

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2004

CORAM

THE HONOURABLE MR. JUSTICE A.S. VENKATACHALAMOORTHY
AND
THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.8459 of 2001
and W.P.Nos. 8460 to 8464 of 2001

Pandiyar Roadways Corporation Ltd.,
Now known as Tamil Nadu State
Transport Corporation,
(Madurai Division-1),
Bye-Pass Road, Madurai 625 010. .. Petitioner

-Vs-

1. The Commercial Tax Officer,
Mahal Assessment Circle,
Madurai 625 010.

2. The Registrar,
Tamil Nadu Taxation Special
Tribunal, Chennai 600 001. ... Respondents

Petitions filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Ms. Chitra Venkataraman

For Respondents : Mr.T. Ayyasamy
Special Govt. Pleader (Taxes)

:COMMON JUDGMENT

P.K. MISRA, J.

Petitioner is a Transport Corporation. These writ petitions are
directed against the revisional order in TCR.Nos.1486 to 1491 of 1997 dated
29.6.2000 decided by the Tamil Nadu Taxation Special Tribunal relating to
assessment years 1980-81 to 1984-85 and 1986-87. First 4 years relate to
reassessments under Section 16 of the Tamil Nadu General Sales Tax Act
(hereinafter referred to as [the act]) and the last one relates to original
assessment.

2. It was contended by the petitioner that it was not a "dealer" and at any rate for the sales of discarded parts or old used buses, no tax should have been levied as such sales constituted "second sales".

3. The main question to be decided is whether the petitioner is a "dealer" ?

4. It is necessary to notice the relevant provisions as they stood in the relevant time.

As per Section 2(g) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes inter alia a casual trader.

As per clause (g) of Explanation (3), "Each of the following persons or bodies who dispose of any goods including unclaimed or confiscated or unserviceable or scrap surplus, old or obsolete goods or discarded material or waste products whether by auction or otherwise directly or through an agent for cash or for deferred payment or for any other valuable consideration, notwithstanding anything contained in this Act, shall be deemed to be a dealer for the purposes of this Act to the extent of such disposals, namely:-

(a) to (f) . . .

(g) The Tamil Nadu State Road Transport Corporations;

(h) to (k) . . .

However, such Explanation (3) was not in the statute at the relevant time, but was added by Act 22 of 2002 with effect from 1.7.2002.

As per 2(e) "casual trader" means a person who has, whether as principal, agent or in any other capacity, occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration, or other valuable consideration, and who does not reside or has no fixed place of business within the State.

As per Section 2(d) - "business" includes:-

(i) any trade, or 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;

5. Learned counsel for the petitioner has contended that the Corporation, which had been established to provide transport service to the public, cannot be said to have carried on any business of buying or selling, and therefore, the sales effected by such Corporation in respect of discarded parts or old used bus would not attract sales tax under the Act. Learned

counsel for the petitioner has further submitted that the very fact that Explanation(3), which was added subsequently, would imply that before the insertion of such explanation, the Transport Corporation was not a "dealer".

6. Learned counsel for the petitioner has placed strong reliance upon the decision of the Supreme Court reported in 114 STC 520 (STATE OF TAMIL NADU AND ANOTHER v. BOARD OF TRUSTEES OF THE PORT OF MADRAS). In the aforesaid case, the question was whether the Madras Port Trust can be said to be a "dealer" within the meaning of Section 2(g) of the Act. Analysing the various provisions, under which Port Trust had been constituted and which related to various activities of the Port Trust, it was observed :-

"42. From the above provisions, in our opinion, it is clear that the Port Trust is not involved in any activity of "carrying on business" as has been clearly held in *Aminchand Pyarelal's case* (1976) 1 SCR 721, and that unclaimed and unserviceable goods are sold in discharge of various statutory charges, items, etc., and the sales of these items are also an infinitesimal part of the Port Trust's main activities or services. No doubt, the sales of goods are in connection with or incidental or ancillary to the main "non-business" activities, but they cannot be treated as "business" without any plea by the State of Tamil Nadu that the Port Trust had an independent intention to carry on business in the sale of unserviceable/unclaimed goods. That is not the case of the department in the show cause notice. Further from the counter-affidavits filed in the High Court it is clear that it is not the case of the State that there is any separate intention on the part of the Port Trust, to carry on business in the unserviceable and unclaimed goods. Its contention has been that the main activities of the Port Trust amounted to "carrying on business" and that these sales, even if they were incidental, fell within the meaning of the word "business". The argument fails in view of our finding that the main activity is not one amounting to "carrying on business"."

