State Of Madras vs M/S.K.C.P. Ltd on 20 August, 1968

Equivalent citations: 1969 AIR 348, 1969 SCR (1) 778, AIR 1969 SUPREME COURT 348

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:
STATE OF MADRAS

Vs.

RESPONDENT:
M/S.K.C.P. LTD.

DATE OF JUDGMENT:
20/08/1968

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1969 AIR 348 1969 SCR (1) 778
CITATOR INFO :
RF 1971 SC2054 (1)

ACT:
Central Sales Tax Act LXXIV of 1956-Ss. 2(b) and 9(3)-Assessee engaged in manufacture and sale of machinery parts-Purchasing furnaces for its foundry-On their being found unsuitable selling them at a profit-If a 'dealer' in respect of such sale-Whether sales tax payable on such sale.

HEADNOTE:
The respondent Company carried on business of manufacture and sale of machinery and parts of machinery etc. For its manufacturing activities, it maintained a foundry and in 19'52 it purchased two arc furnaces for use in this foundry. As the furnaces were found unsuitable they were sold to a purchaser at a profit. For the assessment year 195859 the sales tax assessing authorities included the sale

price of the furnaces in the turnover of the Company although it was maintained by the Company that the sale represented art isolated sale of its fixed capital assets. An appeal to the Sales Tax Appellate Tribunal was rejected but the High Court allowed a revision petition on the view that it was impossible to hold that the sale of the are furnaces was either ingrained in the business activity of the assessee or would constitute its normal business activity; and that the mere fact that the sale price exceeded the cost price of the arc furnaces was not sufficient to establish that the sale was a business activity or that it was actuated by the profit motive.

On appeal to this Court.

HELD: The High Court had rightly concluded that the sale proceeds of the furnaces could not be included in the turnover of the assessee for determining its liability to sales tax.

The furnaces were admittedly imported for the purpose of being installed as a part of the plant in the foundry of the assessee. There was no material to show that there was any intention at the time when the furnaces were purchased of selling them at a profit. Although the assessee was dealing in the sale of heavy machinery and machinery parts it was nowhere proved that furnaces were ever manufactured or sold by it or were part of its business or ingrained therein. The are furnaces were either fixed assets or discarded goods which had been found to be unserviceable Or unsuitable. The assessee could not therefore be said to be a dealer within the definition given in s. 2(b) of the Central Act. [783 F-784 B]

State of Andhra pradesh v. Abdul Bakshi & Bros., 15 S.T.C. 644 and State of Gularat v. Raipur Manufacturing Co. Ltd., 19 S.T.C. 1; distinguished.

Ambica Mills Ltd. v. State of Gujarat, 15 S.T.C. 367, State

Gujarat v. Vivekananda Mills, 19 S.T.C. 103, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 731 of 1966.

Appeal by special leave from the judgment and order dated October 22, 1964 of the Madras High Court in Tax Case No. 197 of 1963 (Revision No. 126).

A.K. Sen and A.V. Rangam, for the appellant. S.T. Desai and T.A. Ramachandran, for the respondent. The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave in which the sole question for decision is whether the respondent company was liable to pay sales tax on an amount of Rs. 4,20,000 being the sale-price of two arc furnaces which 'had been purchased in 1952 and sold in 1958.

The respondent company carried on business at 38, Mount ROad, Madras. its main business 'being the. manufacture and sale of machinery and parts of machinery. ,and accessories. For manufacturing parts of the machinery, the company maintained a foundry and in 1952 it purchased two arc furnaces for a sum of Rs. 2,13,512.81 for the purpose of using the same in its foundry. In the account books and the balance sheet of the company these furnaces were shown under the heading "workshop equipment". According to the company.the furnaces were found to be unsuitable for the purpose for which they had been purchased and therefore they were disposed of in 1958 to a purchaser in Calcutta for a sum of Rs. 4,20,000. For the assessment year 1958-59 the assessing authorities sought to include the amount of Rs. 4,20,000 in the turnover of the company although it was maintained by the company that the sale represented an isolated sale of its fixed capital assets. The appeal before the Sales Tax Appellate Tribunal, Madras, also failed. The view of the tribunal may be stated in its own words :'-

> "It is not denied that the appellant comes within the scope of the definition of "dealer". It has to be seen whether the sale of the two arc' furnaces had a reasonable connection with the normal course of business of the assessee. The fact that the appellant could, not use them or that they are surplus machinery cannot take it out of the ambit of the appellant's business of sales of machinery or part of machinery.. The necessity to dispose of unwanted machinery is ingrained in the very nature of business of sale of machinery which the assessee was carrying on and it had to effect sales of such surplus materials".

