

**State of Madras Vs. Trustees of the Port of Madras**

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**Court :** Chennai

**Decided On :** Jul-24-1973

**Reported in :** [1974]34STC135(Mad)

**Judge :** Ramanujam and ;V. Ramaswami, JJ.

**Appeal No. :** Tax Case Nos. 35 and 36 of 1970 and Revision Nos. 34 and 35 of 1970

**Appellant :** State of Madras

**Respondent :** Trustees of the Port of Madras

**Advocate for Def. :** R.G. Rajan and ;D.V. Sivagnanam, Advs.

**Advocate for Pet/Ap. :** K. Venkataswami, First Assistant Government Pleader

**Disposition :** Petition dismissed

**Judgement :**

**Ramanujam, J.**

1. These two cases relate to the same assessee and involve the same point. The assessee is the Madras Port Trust represented by its Chairman. The assessee was periodically effecting sales through M/s. Murray and Company, Auctioneers, of unclaimed and unserviceable articles. For the assessment years 1964-65 and

1965-66, it has effected sales of such articles to the extent of Rs. 8,20,312.88 and Rs. 9,76,058.25 respectively. The assessing authority took the view that the sales of such articles effected by the assessee are taxable. In that view, it determined the taxable turnover of the assessee for the years 1964-65 and 1965-66 at Rs. 8,06,627.88 and Rs. 9,62,012.25 respectively after rejecting the contention of the assessee that such sales are not in the course of carrying on of a business activity as contemplated by the provisions of the Madras General Sales Tax Act, 1959 (hereinafter called as the Act).

2. The assessee thereafter appealed to the Appellate Assistant Commissioner, but without success. On further appeals to the Sales Tax Appellate Tribunal, the Tribunal held that the assessee is neither a dealer as defined in the Act nor does it carry on any business activity in the commercial sense or with any profit-motive and that, therefore, the sales of unserviceable and unclaimed articles could not be brought to charge under the Act. Aggrieved against the order of the Tribunal, the State has come before this Court.

3. It is contended on behalf of the revenue that the sales of unclaimed and unserviceable articles in question have taken place after the definition of 'business' has been amended by Madras Act 15 of 1964 and that, therefore, whether or not the assessee has effected sales in the course of a business activity or with a profit-motive, the sales will become taxable in the light of the amended provision of the definition of 'business' and that this position is clear from the decision of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426 According to the learned Government Pleader, the periodical sales of unclaimed and unserviceable articles by the assessee would partake the character of a business activity and, therefore, whether there is a profit-motive or not, the sales could validly be taxed.

4. It is true that after the amendment of the definition of 'business' by Madras Act 15 of 1964 all commercial transactions whether carried on with a profit-motive or not or whether or not any profit accrues from such transactions are included in that definition. But the question is whether the sales effected by the assessee can be taken to be commercial transactions so that they can be said to be 'in the course

