had jurisdiction u/s 16 to levy tax on the turnover which had originally escaped assessment. On the other question of the assessee being entitled to exemption on the canteen sales, the Tribunal purported to follow the decision of this court in *India Cements Employees' Canteen v. Deputy Commercial Tax Officer, Tirunelveli Junction* Page 79 *infra* (Writ Petitions Nos. 990 of 1968 and 472 and 473 of 1969) and held that in the case of canteens run by the employer himself, as in the present case, the question of subsidising to the extent of 25 per cent of the total expenses incurred in the normal running of the canteen does not arise and allowed the appeal as regards the canteen turnover of Rs. 1,09,619.00.

5. The learned counsel for the assessee did not advance any argument before us regarding the jurisdiction of the assessing officer u/s 16 of the Act to determine to his best judgment the turnover which had escaped assessment and assess the tax payable on such turnover where for any reason the whole or any part of the turnover of business of a dealer had escaped assessment to tax. Therefore, we do not propose to deal with the question of jurisdiction.

6. The canteen sales involved in the decision of Ramaprasada Rao, J., in *India Cements Employees' Canteen v. Deputy Commercial Tax Officer, Tirunelveli Junction* Page 79 *infra* (W.P. Nos. 990 of 1968 and 472 and 473 of 1969) were sales effected in the canteen run by the employees in a factory and not by the employer, which is the case before us. Though the writ petitioner expressly sought exemption under G.O. Ms. No. 2238 (Revenue) dated 1st September, 1964, there was no investigation by the assessing officer in the case which came

up before Ramaprasada Rao, J., whether the requirements of that order were satisfied or not. That G.O., issued in exercising powers u/s 17,

exempts with effect on and from 1st September, 1964, the tax payable under the said Act on the sales by all canteens run by an employer or by the employees on co-operative basis on behalf of the employer under a statutory obligation, without profit-motive, provided that the employer subsidises at least 25 per cent of the total expenses incurred in running the canteen.

7. Ramaprasada Rao, J., has observed in his judgment that the G.O.

has several limbs on the proof of which only the dealer concerned could secure an exemption under it. Firstly, the canteen should be run by an employer himself. In that case, there is no difficulty at all. Secondly, such a canteen may be run by its employees on a co-operative basis on behalf of the employer, who is under a statutory obligation to maintain such a canteen, provided however such a canteen is run without profit-motive and provided also that the employer subsidises at least twenty-five per cent of the total expenses incurred in the normal running of the canteen.

8. The learned Judge only remanded the matter to the assessing authority for re-examining the material already on record and ascertaining whether infra. the writ petitioner is entitled to the exemption and has not decided that the question of the employer subsidising at least 25 per cent of the total expenses in running the canteen does not arise in the case of a canteen run by an employer under a statutory obligation without profit-motive. But a Division Bench of this Court has held in *State of Tamil Nadu v. English Electric Company of India Ltd.* [1977] 39 S.T.C. 50, that the view of the Appellate Assistant Commissioner in that case that the G.O. referred to above will not apply to sales in the canteen run by the employer is erroneous and that it will apply even to sales in a canteen run by the employer provided that the canteen was run under a statutory obligation without profit-motive and the employer subsidises at least 25 per cent of the total expenses of running the canteen. The learned Judges found that the condition was satisfied in that case and that the canteen sales were exempted from sales tax. With respect, we follow that decision and hold that the condition regarding the necessity for the employer subsidising at least 25 per cent of the total expenses of running the canteen has to be satisfied even in respect of a canteen run by the employer himself, as in the present case, under a statutory obligation without a profit-motive to become eligible for the exemption granted by the said Government Order.

9. In the present case, there is no dispute that the canteen is run by the employer under a statutory obligation and that there is no profit-motive. The question for consideration is whether the assessee had subsidised in the relevant year at least 25 per cent of the total expenses of running the canteen and is entitled to the exemption claimed. The assessing officer had found that the dealer has not proved that it had subsidised 25 per cent of the expenses of

running the canteen. The assessee had contended in the memorandum of grounds of appeal before the Appellate Assistant Commissioner that the assessing officer erred in holding that there is no subsidy to the extent of 25 per cent of the expenses of running the canteen and, therefore, the sales in the canteen were exigible to tax. It was further contended in the memorandum of grounds of appeal that the canteen itself was run by the assessee and, therefore, the entire expenses were subsidised and the computation of 25 per cent subsidy made by the assessing officer is not correct. The Appellate Assistant Commissioner had not dealt with this question of subsidy. Perhaps it was not pressed before him. But following the Supreme Court's decision in the *Burmah Shell Company's* case [1973] 31 S.T.C. 426, the Appellate Assistant Commissioner upheld the order of the assessing officer refusing exemption. Before the Tribunal it was contended by the assessee that the lower authorities were not justified in adopting the provisions of the Government Order dated 1st September, 1964, regarding subsidy to the canteen run by the management and that computation of the 25 per cent was also not proper. It does not appear to have been contended for the assessee before the Appellate Assistant Commissioner and the Tribunal that the assessing officer was wrong in holding that there was no proof that the assessee subsidised at least 25 per cent of the expenses incurred for running the canteen. What had been contended before them appears to be that the canteen itself is being run by the assessee-employer and, therefore, there is no question of the employer being obliged to subsidise 25 per cent of the total expenses of running the canteen. The G.O. contemplates the running of the canteen either by the employer or by the employees on a co-operative basis on behalf of the employer under a statutory obligation, without profit-motive. That being so, the employer running the canteen without profit-motive is obliged to subsidise at least 25 per cent of the total expenses incurred in running the canteen in order to become entitled to the exemption contemplated by the G.O. The assessing officer has found that this requirement has not been proved by the assessee. The finding has not been disturbed either by the Appellate Assistant Commissioner or by the Tribunal. There is, therefore, no need for any further investigation of that question by any remand. We find that the assessee has not proved this requirement, namely, that it had subsidised at least 25 per cent of the total expenses incurred in running the canteen in the relevant year and hold that the assessee is not entitled to the exemption. The Tribunal decided erroneously the question of law.

10. Accordingly, we allow the revision petition, set aside the Tribunal's order and restore the order of the Appellate Assistant Commissioner. The assessee will pay the revenue's costs of this appeal. Advocate's fee Rs. 250.

11. The conclusion reached in this case will not preclude the assessee from establishing in subsequent years by necessary proof that there is really 25 per cent subsidy.