
(1971) 08 MAD CK 0036
In the Madras High Court
Case No : Writ Petition No. 583 of 1966

Tirumala Tirupati Devasthanam	Vs	APPELLANT
The State of Madras and Another		RESPONDENT

Date of Decision : 05-08-1971

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3

Citation : (1972) 29 STC 266

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : O. Radhakrishnan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The Tirumala Tirupati Devasthanam, represented by its Executive Officer, is the writ petitioner. The Devasthanam statutorily functions under the Hindu Religious and Charitable Endowments Act, 1951, as adopted by the State of Andhra Pradesh during the relevant year in question and is managed by a Board of Trustees. The funds of the Devasthanam may be utilised for purposes mentioned in Section 85 of the Act, which includes the maintenance, management and administration of the Devasthanam, the foundation and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the temples, the construction and maintenance of choultries and rest-houses for the use and accommodation of all classes of pilgrims, the provision of water supply and other sanitary arrangements to the pilgrims, the establishment and maintenance of a veterinary hospital etc. Amongst other purposes, the Devasthanam is to set apart a sum of not less than two and a half lakhs of rupees towards the maintenance of Sri Venkateswara University. The trustees are also obliged to make arrangements for securing the health, safety or convenience of pilgrims or worshippers resorting to the institution, and generally to see to the advancement of the Devasthanam as such and primarily to look

after all the amenities of the devotees who come to the Seven Hills. On 21st February, 1966, the second respondent gave a notice covering the assessment years 1964-65 and 1965-66 stating that in April, 1964, and during 1965, the Devasthanam sold silverware and other articles in auction held at Madras at the Madras Jewellers and Diamond Merchants' Association, and realised large sums of monies from out of such auctions.

2. According to the respondent, a sum of Rs. 2,53,610 realised in the public auction held as above for the aforesaid purpose in April, 1964, and another sum of Rs. 2,97,355 being the realisation in such auctions held in 1965, are to be deemed as monies obtained from sale of goods in the course of business of the Devasthanam and consequently the turnover involved in such sales in each of the years attracted sales tax u/s 3(1) of the Tamil Nadu General Sales Tax Act, 1959. The petitioner was informed that they ought to have registered themselves as dealers under the Act, and not having done so under the provisions of the Act, the penal provisions of the Act are attracted. Having thus held the view that the sale proceeds in the public auctions so held by the Devasthanam in the years 1964 and 1965 are assessable to tax under the Act, two notices were issued on 21st February, 1966, calling upon the petitioner to submit their objections to the action proposed. The petitioner filed written objections, and in particular, stated that the Devasthanam was under an obligation to publicly auction their movable properties at a place of their choice if the Devasthanam felt that it would be more beneficial to the institution in securing the proper price. Their further contention was that it was not a commercial activity undertaken by them in the course of any business of theirs, and though prima facie a sale is involved, it is not in connection with the business of the Devasthanam, and much less as a dealer under the provisions of the Act. Apprehending that further action will be pursued, the petitioner has come up with a writ of prohibition stating that the respondent has no jurisdiction under the Tamil Nadu General Sales Tax Act to bring the petitioner's activities into the net of taxation and praying for a rule interdicting the further processing of the notice and action thereunder.

3. Section 2(d) of the Tamil Nadu General Sales Tax Act, which was expanded and inducted into the Act by an amending Act of 1964, states that business includes "any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture". Though it is an inclusive definition, yet the purport of the word "business" appearing in Section 2(d) indicates that only trading, commercial or manufacturing activities or any other such adventure or concern would come within the definition of "business." No doubt, the motive behind such an activity, whether to make a gain or profit is made irrelevant under the definition itself. But the essential base on which the definition rests is that the person concerned, if he is to be a businessman, should be a trader or a person indulging in commerce or manufacturing activities. Unless therefore, the nature of the activity of the individual is so intricately connected with trade, commerce or manufacture, as popularly understood, such a person cannot be said to be one who is carrying on business. Section 2(g) of

the Act, which defines "dealer" provides :

"dealer", means any person who carries on the business of buying, selling, supplying or distributing goods...whether for cash...or other valuable consideration,

4. It follows from this definition that in order to characterise a person as a dealer, the primary prerequisite is that he should carry on business. Such a business may be in myriad ways, such as buying, selling etc. But he should carry on business before he could be terminologically called a dealer within the meaning of Section 2(g) of the Act. If a person, therefore, does not carry on business, he is not a dealer. It is in the perspective of this annotation of these two definitions that the facts in the present case have to be noticed.

5. The Tirumala Tirupati Devasthanam, besides being a charitable institution, is a Hindu institution of age-old antiquity, which has gained importance for the way in which the Devasthanam is functioning and propagating the Hindu religion and serving the needs of those who often visit the Hills for getting the darshan of the Lord. It is common knowledge, which can be taken judicial notice of, that the pilgrims, who visit Lord Venkateswara, pay their homage by submitting in the Hundi kept in the temples their mite, and such collections, sometimes include silver and other valuable articles. These Hundi collections form an asset of the Devasthanam, which they utilise for the purpose of propagating the religion and for serving the various objects for which the Devasthanam has been founded, which I have already referred to. It therefore becomes necessary for the Devasthanam to convert such valuable metals which find their place in the Hundi into cash, so that such cash may be utilised for the objects for which the institution has been founded and for which it is existing. It is with this sole and unambiguous object in view that the Devasthanam auctions such valuable metals such as silver etc., at appointed places according to their discretion, and secure their money equivalent in public auctions held for the purpose. It is difficult to hold the view that in such cases, where the Devasthanam justifiably disposes off the metallic substances or metallic goods in their custody the same being the realisations in the Hundi, either by private negotiation or by public auction, it could be said that the Devasthanam was doing a business or was indulging in a commercial activity, though not for a profit-motive. Business, which is intricately connected with commerce, is unknown to the Devasthanam, and it is impossible to conceive that while they dispose of their articles of silver etc., found in the Hundi, they were doing a business. Their object is something very different from doing business. Their objects are not only enumerated by the Legislature of the Andhra Pradesh State, but their accredited objects are more salutary and more important to the community and to the country than mere commercial activity as thought of by the respondent. In this view, the action of the respondent is absolutely illegal and without jurisdiction.

6. In Deputy Commissioner of Commercial Taxes v. Sri Thirumagal Mills Ltd. [1967] 20 S.T.C. 287 a limited liability company manufacturing cotton yarn, in

order to provide amenity to its workmen, had opened a fair price shop so that commodities might be made available to its workmen at fair prices. The turnover made by the company in such a transaction was sought to be brought to tax by the revenue. A Division Bench of this court, to which I was a party, observed as follows:

Unless a transaction is connected with trade, that is to say, it has something to do with trade or has the incidence or elements of trade or commerce, it will not be within the definition of "business" in the Madras General Sales Tax Act, 1959, as amended by Act 15 of 1964. The words "in connection with or incidental or ancillary to" in the second part of the definition of "business" still preserve or retain the requisite that the transaction should be in the course of business understood in a commercial sense. The intention of Madras Act 15 of 1964 is not to bring into the tax net a transaction of sale or purchase which is not of a commercial character.

7. A fortiori in the instant, case, when the Devasthanam, whose laudable objects have already been enumerated by me, disposed of their articles of silverware etc., deposited in the Hundis, then, it cannot be said that the Devasthanam was indulging in business in a commercial sense.

8. This writ petition is therefore allowed with costs. Counsel's fee Rs. 100.