Govt. Medical Store Depot, Gauhati vs The Supdt. Of Taxes, Gauhati & Ors on 29 August, 1985

Equivalent citations: 1985 AIR 1748, 1985 SCR SUPL. (2) 739, AIR 1985 SUPREME COURT 1748, 1986 TAX. L. R. 2164, 1985 TAX. L. R. 2164, (1985) 60 STC 296, 1985 (4) SCC 239, (1985) 48 CURTAXREP 359

Author: Misra Rangnath

Bench: Misra Rangnath, V.D. Tulzapurkar, Sabyasachi Mukharji

PETITIONER:
GOVT. MEDICAL STORE DEPOT, GAUHATI

Vs.

RESPONDENT:
The SUPDT. OF TAXES, GAUHATI & ORS.

DATE OF JUDGMENT29/08/1985

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
TULZAPURKAR, V.D.
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 1748 1985 SCR Supl. (2) 739
1985 SCC (4) 239 1985 SCALE (2)600
CITATOR INFO :
RF 1986 SC1902 (12)

ACT:
Assam Finance (Sales Tax) Act 1956, Central Sales Tax Act 1956 s.2(b) - Government Medical Store Depot - Transactions on 'no loss no profit' basis - Whether 'dealer' - Liability to & Sales Tax - Whether arises.

HEADNOTE:
The Central Government in the Ministry of Health, Family Planning and Urban Development set up a Medical Store Depot at Gauhati for the purpose of procuring and supplying medical stores to the Government institutions, both Central and State, as also the Railway establishments located in

Assam, North Eastern Frontier Areas, Nagaland Manipur, Tripura and other neighbouring places on payment.

The appellant-Depot did not apply for registration on the ground that it was not a dealer -within the meaning of section 2(b) of the Central Sales Tax, Act, 1956 and, therefore, was not liable to tax as the transactions were without any profit-motive ant on the basis of 'No loss - No profit'. The Superintendent of Taxes, however, got the appellant-Depot registered under section 7(1) of the Assam Finance (Sales Tax) Act, 1956 and also treated it to be a dealer under the Central Sales Tax Act 1956 and on that basis the Taxing Authority made assessments.

The appellant challenged the demands under Art. 226 contending that it was not a dealer and that the certificate of registration issued to it without any application should be cancelled and the demands made should be quashed because the action of the Taxing Authority in compulsorily registering it was bad and the assessments were illegal. The High Court dismissed the Writ Petition and held that the appellant-Depot is a 'dealer' within the meaning of sec. 2(d) of the Central Sales Tax Act 1956 and that the Superintendent of Taxes had jurisdiction to register it and also to pass the impugned order of assessment.

Allowing the appeals to this Court,

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HELD: l. The High Court, on the materials placed before it, went wrong in dismissing the writ petition. The Writ Petition should have been allowed and the assessment should have been quashed. [746 E-F]

2. In respect of the pre-amended period when in the definition of the term 'business' profit-motive was an ingredient, in the absence of profit-motive transactions though satisfying the requirement of volume, frequency, continuity ant regularity, would not constitute business so as to make a person carrying on such transactions a dealer. [744 H, 745-A]

The State of Gujarat v. Raipur Manufacturing Co. Ltd., 19 S.T.C 1, Hindustan Steel Ltd.v. The State of Orissa a, 25 S.T.C. 211, State of Andhra Pradesh v.Abdul Bakshi & Bros., 15 S.T.C. 644, State of Tamil Nadu v. Thirumagal Mills Ltd. etc., 29 S.T.C. 290, and The Joint Director of Food, Visakhapatnam v. The State of Andhra Pradesh, 38 S.T.C. 329, relied upon-

Deputy commercial Tax Officer, Saidapet, Madras Anr. Enfield India Ltd. Co-opertive Canteen Ltd., 21 S.T.C. 317 and Goverment Medical Store Depot v. State of HarYana & Anr.. 39 S.T.C. 114, in applicable.

In the instant case, the appellant had from the very beginning taken the stand that its transactions were without any profit motive. The burden lay on the Revenue to show that these transactions were carried on with profit motive, whether profit was actually earned or Dot being of no

material importance, and no investigation had been rade by the respondent into this aspect when it made the assessments. Nor was the High court called upon to record such a finding on the basis of any material placed and the respondent remained satisfied by pleading a bare denial to the assertion in the writ petitions supported by the scheme and its terms. [746 A-C]

The State of Gujarat v. Raipur Manufacturing Co. Ltd., l9 S.T.C. l., relied upon.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1748- 1757 of 1973.

From the Judgment ant Order dated 26.6.1973 of the Gauhati High Court at Gauhati in Civil Rule Nos. 366-370 & 460-464 of 1969.