A revision petition was presented to the High Court of Madras under s. 38 of the Madras General Sales Tax Act (Act 1 of 1959) read with s. 9(3) of the Central Sale Tax Act, 1956 (Act LXXIV of 1956), hereinafter called the Madras Act and the Central Act respectively. 'Before the High Court it was argued on behalf of the assessee that the furnaces were purchased for the purpose of being installed in the factory. It was therefore to be used as capital asset and not as a part of the stock- in-trade. At the time of purchase the assessee had no idea of selling the furnaces and there was no intention of making any profit. The business which was carried on by the assessee was entirely different, namely, production of machinery and parts and the sale of the furnaces, when they were found to be unserviceable, was not made in the course of the normal business activity of the assessee. The position taken up on behalf of the State was that when the assessee carried on the business of selling machinery of various kinds the sale of arc furnaces must be regarded as sale of machinery in the normal course of its business activity. The learned Judges of the High Court referred to a large number of decided cases including the decision of this Court in State of Andhra Pradesh v. Abdul Bakshi & Bros.(1) Reliance was finally placed on the observations in Ambica Mills Ltd. v. State of Gujarat(2) in which it was observed inter alia that the machinery which had been disposed of had been obviously purchased and installed for use for production of textile goods. The view taken in that decision was that a person could not be said to be carrying on business of selling assets of that business when sale of such assets had been made only because they had become useless and unserviceable by usual wear and tear or because of the necessity for substituting modern machinery. In the present case the learned Madras Judges were of the opinion that it was impossible to hold that the sale of the arc furnaces was either ingrained in the business activity of the assessee or 'would constitute its normal business activity. According to them the mere fact that the sale price

exceeded the cost price of the arc furnace was not sufficient to establish that their sale was a business activity or that it was actuated by the profit motive. It was consequently held that the turnover of the assessee was not liable to sales tax.

Mr. A.K. Sen for the appellant contends that the assessee being a dealer in heavy machinery and accessories thereof the sale of arc furnaces could not be said to be wholly different and unconnected with its usual business activity. He has emphasised the fact that the assessee had admittedly made a profit of Rs. 2,07,000 from the aforesaid transaction and in addition collected sales tax from the Calcutta dealer. He has called attention to the finding of the Appellate Assistant Commissioner of Commercial Taxes that the sale in the present' case was not one of used asset and that whatever the intention at the time of the purchase might be, once the machinery was found not usable, the (1) 15 S.T.C. 644. (2) 15 S.T.C.

367. assessee "has got necessarily to get into a business venture of selling it and in point of fact sold it at good profit". It is further urged that the arc furnaces became a part of stock or machinery for sale because the assessee was dealing in manufacture and sale of heavy machinery and it must be deemed to have put the furnaces into its stock in due course of business activity. Mr. Sen has next pointed out that the respondent fell squarely within the definition of the word "dealer" as defined by s. 2(b) of the Central Act. In support of his submission Mr. Sen sought to rely on a decision of this Court in The State of Andhra Pradesh v. Abdul Bakshi & Bros.(1) In that case the respondents had purchased undressed hides and skins and tanning bark together with other material required in their tannery as they carried on the business of tanning hides and skins and of selling tanned skins in the town of Hyderabad. For the assessment year 1954-55 the Sales Tax Officer sought to include in the total turnover a certain, amount representing the price paid for buying tanning bark required in their tannery. The respondents submitted that the tanning bark had been bought for consumption in tannery and not for sate and they were accordingly not dealers in tanning bark. Therefore the price paid for buying tanning bark was not liable to duty under the Hyderabad General Sales Tax Act. The departmental authorifles as also the Sales Tax Appellate Tribunal rejected this contention but it was accepted by the High Court of Andhra Pradesh. The High Court rejected the claim of the taxing authorities to tax the tanning bark on the ground that the purchaser was liable to pay tax only when he was carrying on business of buying and selling the commodity and not when he brought it for consumption in the process for manufacturing an article to be sold by him. This view was reversed and it was observed as a follows:

> "A person to be a dealer must be engaged in the business of selling or buying or supplying goods. 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".

Mr. Sen has laid stress on what has been said further at pages 647 and 648 :--

> "The Legislature has not made sale of the very article bought by a person a condition for treating him as a (1) 15 S.T.C. 644.

dealer: the definition merely requires that the buying of the commodity mentioned in rule 5(2) must be in the course of business, i.e. must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity".

