

The District Controller of Stores, Northern Railway, Jodhpur

Vs

The Assistant Commercial Taxation Officer and Another

Civil Appeal No. 487 of 1971

(K. K. Mathew, Syed M. Fazal Ali JJ)

09.12.1975

JUDGMENT

MATHEW, J. -

1. The short question which arises for consideration in this appeal by certificate is whether the appellant, the Northern Railway, Jodhpur is liable to pay sales tax on the sales of unserviceable materials and scrap etc. for the period in question.

2. In view of the definition of the word 'business' in Section 2 of the Rajasthan Sales Tax Act (Act No. 29 of 1954) as introduced with the retrospective effect by the Rajasthan Taxation Laws (Amendment) Act, 1965 (Act No. 9 of 1965), the High Court held that the sales of unserviceable materials were exigible to tax. The definition of the term 'dealer' in Section 2(f) of the above Act, so far as it is material, runs :

'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) the Central or a State Government or any of their departments, a local authority, a company, an undivided Hindu Family or any society (including a cooperative society) club, firm or association which carries on such business

3. As already indicated by Section 2 of the Rajasthan Taxation Laws (Amendment) Act, 1965 (Act No. 9 of 1965), Section 2 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act No. 9 of 1954), was amended. Clause (cc) of Section 2 provides :

'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;

but does not include activities of sale, supply or distribution of goods carried on without any profit motive by -

(i) any charitable or religious institution in the performance of its functions for achieving its avowed objects; and

(ii) an educational institution, where such sale, supply or distribution is made to its students.

4. The contention of the appellant was that it was not carrying on the business of buying and selling and therefore the sales of unserviceable material and scrap iron etc. would not be a transaction in connection with or incidental or ancillary to "such" trade, commerce, manufacture, adventure or concern.

5. We think that the activity of the appellant in the selling of unserviceable material and scrap iron etc. would be "business" within clause (i) of the definition of the word 'business' introduced by the amending Act.

The word 'business' according to clause (i) of that definition would include any trade, commerce, or manufacture of any adventure or concern in the nature of trade, commerce or manufacture whether or not it is carried on with a motive to make gain or profit. So even if it be assumed that the activity involved in selling unserviceable material and scrap iron etc. would not amount to carrying on business in the normal connotation of that term, it would be 'business' within clause (i) of that sub-clause as introduced by the amending Act.

6. We also think that there is no fallacy in thinking that the railway since it is concerned in the activity of transportation is engaged in commerce within the meaning of clause (i) of the definition and that the sale of unserviceable materials and scrap iron etc. is transaction in connection with or ancillary to such commerce within the clause (ii) of that definition.

7. There can be no dispute that the legislature was competent to give retrospective effect to the definition of 'business' introduced by the amending Act.

8. In any view we are of the opinion that the high Court was right in its conclusion.

9. We, therefore, dismiss the appeal with costs.

</html