

State of Tamil Nadu

Vs

Binny Ltd., Madras

Civil Appeal No. 757 (T) of 1973

(P. N. Bhagwati, A. P. Sen. E. S. Venkataramiah JJ)

01.08.1980

JUDGMENT

BHAGWATI, J. –

1. The only question which arises for consideration in this appeal by certificate is whether sales of provisions effected by the assessee in a workmen's Store maintained by it are assessable to tax under Tamil Nadu General Sales-tax Act, 1959. The assessee carries on business of manufacture and sale of textiles in a factory situate in the State of Tamil Nadu. It is one of the leading manufacturers of textile in the country. It is running a store in the premises of the factory where workmen can but provisions. In the course of assessment of the assessee to sales tax for the assessment year 1967-68 under the Tamil Nadu General Sales Tax Act, 1959, the question arose whether the sales effected by the assessee in the store were taxable. The assessee contended that in respect of the sales effected by it in the store it was not carrying on a business within the meaning of Section 2(d) of Act because there was no profit motive motive in running the store and this activity was being carried on by it only for the purpose of providing a facility to workmen. This contention was negated by the sales tax authorities and they brought the sales of provisions in the Store to tax. The assessee carried the matter in appeal to the tribunal where the assessee succeeded and this led to the filing of a revision application by the State before the High Court. The High Court by a brief order dismissed the revision application and following its earlier decision in Deputy Commissioner of Commercial Taxes v. Sri Thirumagal Mills Ltd ((1967) 20 STC 287 (Mad HC)). held that the sales in question were not taxable. The State thereupon preferred the present appeal after obtaining the necessary certificate from the High Court.

2. Now, it may be pointed out at the outset that the decision in the Thirumagal Mills case ((1967) 20 STC 287 (Mad HC)) on which the High Court relied for deciding the present question in favour of the assessee, has been subsequently overruled by this Court in the State of Tamil Nadu v. Burmah Shell Company Limited. ((1973) 3 SCC 511 : 1973 SCC (Tax) 269 : 31 STC 426). The view taken by the High Court in Thirumagal Mills case ((1967) 20 STC 287 (Mad HC)) was that sales effected in a fair fair price shop maintained by the assessee were not taxable even after the amendment made in the Tamil Nadu General Sales-tax Act, 1959 with effect from September 1, 1964, because the activity carried on the fair price shop was not of a commercial nature and did not partake of the character of business. This view did not find favour with the court in Burmah Shell case ((1973) 2 SCC 511 : 1973 SCC (Tax) 269 : 31 STC 426) and in the judgment delivered in that case Jaganmohan Reddy, J., speaking on behalf of the court, pointed out that the view taken in Thirumagal Mills case ((1967) 20 STC 287 (Mad HC)) did not take into account the word such in clause (ii) of Section 2(d) of the Act and the Madras High Court was in error in holding that in order to come within clause (ii) of Section 2(d), it was necessary to show that the transaction had the

characteristics of business. Section 2(d) as it stood again after its amendment from September 1, 1964 defined 'business in the following terms :

2. (d) "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.

3. This Court observed in the *Burmah Shell case* ((1973) 3 SCC 511 : 1973 SCC (Tax) 269 : 31 STC 426) that for the purpose of attracting the applicability of clause (ii) of Section 2(d), it was not necessary that that transaction in question must partake of the characteristics of business, but it was sufficient if it was "in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern". The word "such" in clause (ii) was in the opinion of the court, referable to trade, commerce, manufacture, adventure or concern referred to in clause (i) and if there was in existence some trade, commerce, manufacture, adventure or concern falling within clause (i), any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern, would constitute 'business' within the meaning of clause (ii), even though the transaction by itself may not have the characteristics of business as understood in ordinary parlance. Now, the business which was carried on by the assessee was manufacture of textiles and the transaction of sale of provisions in the store were, in the submission of Mr. S. T. Desai appearing on behalf of the State, in connection with or incidental to such business. This contention was seriously disputed by Mr. Ramachandran on behalf of the assessee and he urged that there was no connection between the activity of manufacture of textile carried on by the assessee and the sales of provisions in the Store maintained by it nor was it possible to say that the sales effected by the assessee were incidental to the manufacture of textiles. Mr. Ramachandran contended that in order to attract the applicability of clause (ii) of Section 2(d) it was necessary that the connection between the sales of provisions in the Store and the manufacture of textile must be direct and such direct connections was, according to him, wanting in the present case. We do not think the contention of Mr. Ramachandran is at all justified. It is indeed difficult to see how it can at all be said that the activity of selling provisions to the workmen in the Store was not incidental to the business of manufacture of textiles in the factory. The sales which were effected in the Store were to the workmen employed in the factory where textiles were being manufactured and the provision of his facility to the workmen was certainly incidental to the carrying on the business of manufacture of textiles. This view finds support from the decision of this Court in *Royal Talkies, Hyderabad v. Employees State Insurance Corporation* ((1978) 4 SCC 204 : 1978 SCC (L&S) 497 : (1979) 1 SCR 80), where the question was as to whether a canteen maintained by a cinema owner in the premises of the cinema could be said to be incidental to the business of running the cinema. Krishna Iyer, J., speaking on behalf of the court, pointed out that [SCC p. 212 : SCC (L&S) p. 505] "a thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either." Applying this test the court held that it was impossible to contend that "a canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre. The cinemagoers ordinarily find such work and advantage, a facility, an amenity and sometimes a necessity. All that

the statute requires is that the work should not be irrelevant to the purpose of the establishment." Now, if a canteen maintained by a cinema owner for the benefit of cinemagoers can be regarded as incidental to the purpose of the cinema theatre which is to carry on the business of exhibiting films in the theatre, we fail to see how a Store run by the owner of a textile undertaking for sale of provisions to the workmen employed in the factory can be said to be anything other than incidental to the business of manufacture of textiles. We are clearly of the view that the activity of selling provisions to workmen in the Store was incidental to the business of manufacture of textiles and the sales were, therefore, transactions falling within the definition of 'business' in clause (ii) of Section 2(d). We must, in the circumstances, hold that the assessee carried on business of selling programmers to the store and the sales attracted the liability to tax under the Tamil Nadu General Sales Tax Act, 1959 as it existed during the year of assessment.

4. We accordingly allow the appeal, set aside the judgment of the High Court as also the order made by the Tribunal and restore the order the sales tax authorities holding that the sales in question were assessable to tax under the Tamil Nadu General Sales-tax Act, 1959. The assessee will pay the costs of the appeal to the State.

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