O.P. Sharma and R.N. Poddar for the Appellant. B.B. Ahuja and S.K. Nandy for the Respondents. The Judgment of the Court was delivered by RANGANATH MISRA, J. The hort point raised in these appeals by special leave directed against the judgment of the Gauhati High Court is as to whether the assessee - appellant is liable to be taxed under the Assam Finance (Sales Tax) Act, 1956 ('State Act' for short), and the Central Sales Tax Act, 1956 (Central Act). When assessments were completed under the two Acts in spite of the resistance of the assessee which took the stand that it was not a dealer and, therefore was not liable to tax, writ petitions were filed before the High Court challenging the demands by contending that the appellant was not a dealer and the certificate of registration issued to it without any application on its behalf should be cancelled and the demands should be quashed. The appellant contended that the Central Government in the Ministry of Health, Family Planning and Urban Development had set up a Medical Store Depot at Gauhati for the purpose of procuring and supplying medical stores to the Government institutions, both Central and State, as also the Railway establishments located in Assam, North Eastern Frontier Areas, NagaLand, Manipur, Tripura and other neighbouring places on payment. The Depot had been set up with a view to facilitating supply of medical stores to the Government institutions and the motive in locating the Depot was to function as a distributing center for the purpose of supply of medical stores. The appellant contended, inter alia before the High Court.

> "That your petitioner does not carry on any business in medical stores, namely, medicine, drugs, surgical instruments and appliances, dressings and hospital equipments, but merely supplies the said goods to the institutions mentioned earlier on 'no profit - no loss' basis. Your petitioner in recovering the value of the above-mentioned medical stores from the institutions mentioned earlier, adds 10 per cent of the purchase prices of such medical stores as Depart mental charges to meet the administrative costs only. That the supply of medical stores by the petitioner is neither its avocation nor profession and there is no element or object of profit making in all its dealings with the institutions mentioned earlier. The transactions carried on

> by the petitioner Depot are not of commercial nature and the Depot functions only us a distribution center with the sole object of ensuring the supply of pure drugs and medicines at lesser prices than available in the market to the Central and State Government institutions within the State of Assam and other neighbouring places."

The appellant did not apply for registration in view of its stand but the Superintendent of Taxes got the appellant registered under s. 7(1) of the State Act with effect from December 1, 1965, and also treated it to be a dealer under the Central Act. Assessments followed under both the Acts overruling appellant's stand whereupon the writ petitions as indicated were filed.

Before the High Court the appellant reiterated its stand that as it was not a dealer within the meaning of s. 2

(b) of the Act, the action of the Taxing authority in compulsorily registering it was bad and the assessments were illegal. Before the High Court appellant produced a letter written by it to the Superintendent of Taxes dated September 30, 1966, wherein it had been stated :

> "The supply price is fixed on the basis of cost of acquisition plus departmental charges consistent with the overheads fixed absolutely on the principles of 'No loss-No profit The formula of rate fixation and the levy of departmental charges are approved by the Government of India, who also watch and if required, revise such fixations annually to enforce the ruling principles of 'No loss-No profit."

It had been the consistent stand of the appellant from the very beginning that the transactions were without any profit motive and on the basis of 'No loss-No profit', and, therefore, unless the respondent found that the transactions had been carried on with a view to making profit it would not constitute business and the appellant cannot be held to be a dealer liable to tax under the two Acts. The High Court referred to the definition of dealer in s. 2 (b) which requires business of buying or selling of goods to be carried on. Certain decisions of this Court were placed before the High Court in support of the appellant's stand that without profit motive the transactions would not constitute business even if there was frequency, volume, certainty and regularity. The High Court, however, held:

> "It is difficult to hold that the Government of India in this case is absolutely regardless of the question of possibility of profit rather than loss. The very formula 'No profit-No loss clearly points to earning of some profit and certainly not incurring of loss in the course of the transactions which are organised, systematic and regular. The very fact the Government keeps a watch and if required revises the formula of rate fixation and the levy of departmental charges would also go to show that the Government never intended not to earn minimum of profit in these trans actions of sales,"

and proceeded to dismiss the writ petitions by saying :

> "Be that as it may, for the reasons given by us and in view of the principles of law settled by the Supreme Court, we are clearly of the opinion that the petitioner Depot is a 'dealer' within the meaning of section 2(b) of the Act and, therefore, the Superintendent of Taxes had jurisdiction to register it and also to pass the impugned order of assessment. We are also clearly of the opinion that the petitioner is carrying on the business of selling goods. Both the submissions of the learned counsel for the petitioner, therefore, fail."

In The State of Gujarat v. Raipur Manufacturiug Co. Ltd., 19 S.T.C. 1, this Court held :

> "Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit motive. By the use of the expression 'profit motive' it us not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity..."

