KERALA HIGH COURT

Gosri Dairy

Vs.

State of Kerala

T.R.C. Nos.82 and 83 of 1959, Trivandrum in T.A. Nos.112 and 113 of 1958

(M.S. Menon, T.K. Joseph and M. Madhavan Nair, JJ.)

07.07.1961

JUDGMENT

M. Madhavan Nair, J.

1. These Tax Revision Cases are by the Gosri Dairy, Vyttila, a firm dealing in dairy products. The business necessitates keeping of a productive live-stock. As the productivity of milch cows is not without limitation of time, the firm has necessarily to sell away a part of the live-stock annually, to be replaced by fresh yielding stock. The question arose whether the proceeds of such sales are to be counted as part of the turnover of the firm liable to sales-tax.

2. T.R.C. No.82 of 1959 relates to the and assessment for the year 1955-56, and No.83 of 1959 for the year 1956-57. In these years, the proceeds of sales of dry cattle came to Rs.11,270 and 15,890 respectively.The Sales Tax Officer included the above sums in the trunover of the petitioner's business for the relative years and assessed tax. The appeals by the firm before the Additional Appellate Assistant Commissioner, and before the Sales Tax Appellate Tribunal proved unsuccessful. Hence these petitions for revision under Section 15B of the General Sales Tax Act, by the assessee.

3. In the year 1954-55 also, the sale proceeds of dry cattle were taken as part of the turnover and assessed. That came up in T.R.C. No.21 of 1937 (Ker) and was affirmed by this Court observing:

> "In the course of its business of running a dairy the petitioner firm was regularly and systematically selling its dry cows.....Although the petitioner's business might not primarily be the sale of live stock there can be no doubt that the sales now in question were effected in, the course of its business of running a dairy and selling milk and milk products.....There can be no doubt that the transactions in question satisfy the definition of sale in the Act and the petitioner the definition of dealer."

4. In the instant cases the sales-tax authorities were only following that decision of this Court in their assessments.

5. When the instant Tax Revision Cases came up for disposal before a Division Bench their Lordships referred them for decision by a Full Bench, because

> "the learned Advocate for the petitioner, relying on Deputy Commissioner of Commercial Taxes, Motor Service, Gudiyattam, 1954-5 STC 128: AIR 1951 Madras 954, *State of Bombay v. Ahmadabad Education Society*[1], and *Huxham v. Johnson*[2], has urged that conversion into money of part of the capital assets, does not amount to the income from the business carried by the assessee for purposes of the assessment. We feel that sterilisation of part of the capital asset, amounts to capital receipts, and the case relied by the Tribunal, deserves reconsideration".

6. We heard the matter at length, but were not persuaded to a view different from that in the prior decision.

7. Questions of capital assets or capital receipts do not arise in a sales-tax assessment. Even under the Income-tax Law, profits or gains arising from a sale of a capital asset are now taxable. As regards sales-tax, all the sales of a dealer in the course of his business attract taxation.

8. The contention of the assessee is that the firm is not a dealer in dry cattle, its business being only to deal in dairy products which would not include cattle maintained as the source of those products. Sales of dry cattle were necessitated occasionally to avoid deterioration of the stock, and could not be characterized as a dealing in cattle. Stress was laid on the definition of "dealer" in the Sales Tax Act of buying or selling goods". Unless the selling of cattle was done by the assessee as a "business", taxation would not be attracted under the General Sales Tax Act.

9. The question therefore is whether the assessee firm deals in the sale of cattle as part of its business.

10. The learned counsel for the assessee relied on the following rulings in support of his contention.

> (i) 1954-5 STC 128: AIR 1954 Madras 954, when motor transport companies carrying on the only business of providing transport sold away unserviceable or useless buses it was held that by reason of these isolated transactions they could not be treated as dealers in buses within the meaning of the General Sales Tax Act.
> (ii) (1956) 7 STC 497: AIR 1956 Bombay 673, the respondent's sale, at cost price, of the surplus of iron and bricks secured for purposes of construction of its colleges and hotels, was held not to convert it into a dealer liable to taxation under the Sales Tax Act.
> (iii) *Onkarmal Jodhraj Agarwal v. The State*[3], (MP Rev.)), sale of two cars by the assessee was not taxed as he "did not sell any other motor vehicles".