The facts in the decision of this Court under discussion were different and distinguishable from the present case. The tanning bark: was actually consumed in the process of manufacturing another commodity and it was either used as an ingredient or for aiding the process of manufacture which cannot be said about the arc furnaces which were indisputably bought for being installed in the foundry as a part of the manufacturing plant. The words "in aid of a manufacturing process" have to be read in the context in which they appear in the passage extracted above and cannot be taken to mean that even a part of manufacturing plant will become a salable commodity if it is found to be unusable or no longer required. Such a view is untenable and cannot be -regarded as sustainable in the light of the decision of this Court. In State of Gujarat v. Raipur Manufacturing Co. Ltd.(1), the tribunal had held that where a cotton textile mill had managed to collect unserviceable article in the course of manufacture of cloth which were sold, sales of these articles must be regarded as a part of the business of the textile mill if the transactions of sale were large and frequent. After referring to the definition and the expression "dealer" in s. 2 (6) of the Bombay Sales Tax Act, 1953 and the other relevant provision of that Act as also the law laid down in the State of Andhra Pradesh v. Abdul Bakshi & Bros.(2) it was observed that by the use of the expression "profit motive" it was not intended that profit must, in fact, be earned nor did the expression cover a mere desire to make some monetary gain out of the 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. Where a person came to own, in the course of his business of manufacturing or selling a commodity some other commodity which is not a byproduct or a subsidiary product of that business and he sold that commodity, cogent evidence that he had the intention to carry on the business of selling that commodity would be required. It was further observed that where a person in the course of carrying on the business was required to dispose of what might be called his fixed assets or his discarded goods acquired in the course of business, an inference that he desired to carry on the (1) 19 S.T.C. 1. (2) 15 S.T.C.

644. business of selling his fixed assets or discarded goods would not ordinarily arise. In the State of Gujarat v. Vivekananda Mills(1), the assessee was carrying on the business of manufacturing cotton fabrics. It had agreed to purchase under user's import licence 500 bales of Californian cotton in January 1953. Believing that the shipment would arrive after six months the assessee made arrangement to purchase 300 bales of similar cotton to meet its immediate requirements. The consignment of Californian cotton arrived unexpectedly in April 1953. A large sum of money belonging to the assessee was blocked up and with the sanction of the authorities the assessee sold 411 bales of this cotton to other mills. It was held that in selling the cotton with a view to avoid locking up of funds, it could not be inferred that. the assessee had sold the goods with the intention

to carry on the business of selling cotton and the sales were not liable to tax. It was clear from the supplemental statement of the case which had been submitted that though the assessee had been selling cotton from the year 1946 onwards except for three intervening years the sales were in respect of goods purchased for the business of manufacturing cotton cloth and the sales had been effected either because the cotton was surplus or the assessee had to accommodate its sister concern or with the view that the finances were not blocked up by detaining cotton which the assessee did not need for its business.

The facts and circumstances which have been established in the present case are stronger than those in the previous decisions of this Court. The furnaces were admittedly imported for the purpose of being installed as a part of the plant in the foundry of the assessee. There is no material whatsoever to show that there was any intention at the time when the furnaces were purchased of selling them at a profit. According to Mr. Sen himself the assessee decided to sell the furnaces because it was discovered that they were too big to be installed in the manufacturing plant. The case of the assessee throughout was and no evidence or material to the contrary existed that the furnaces had been shown in the books of the assessee under the classification "workshop equipment". The same entries existed in the balance sheet. Although the assessee was dealing in the sale of heavy machinery and machinery part it was nowhere proved that furnaces were ever manufactured or sold by it or were part of its business or ingrained therein. The arc furnaces were either fixed assets or discarded goods which had been found to be unserviceable or unsuitable. The assessee could therefore hardly be said to be a dealer within the definition given in s. 2(b) of the Central Act which is (1) 19 S.T.C. 103.

> "dealer" means any. person who carries on the business of selling goods, and

includes a Government which carries on such business."

This definition has to be read in the light of the principles which have been laid down by this Court in the cases referred to above.

It must therefore be held that the High Court rightly came to the 'conclusion that the sale proceeds of the furnaces could not be included in the turnover of the assessee for the purpose of determining the liability of the assessee to sales tax. The appeal fails and is dismissed with costs. Appeal dismissed.

R.K.P.S.