(1976) 11 MAD CK 0039

In the Madras High Court

Case No : Tax Case No. 199 of 1972 (Revision No. 173 of 1972)

The State of Tamil Nadu APPELLANT

Vs

The Hindu RESPONDENT

Date of Decision : 04-11-1976

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 38

Citation : (1978) 41 STC 105

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant; A.R. Ramanathan, for the Respondent

Final Decision : Allowed

Judgement

Ismail, J.—This is a petition filed by the State u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, to revise the order of the Sales Tax

Appellate Tribunal dated 29th November, 1971. The assessment year is 1968-69. The turnover which was disputed before the Sales Tax

Appellate Tribunal was Rs. 6,40,556.61 and the turnover which is the subject-matter of this tax revision case is the amount of Rs. 6,24,373.30

made up of (1) a sum of Rs. 37,209.20 representing the turnover relating to the sale of glazed newsprint and (2) Rs. 5,87,164.10 representing the

turnover relating to the sale of old newspapers, print waste and cut waste, etc. The respondent is the publisher of the newspaper ""The Hindu"". The

question regarding the assessability of the turnover relating to old newspapers and other waste came up for consideration before this court in State

of Tamil Nadu v. Indian Express (Madurai) Limited [1974] 34 S.T.C. 231. This court in that judgment held that having regard to the amendment of the definition of the term ""business"" in the Tamil Nadu General Sales Tax Act, 1959, by Act 15 of 1964, the transactions which were incidental

or ancillary to the main trade or business were liable to tax and since the assessee was carrying on the business of printing, publishing and sale of

newspapers, the turnover relating to unsold newspapers and other waste was liable to tax. In view of this judgment of this court, the learned

counsel could not question the liability to tax the turnover relating to the old newspapers and other waste.

2. However, the learned counsel for the assessee contended that in respect of two items the order of the Tribunal has to be sustained and the

revision petition has to be dismissed. One is the sum of Rs. 37,209.20 referred to already. This is dealt with in paragraph 11 of the order of the

Tribunal. The Tribunal merely says in that paragraph:

This relates to sales of glazed newsprint. The learned sales tax practitioner explained that this newsprint had been procured for use in the

publication ''Sport and Pastime'' and that when that publication was stopped the available stock of glazed newsprint was disposed of and this was

not in the course of the business of the appellants. We agree with this contention of the learned sales tax practitioner.

3. From this it is clear the Tribunal itself has not given any reason for holding that the said turnover was not assessable to tax. We are of the opinion

that having regard to the definition of the term ""business"" occurring in Section 2(d) of the Tamil Nadu General Sales Tax Act, 1959, as amended

by Act 15 of 1964, the said turnover is liable to tax. Section 2(d) states:

''business'' includes-

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade,

commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such

trade, commerce, manufacture, adventure or concern ; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

4. The sale of glazed newsprint purchased for printing ""Sport and Pastime"", when that publication ceased, is certainly a transaction incidental or

ancillary to the business of the respondent, namely, that of printing, publishing and selling newspapers. As a matter of fact, the reasoning of the

decision of this court in State of Tamil Nadu v. Indian Express (Madurai) Limited [1974] 34 S.T.C. 231, already referred to, will apply to this

question also. This court observed in that judgment:

Though the learned counsel may be right in contending that the main and substantial business of the assessee is only printing, publishing and sale of

newspapers, still it will not rule out the possibility of the assessees 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 assessees 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 assessees of unsold

newspapers and other waste products is not connected with their main business.

5. Consequently, in view of the definition of the term ""business"" contained in Section 2(d) and in view of the decision referred to above, the

turnover is liable to be taxed.

6. The next point raised by the learned counsel for the assessee is that the turnover relating to the print waste and cut waste should not be included

in the assessable turnover. The order of the Tribunal does not give the actual amount of the turnover referable to the sale of the print waste and cut

waste. But it is clear that the turnover referable to such sales forms part of the sum of Rs. 5,87,164.10 referred to already. We are of the opinion

that there is no substance in this point also in view of the fact that the above extract from the earlier judgment of this court will show that the point is

covered by the judgment. The print waste or cut waste can only be said to be unused paper or unserviceable paper and it cannot be anything else.

As a matter of fact, the Supreme Court in The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation

Officer and Another, , dealt with a case of sale of unserviceable materials and scrap iron by the railway and held that having regard to the definition

of the term ""business"" found in the Rajasthan Sales Tax Act, 1954, which was similar to the definition referred to already, found in the Tamil Nadu

Act, the turnover was liable to tax. Consequently, we hold that even the turnover relating to the sale of print waste and cut waste will be liable to

tax since the same cannot be said to be not ancillary or incidental to the business of printing, publishing and selling newspaper.

7. Therefore, we allow this tax revision petition and set aside the order of the Sales Tax Appellate Tribunal in respect of the two sums referred to

above totalling a turnover of Rs. 6,24,373.30. There will be no order as to costs.