[1]1956-7 STC 497: AIR 1956 Bom 673 [3]1952-3 STC 313
[2](1927) 11 Tax Cas 266

> (iv) *Mohanlal Ramakisan Nathani v. The State*[4], (MP Rev.)), sale of two cars by the assessee was held not to attract lax as there was no other instance of his selling a car.

11. These rulings only show that isolated transactions, not forming part of the business of the assessee, would not convert the vendor into a dealer, nor attract liability to sales-tax.

12. Whether one is a dealer in a particular commodity or not would largely depend on the volume and the regularity of one's transactions in the line.

In 1952-3 STC 305 (MP Rev) (cited supra), it is observed:

> "The fact whether they constitute one of the lines of business will not necessarily depend on whether he mentioned those goods in his application for registration. What would be of practical importance is the value and the degree of frequency in business transactions in these lines. In the case before us, by none of these tests applicable can the dealer be considered as engaged in the business of buying and selling motor cars; apart from the two cars sold during the quarter, no other instance of his selling either a new or second hand car has been brought to our notice. We have therefore no hesitation in cancelling the inclusion of the price of these cars (Rs.21,400) in the taxable turnover for the quarter".

13. Admittedly, the firm is a registered dealer only for dairy products. But that does not, as mentioned above, mean that it cannot be dealing in other commodities also. The firm has been regularly selling its unserviceable cows, in such numbers that the annual proceeds thereof ran to the time of Rs.11,000 to 16,000. In the nature of things, these sales cannot be mere casual dealings, or isolated transactions but acts done in the carrying on or carrying out of the firm's business.

14. *Gannon Dunkerly and Co. v. State of Madras*[5], was relied on to show that the word 'business' in the definition of 'dealer' in the General Sales Tax Act is used in the sense of buying or selling goods with a view to earn profit. The assessees carrying on business as Engineers and contractors, supplied foodgrains for the benefit of their workmen and recovered the costs thereof by debiting the value against their wages. It was held that, as the supply of food grains was not carried out with a view to earn profit, and in fact no profit accrued, the assessees were not liable to sales tax on the value of food grains. We are not sure whether a contractor's supplying foodgrains to the workmen at the work spot is not with a view to earn profit out of the work in which they were employed. Contentment and happiness among workmen will certainly contribute to earnestness in their works; and better out-turn must yield better profits.

15. The learned Government Pleader drew our attention to the decision in *Aryodaya Spinning and Weaving Co. Ltd, v. State of Bombay*[6] There, the assessee was carrying

[4]1952-3 STC 303 [6](1960-11 STC 141 (Bom))

[5]1954-5 STC 216: AIR 1954 Mad 1130

on business of manufacture of cotton textiles andyarn, but was found to sell excess cotton and cotton waste, and the question was whether those sales attracted tax. It was held:

> "Although the normal business of the assessee was the manufacture of yarn and cloth, cotton waste which was a subsidiary product was normally sold and in the circumstances

> an intention to carry on the business of selling the subsidiary product as a part or an incident of the business of the assessees might readily be inferred and the transaction of sale might be regarded as an activity in the course of the business of the assesees. The assessees were selling cotton regularly and therefore they must be regarded as dealers in cotton and cotton waste and could be charged to sales-tax."

16. The frequency, regularity and the volume of sales of cattle by the assessee in the present case are such that they can be regarded as "an activity in the course of the business of the assessee." We therefore accept the view taken by the sales-tax authorities that the petitioner's sale of dry cows was part of its business, constituting it a dealer within the meaning of the Sales Tax Act and attracted liability to taxation in respect thereof.

17. In the result, we affirm the view taken by Raman Nayar, J., with the concurrence of one of us (M.S. Menon J.) in T.R.C. No.21 of 1957 (Ker). The Revision Petitions fail and are dismissed.

18. As the question involved is the same in both the cases, the department will have its costs in one case only.

Revision petitions dismissed.