In Hindustan Steel Ltd. v. The State of Orissa,25 S.T.C. 211 the sames. question came up for examination. Hindustan Steel Ltd., the appellant, was procuring cement, bricks and iron materials and was supplying the same from its stores to contractors working under it by recovering the cost price along with a further sum to cover handling expenses. It took the stand before the Sales Tax authorities that the supplies to contractors on recovery of price together with the extra sum did not constitute business. This Court referred to its earlier decision in the case of State of Andhra Pradeah v. Abdul Bakahi & Bros., 15 S.T.C. 644, where it had said:

> "The expression 'business' though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive, and not for sport or pleasure and held :
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> "If the company agreed to charge a fixed percentage above the cost price for storage, insurance and rental charges, it may be reasonably inferred that the company did not carry on business of supplying materials as a part of business activity with a view to making profit."

In Stste of Tamil Nadu v. Thirumagal Mills Ltd. etc., 29 S.T.C. 290, this Court took a similar view with reference to the pre-amended definition of 'dealer' and 'business' under the Tamil Nadu Sales Tax Act.

In The Joint Director of Foods, Visakhapatnam v. The State of Andhra Pradesh, 38 S.T.C. 329, this Court again pointed out:

> "We may hasten to mention that the ordinary concept of business has the element of gain or profit, whose absence negatives the character of the activity as business in section 2(b) of the Central Act. A person becomes a dealer only if he carries on business and the Central Government can be designated as 'dealer' only if there if profit- motive."

On the basis of these authorities the position is clear that in respect of the pre-amended period when in the definition of the term 'business' profit motive had not been omitted, in the absense of profit-motive transactions though satisfying the requirement of volume, frequency, continuity and regularity, would not constitute business so as to make a person carrying on such transactions a dealer.

Reliance was placed by counsel for the respondents on two decisions - one of this Court and other of the Punjab & Haryana High Court. In Deputy Commercial Tax Officer, Saidapet, Madras & Narc. v. Enfield India Ltd. Co-operative Canteen Ltd., 21 S.T.C. 317, the question for consideration was whether a members' Co-operative Society supplying refreshments was a 'dealer' under the Tamilnadu Sales Tax Act. In the definition of 'dealer', the explanation specifically brought in a co-operative society and expressly Provided that whether or not in the course of business if it supplied goods to its members it became a dealer. KEEPING the said definition in view the decision went in favour of the Revenue. That would not be an authority relevant for our present purpose.

In Government Medical Store Depot v. State of Haryana & Anr., 39 S.T.C. 114, the very appellant was the assessee in respect of its repot located at Karnal. On the facts placed before the Court, the following conclusion was reached after referring to the judgment of this Court in the case of The Joint Director of Foods, Visakhapatnam:

> "The aforesaid observations apply with full vigour to the instant case and we have no hesitation in holding that the petitioner Depot was a 'dealer' within section 2(b) of the Central Sales Tax Act and also under s. 2(d) of the Act."

Obviously, this was a decision on the facts available on record and cannot be relied upon for the factual determination of the question in dispute before us.

In the Raipur Manufacturing Co.'s case (supra) this Court had clearly said :

> "It may be pointed out that the burden of proving that the Company was carrying on business of selling coal lay upon the Sales Tax Authorities and if they made no investigation and have come to the conclusion merely because of the frequency and the volume of the sales, the inference cannot be sustained."

In the instant case, as already shown, the appellant had from the very beginning taken the stand that its transactions were-without any profit motive. The burden lay on the Revenue to show that these transactions were carried on with profit motive, whether profit was actually earned or not being of no material importance, and no investigation had been made by the respondent into this aspect when it made the assessments. Nor was the High Court called upon to record such a finding on the basis of any material placed and the respondent remdined satisfied by pleading a bare denial to the assertion in the writ petitions supported by the scheme and its terms. Mr. Ahuja for the respondent strenuously pleaded that the matters should go back and the respondents would be given an opportunity of determining the question as to whether the transactions had been carried on with any profit motive. We are concerned with the years 1965-68. About two decades have already rolled by. We may point out that at the instance of Mr. Ahuja we had called upon the appellant to produce its record and appellant's counsel on the subsequent date reported that the record were not available to be produced. In these circumstances, we do not think it proper to remand the matters to give the respondent an opportunity of determining the question of profit motive.

The High Court, in our view, on the materials placed before it, went wrong in dismissing the writ petitions. The legal position being settled as indicated by several decisions of this Court, the writ petitions should have been allowed and the assessments should have been quashed. We accordingly allow the appeals, and while reversing the decision of the High Court in respect of the periods specified above, quash the assessments. We make it clear that quashing of these assessments would not operate as a bar to respondent going into the matter again in respect of any subsequent period in accordance with law and our judgment must be confined to the facts of the case as available on record for the period in question. Parties are directed to bear their respective costs throughout.

A.P.J. Appeals allowed.