

State of Tamil Nadu

Vs

Board of Trustee of the Port of Madras

Civil Appeal No. 1728 of 1999

(M. Jagannadha Rao, S.N. Phukan JJ)

26.03.1999

JUDGMENT

M. Jagannadha Rao, J.

1. Leave granted.

2. This appeal is preferred by the State of Tamil Nadu and the Commercial Tax Officer, Harbour-I, Assessment Circle, Chennai against the Judgment of the High Court of Madras in Writ Appeal No. 1015 of 1994 dated 10.12.1996. By that judgment, the Division Bench allowed the appeal and set aside the Judgment passed by the learned Single Judge in Writ Petition No. 5509 of 1994 dated 30th March, 1994. The learned single Judge had dismissed the Writ Petition No. 5509 of 1994 filed by the first respondent, the Board of Trustees of the Port Trust of Madras (hereinafter called the 'Post Trust') and by the Judgment under appeal, the writ petitions stood allowed and the notices issued by the second appellant, the Commercial Tax Officer on 1.9.1993 and 9.2.1994 stood quashed.

3. The facts are as follows :

The Madras Port Trust is now a major Port Trust governed by the provisions of the Major Port Trusts Act, 1963 (earlier it was governed by an Act of 1905). It provides services of landing, shipping or transshipping, receiving, shifting, transporting, storing or delivery of goods brought into the premises of the Port Trust. Goods are brought into the Port Trust and delivered to the importee/consignee or their cleaning Agents etc. Goods are also exported through the Port Trust by means of its services. In the case of uncleared or abandoned goods, the Port Trust brings them for sale in public auction after the approval of the customs authorities. Before 1959, the Sales Tax Authorities in Madras sought to assess the Port Trust to sales tax under the Madras General Sales Tax Act (Act 9 of 1939) in respect of charges collected for water supplied by the Port Trust to ships. At that time, the Port Trust was governed by the Madras Port Trust Act (Act 2 of 1905). A Division Bench of the High Court of Madras in *Trustees of the Port of Madras v. State of Madras, 1960(11) STC 224 (Mad)* held by Judgment dated 27.11.1959 that the Port Trust was not constituted for the purposes of "carrying on any business" of buying and selling with a view to make profit and that while supplying water to the ships that called at the Port, it was only discharging a statutory duty imposed upon it by the statute and was not a "dealer", within the meaning of 'dealer' in Section 2(b) of the Madras General Sales Tax Act, 1939. At that time Section 2(b) which defined the word "dealer" stated that a dealer would be any person *who carried on the business* of buying or selling goods. The

definition did not say that it was not relevant whether the said person was carrying on business with or without profit motive. In other words, profit motive was treated, at that time, as an essential element of business. The High Court, therefore, held that inasmuch as the Port Trust was performing certain statutory functions and rendering duties without any intention to make profit, it was not a 'dealer' within the definition of the said expression.

4. The above said statute of 1939 was replaced by the Tamil Nadu General Sales Tax Act, 1959. It contained a definition of "business" in Section 2(d) and a definition of "dealer" in Section 2(g). The definitions were amended from time to time. Section 2(d) which defined "business" did not initially state that the motive to gain or profit was not relevant. But the said sub-clause 2(d) was substituted by a new clause by the Madras Act 1 of 1964 which included within the said definition of "business", the activity of carrying on business whether or not such business was carried on with a motive to make gain or profit. After the said amendment of 1964 the matter in regard to the Madras Port Trust again went before the Madras High Court in *State of Madras v. Trustees of Port of Madras*, (1974) 34 STC 135 (Mad). The dispute in that case related to the sale of unclaimed and unserviceable goods by the Madras Port Trust through auctioneers. The question raised was whether the Port Trust was a department of the Central Government and whether the Port Trust was a 'dealer' and its activity of selling the unclaimed and unserviceable goods could be subjected to sales tax. It was held by a Division Bench of the High Court of Madras in the above cited case in *State of Madras v. Trustees of Port of Madras*, (1974) 34 STC 135, that even through the sales in question related to the assessment years 1964-65 and 1965-66 and were effected after the amendment of the definition "business" by Madras Act 15 of 1964, still the above s