of business'. The assessee is a statutory body constituted for the purpose of performance of certain statutory duties by the provisions of the Madras Port Trust Act, 1905. The preamble to the said Act sets out the object of the Act as regulation, conservancy and improvement of the Port of Madras. Section 39 of the Act sets out the service to be rendered by the Port Trust in relation to all goods received or taken custody of by the Port Trust, either in the course of export or in the course of import. Section 42 provides the scale of rates for and the conditions under which any of the services specified in Section 39 are to be performed. Section 44 states that the prior sanction of the Central Government has to be obtained for the scale of rates to be charged, and the conditions subject to which the services are to be performed. Section 51 creates a lien over the goods for the amount of rates leviable under the Act in respect of those goods. Section 56 empowers the Port Trust, after the expiry of a specified time, to sell by public auction, so much of the goods as may be necessary to recover the amount of rates remaining unpaid. Section 58-A also empowers the Port Trust to sell the goods which have not been removed from its premises within a limited time, by public auction, after giving notice of sale to the owner of the goods. Section 59 provides as to how the proceeds of every sale conducted under Section 56 or Section 58-A shall be applied. Section 62 provides that if the proceeds of sale are insufficient to cover the rates, damages, expenses, etc., payable to the Port Trust, it may recover the balance by resorting to the alternative remedy by way of suit. The above provisions clearly indicate that the Port Trust at no time became the owner of the goods, nor did it effect the sales as per the directions of the owners of the goods. The sales have been effected by the Port Trust only in exercise of its statutory right to recover its dues by enforcing its right of lien on the goods and the sale proceeds never became the property of the Port Trust. In the light of the above position, it cannot be said that the Port Trust has sold the unclaimed goods either as a commercial venture or as a dealer. Even in the face of the amended definition of 'business', unless the Port Trust is treated as a dealer carrying on the business of selling, supplying or distributing the goods as a commercial venture, its sales in the course of the exercise of its statutory duties are not assessable. Therefore, the sales of unclaimed or uncleared goods by the Port Trust cannot be considered as sales effected by a 'dealer'.

5. Unserviceable goods said to have been sold by the Port Trust are old paper, iron scraps, containers, dismantled structures, old trucks, etc. The sales of such articles can of course be brought to charge by virtue of the amended definition of 'business', if they have been effected by a dealer.

6. But as already held the Port Trust cannot be considered to be a dealer engaged in a business or a commercial venture.

7. In *Director of Supplies and Disposals v. Board of Revenue, West Bengal, Calcutta* [1967] 20 S.T.C. 398, their Lordships of the Supreme Court considered a somewhat similar question. In that case, the Director of Supplies and Disposals was taxed on his sales of some surplus materials. It was found that the function of the Directorate of Supplies and Disposals was to dispose of the surplus goods and to purchase goods on behalf of the Government of India and that a considerable portion of the surplus materials left in India at the conclusion of the last war by the American Government, which were no longer useful or have become obsolete, were sold to the public in a series of transactions. The question there was whether the Director of Supplies and Disposals carried on the business of selling the goods and was a dealer within the meaning of Section 2(c) of the Bengal Finance (Sales Tax) Act, 1941. The court held that though the expression 'business' is a word of wide and indefinite import, there must be some real, systematic or organised course of activity or conduct with a set purpose of making profit, that the Director was merely disposing of the surplus material by way of realisation of its value and that, therefore, the transactions were not taxable as sales effected by a dealer.

8. As already stated, the Port Trust has effected the sales in question in enforcement of its lien for recovery of the rates and rents payable in respect of the goods, and that it was not the owner of the goods sold at any time. To make a person a dealer as defined in the Act, he must have sold the goods either as owner or as one who has been authorised by the owner to sell on his behalf. When the Port Trust sells the goods in respect of which it had a lien, it cannot be said to have effected the sales of the goods as a dealer. Suppose a pawn broker sells the articles pledged with him in default of the owner redeeming the articles as agreed with a view to recover the amounts advanced by him, can it be said that he

is a dealer engaged in the business of buying and selling the articles? The answer can only be in the negative.

9. In a recent decision in *Tirumala Tirupati Devasthanam v. State of Madras* [1972] 29 S.T.C. 266, Ramaprasada Rao, J., has held that though the definition of 'business' in Section 2(d) of the Madras General Sales Tax Act, 1959, as amended by the amending Act of 1964 is an inclusive one, yet only trading, commercial or manufacturing activities would come within the definition, that though the motive to make a profit behind such an activity is irrelevant under the definition, the essential base on which the definition rests is that the seller should be a trader or a person indulging in commerce or manufacturing activities, and that unless the nature of the activity of a person is so intricately connected with trade, commerce or manufacture, as popularly understood, such a person cannot be said to be a dealer carrying on business. According to the learned Judge the primary requisite necessary before a person can be characterised as a dealer within the meaning of Section 2(g) of the Act is that he should carry on a business venture. In that case, silver and other valuable articles found in the hundis of the temples of the Tirumala Tirupati Devasthanam were sold in public auction with a view to convert them into cash. The question was whether such sales effected by the Devasthanam are liable to be taxed. It was held that the sales effected were only by way of converting the silver and other articles into cash and that the Devasthanam in effecting the sales was not indulging in a commercial activity or doing any business. The case before us so far as it relates to unclaimed goods is an a fortiori one, for, in this case, the articles sold by the Port Trust did not belong to it unlike in the case dealt with in *Tirumala Tirupati Devasthanam v. State of Madras* [1972] 29 S.T.C. 266, where the articles sold belonged to the Devasthanam.

