

State of Tamil Nadu

Vs

Thirumagal Mills Ltd. etc.

Civil Appeals Nos. 1454 of 1969 and 148 of 1971

(K.S. Hegde, A.N. Grover, H.R. Khanna JJ)

17.11.1971

JUDGMENT

GROVER, J. -

1. These appeals by special leave from a judgment of the Madras High Court involve a common question.
2. The facts in the first of these appeals may be stated. The assessee, who is the respondent herein, is a spinning mill manufacturing cotton yarn. It was assessed to sales-tax under the Madras General Sales Tax Act, 1959, hereinafter called the 'Act'. For the assessment year 1960-61 the assessing authority included in the taxable turnover certain amounts representing the sale value of foodgrains and groceries sold in the fair price shop run by the mills and the amount realised by sale of articles of food in the canteen which was run for its employees. The assessee filed an appeal questioning its liability to pay tax on these items. The appellate authority dismissed that appeal. The assessee thereupon filed a further appeal to the Sales-tax Appellate Tribunal which allowed that appeal and directed that turnover in question be deleted. The Revenue went up in revision to the High Court of Madras. A division bench of that Court dismissed the revision.
3. The Appellate Tribunal had found that the fair price shop and the canteen were run exclusively for the benefit of the employees and there was no profit motive in running the same. The High Court referred to the relevant statutory provisions and expressed the view that the primary requisite of 'business' as defined by the Act should be a trade or commerce or adventure in the nature of trade or commerce. Presence or absence of profit was not material but the activity must be of a commercial character in the course of trade or commerce. It was found that the assessee had not been carrying on business in the fair price shop. The High Court looked into the Articles of Association of the assessee and found no article empowering it to carry on business in fair price shop. The assessee had opened that shop only to provide an amenity to its workmen so that commodities may be made available to them at fair prices. According to the High Court if as a matter of fact some profit accrued that would be wholly immaterial because the assessee never intended to run the fair price shop as a business having an element of commercial activity.
4. Section 2 of the Act gives the definitions. The definitions of "business" given in clause (d), of "dealer" as given in clause (g) and of "sale" as given in clause (n) are reproduced below :

"(d) 'business' includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern.

(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 -

#(i) .....(ii) .....##

(iii) a commission agent, a broker or a del credere agent, or an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal.

#(iv) .....##

(n) 'sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of business for cash or for deferred payment or other valuable consideration, and includes a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge."

By the Madras General Sales Tax (Second Amendment) Act, 1964, clause (d) of Section 2 was substituted by the following clause :

"'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."

Section 9 validated the levy and collection of certain taxes in following terms :

"Section 9 - Notwithstanding anything contained in any judgment, decree or order of any Court, no levy or collection of any tax under the provisions of the principal Act and of rules made thereunder in respect of sales in the course of business whether or not it is carried on with a motive to make gain or profit shall be deemed to be invalid or ever to have been invalid on the ground only that such levy or collection was not in accordance with law and such tax levied or collected or purporting to have been levied or collected shall, for all purposes, be deemed to be and always to have been validly levied or collected and accordingly -

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the levy or collection of such tax shall, for all purposes, be deemed to be, and to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any Court against

the State Government or any person or authority whatsoever for the refund of any tax so paid; and

(c) no Court shall enforce any decree or order directing the refund of any tax so paid;

(d) any such tax levied under the principal Act before the commencement of this Act but not collected before such commencement or any such tax leviable under the principal Act but not levied before such commencement may be collected (after levy of the tax wherever necessary) in the manner provided in the principal Act."

5. It has not been contended before us on behalf of the Revenue that the turnover of the sales by the fair price shop and the canteen could be included in the taxable turnover according to the definition of "business" as it stood in the original Act. The contention raised is that Section 2 of the second Amendment Act, 1964, substituted the new definition of "business" with retrospective effect. This result flows, it is said, from the language of Section 9 although in Section 2 of that Act no such language has been used as can give retrospective operation to the amendment made. We are unable to agree that Section 9 by itself would make the definition of "business" as substituted in Section 2 retrospective. In *State of Tamil Nadu and Another v. Rayappa Gounder, Etc.*, [AIR 1971 SC 231.] Section 7 of the Madras Entertainment Tax (Amendment) Act, 1966 which was similar to Section 9 mentioned above came up for consideration. The question was whether the assessments were validly protected by that section. Reliance was placed on certain decisions of this Court which laid down that it is open to the Legislature within certain limits to amend the provisions of the Act retrospectively and to declare what the law shall be deemed to have been but it was not open to the Legislature to say that a judgment of a Court properly constituted and rendered shall be deemed to be ineffective. Hence it was held that the impugned assessment in that case could not be sustained. The principle which has been laid down clearly is that validation of tax which has been declared to be illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is achieved by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. The Legislature can give its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon the Courts. None of these methods has been adopted in the present case. See *Prithvi Cotton Mills Ltd. v. Broach Borough Municipality and Others*. [79 ITR 136.]

6. Although the definition of "business" was substituted by the Second Amendment Act of 1964 it was not made retrospective by the usual words that it should be deemed to have been always substituted nor was any other language employed to show that the substantive provision, namely, the definition of "business" was being amended retrospectively. Section 9, therefore, can be of no avail to the Revenue. It has been pointed out that in the other decision rendered by this court in which similar validation provision appeared the substantive section had not been amended at all. That, in our judgment will not make any difference because the essence of the matter is that the definition of the word "business" which was material was amended only prospectively and not with retrospective effect. It is common ground and has not been disputed that if retrospective operation is given to Section 2(d) of the Second Amendment Act, 1964 the Revenue must fail in these appeals. We may add that we have not considered the question of the liability of the assessee to be assessed subsequent to the amendment made by the Second Amendment Act of 1964.

7. In the result the appeals are dismissed with costs.

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