In view of the aforesaid conclusion, it was held that the sale of discarded materials or scrap materials would not attract the provisions of the Act.

7. Learned counsel appearing for the respondents has submitted that the aforesaid decision would not be applicable to the present case. On the other hand, it has been contended by him that in view of the wide and inclusive definition, it must be held that the main activity of the Corporation was "business" of providing transport and the sale of old buses or parts being incidental, would attract the provisions of the Act. It is further contended by him that as a matter of fact a similar question had been raised before this High Court and has been directly answered against the Transport Corporation in the said case.

8. In 59 STC 95 (THE DEPUTY COMMISSIONER (C.T.), COIMBATORE DIVISION, COIMBATORE-2 v. CHERAN TRANSPORT CORPORATION LIMITED), a Division Bench of this Court construed Cheran Transport Corporation as a "dealer" even though it was not carrying on business of buying and selling as contemplated under section 2(g) of the Act.

9. In 84 STC 436 (THE DEPUTY COMMISSIONER (C.T.), COIMBATORE

DIVISION, COIMBATORE v. ANAMALLAIS BUS TRANSPORT (P) LIMITED), it was held that transaction of sales would attract the provisions of the Act even though the articles sold may not be in the line of business undertaken by the dealer.

10. Learned counsel for the respondents has further submitted that in the decision reported in 107 STC 204 (STATE OF ORISSA v. ORISSA ROAD TRANSPORT CO. LTD.), the Supreme Court has rejected a similar contention raised by Orissa Road Transport Company Limited. It was observed in the said case as follows :-

10. It cannot be denied that the respondent is a business organisation whose activity is that of providing road transport. In the course of its carrying on of the said business some obsolete parts, spare parts, etc., are not required by it. As a prudent business organisation the said items, which were obviously used or intended for use in its business, are sold when there is no requirement for them. We find it difficult to accept that such sales cannot even be regarded as occasional sales of a business nature which would make the respondent a casual dealer within the meaning of that expression occurring in section 2(bb) of the said Act. . . .

It was further observed :-

12. The definition of the word "business" in the Orissa Act being pari materia with the definition of such expression in the Madras Act as well as the Rajasthan Act, the ratio of the decision in *Burmah Shell case* (1973) 31 STC 426 (SC) and the *District Controller's case* (1976) 37 STC 423 (SC) would be clearly applicable in the instant case and, therefore, the respondent will have to be regarded as a dealer carrying on the business of selling spare parts, etc., and thereby become liable to pay sales tax on the sale of such items.

11. In our opinion, the decision reported in 114 STC 520 (cited supra) does not have the effect of overruling the two decisions of the Madras High Court reported in 59 STC 95 and 84 STC 436. In view of the aforesaid two decisions of the Madras High Court and the observation of the Supreme Court in 107 STC 204, which related to a Transport Corporation carrying on similar activities, we are of the opinion that transaction of sales of old used buses or parts attracted the provisions of the Tamil Nadu General Sales Tax Act as it stood then. The mere fact that an Explanation was added subsequently would not dilute the aforesaid conclusion, as in our opinion, inclusion of the Explanation, so far as it relate to "Transport Corporation", must be taken to be clarificatory in nature. The decision reported in 114 STC 520 is not applicable to the facts of the present case.

12. Once the aforesaid conclusion is reached, there is no scope for interfering with the order passed by the Tribunal. The contention to the effect that transactions were "second sales" cannot be accepted and the conclusion of the Tribunal on this aspect does not suffer from any irregularity.

13. For the aforesaid reasons, we do not find any merit in the writ petitions, which are accordingly dismissed. No costs.

Index : Yes

Internet: Yes

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1. The Commercial Tax Officer,
Mahal Assessment Circle,
Madurai 625 010.

2. The Registrar,
Tamil Nadu Taxation Special
Tribunal, Chennai 600 001.

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