10. In *Andhra Pradesh State Road Transport Corporation v. Commercial Tax Officer, Hyderabad III* [1971] 27 S.T.C. 42, the Andhra Pradesh High Court had held that the sales of scrapped vehicles, old tyres, old containers and other unserviceable materials effected periodically by the Andhra Pradesh Road Transport Corporation constituted under the Road Transport Corporation Act, 1950, were not taxable on the ground that the corporation was not a dealer carrying on business in those materials and that the corporation is primarily

constituted for operating an efficient road transport service and it could not be held to be carrying on business of selling discarded materials which have come into its possession in the course of its activities. This decision was referred to and explained by the Supreme Court in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426 on the ground that the said decision was based on the fact that the State Road Transport Corporation is primarily constituted to provide an efficient, adequate, economical and properly co-ordinated system of road transport service and, therefore, could not be held to be a dealer carrying on business in old and scrapped materials and that, therefore, the charging section which only makes a dealer liable to pay tax in respect of the turnover for the year cannot be taken to include the Road Transport Corporation which is a statutory body constituted for a special purpose.

11. We are, therefore, of the view that the decision in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426, which is strongly relied on by the revenue cannot be of any help for the reason that the sales of unclaimed and unserviceable goods effected by the Port Trust are not incidental or ancillary to any business, but are only in the course of its performance of the statutory duties.

12. The learned Government Pleader seeks to bring the Port Trust within explanation (2) to Section 2(g) of the Act. The said explanation is as follows :

The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.

13. According to the revenue, the Port Trust is a department of the Central Government and, therefore, even if the sales effected by it are not in the course of business, they are liable to be taxed, as the explanation deems a department of the Central Government or a State Government a dealer for the purpose of this Act. But we are not able to accept this contention of the revenue. The Port Trust is a statutory body constituted by the Madras Port Trust Act, 1905, and though it is subject to certain control by the Central Government under the provisions of that Act, it cannot be said to be a department of the Central Government. Therefore,

the said explanation cannot be availed of by the revenue.

14. The learned Government Pleader then seeks to bring in the Port Trust under the term 'local authority' occurring in Section 2(g)(i) of the Act. But even if the Port Trust is taken to be a local authority, still it cannot be treated a dealer unless it carries on the business of buying and selling, etc. As we have already held that the Port Trust, a statutory body, has not effected the sales in question in the course of any business activity, this contention also has to be rejected.

15. As a matter of fact, in *Trustees of the Port of Madras v. State of Madras* [1960] 11 S.T.C. 224, the question arose as to whether the Madras Port Trust could be taxed under the Act on their supply of water to the ships which touched the Port of Madras. A Division Bench of this Court held that the Port Trust in supplying water to the ships and collecting a fee therefor was only discharging a duty imposed upon it by the Madras Port Trust Act, 1905, and was not doing any business so as to make it a dealer within the meaning of Section 2(g) of the Act. We, therefore, hold that the Port Trust was not a dealer when it effected the sales in question and, therefore, the sales are not taxable under the Act.

16. In this view the tax cases are dismissed with costs. Counsel's fee Rs. 150 in T.C. No. 35 of 1970 alone. There will be no order as to costs in T.C. No. 36 of 1970.