

State Of Punjab & Anr vs M/S. Bajaj Electricals Ltd on 5 December, 1967

Equivalent citations: 1968 AIR 739, 1968 SCR (2) 636, AIR 1968 SUPREME COURT 739, 1968 LAB. I. C. 814

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, Vishishtha Bhargava

PETITIONER:
STATE OF PUNJAB & ANR.

Vs.

RESPONDENT:
M/S. BAJAJ ELECTRICALS LTD.

DATE OF JUDGMENT:
05/12/1967

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 739 1968 SCR (2) 636

ACT:
Punjab Professions, Trades, Callings and Employment Taxation Act, (Punj. 7 of 1956), s. 7-Supplying goods within State against orders outside State--Supplier has no shop, branch or agent within State-Liability to tax-"Trade", Meaning of.

HEADNOTE:
The respondent a Joint Stock Company, having no shop or office or agent within the State of Punjab, used to supply goods within the State pursuant to orders received and accepted at New Delhi, and also used to receive the price for the goods within the State. The Assessing Authority, Kamal, assessed the respondent to profession tax under the Punjab Professions, Trades, Callings and Employments Taxation Act, 1956. The order was quashed by the High

Court.

In appeal to this Court,

HELD : The activities of the respondent in the State were mere ancillary activities and did not amount to carrying on trade within the State. [538 C-D]

The expression "trade" is not defined in the Act. "Trade" in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture. The question whether trade is carried on by a person at a given place, though one of mixed law and fact, must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts. [537 H-538 E]

Grainger and Son v. Gough (Surveyor of Taxes) 3 T.C. 464, F.L. Smith & Co. v. F. Greenwood (Surveyor of Taxes), 8 T.C. 193 and Firestone Tyre Co. Ltd. v. Lewellin, 37 T.C. 111. distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 287 of 1967.

Appeal from the judgment and order dated May 29, 1964 of the Punjab High Court in Civil Writ No. 1609 of 1961. Harbans Singh and R. N. Sachthey, for the appellants. The Judgment of the Court was delivered by Shah, J. The respondents Joint Stock Company-has its principal place of business in Bombay, and a branch office in New Delhi. The Assessing Authority, Karnal, exercising power under the Punjab Professions, Trades, Callings and Employments Taxation Act 7 of 1956, assessed the respondent to, profession tax for the years 1960-61 and 1961-62 and issued a notice of demand for the amount so assessed. The High Court of Punjab quashed the notices of demand and the assessment orders holding that the respondent did not carry on trade within the State of Punjab and was not liable to be assessed to tax under the Act. The State of Punjab has appealed to this Court against the order of the High Court. Section 3 of Act 7 of 1956 provides "Every person who carries on trade, either by himself or by an agent or representative, or who follows a profession or calling or who is in employment, either wholly or in part, within the State of Punjab, shall be liable to pay for each financial year or a part thereof a tax in respect of such profession, trade, calling or employment. Provided

The respondent, it is common ground, has no branch office or any other place of business in the State of Punjab. It has also not appointed any agent or representative to carry on business on its behalf within the State. The respondent supplies goods to the Government of Punjab and certain "semi-Government bodies" in the State in execution of orders received at its branch office at Delhi. The goods are despatched from Delhi by rail or by public motor transport. Pursuant to the terms and conditions of the "Rate Contract"

between the respondent and the Controller of Stores for the State of Punjab, the respondent consigns the goods sold by it to the appropriate Government Department F.O.R. destination. Inspection of the goods is made within the State of Punjab. The price for the goods sold is collected by presenting bills or railway receipts through Banks to the consignees.

The Assessing Authority held that the respondent "may reasonably be regarded as selling goods within" the State of Punjab because it was supplying goods F.O.R. destination. The High Court held that the respondent could not in law be regarded as carrying, on trade at the place at which the goods were supplied, merely because the railway or other receipts were taken out in the name of the respondent and presented to the purchasers duly endorsed in their favour to secure realization of the price of the goods. Liability to pay tax under Act 7 of 1956 arises if a person carries on trade by himself, or through his agent, or follows a profession or is in employment within the State, and not otherwise. The expression "trade" is not defined in the Act. "Trade" in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture. The question whether trade is carried on by a person at a given place must be determined on a consideration of all the circumstances. No test or set of tests which is or are decisive for all cases can be evolved for determining whether a person carries on trade at a particular, place. The question, though one of mixed law and fact, must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts.

In the present case, the respondent has no shop or office within the State of Punjab. The respondent supplies goods within the State pursuant to orders received and accepted at New Delhi, and also receives price for the goods within the State. But these are ancillary activities and do not in our judgment amount to carrying on trade within the State of Punjab. We need not refer in detail to cases such as *Grainger and Son v. Gough* (Surveyor of Taxes) (1); *F. L. Smith & Co. v. F. Greenwood* (Surveyor of Taxes)(2); and *Firestone Tyre Co. Ltd v. Lewellin*, (3) which interpret the expression "trade exercised within the United Kingdom" in the English Income Tax Acts, for they merely lay down that for the purpose of the Income Tax Acts, there is no single, decisive or "crucial" test to determine whether the tax-payer exercises trade at a given place.

The appeal fails and is dismissed. The respondent has not appeared at the hearing. There will, therefore, be no order as to costs.

Y.P.
dismissed

Appeal

- (1) 3 T.C. 464.
- (2) 8 T.C. 193.

(3) 37 T.C. 111.