1964

April 8

STATE OF ANDHRA PRADESH

v.

ABDUL BAKHI AND BROS.

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Sales Tax—Total Turnover included price for buying tanning bark—That price is taxable—Dealer—Meaning of—Hyderabad General Sales Tax Act, 1950, *s.* 2(c), 2(m)—*Sales Tax Rules, rr.* 5-(1), 5(2).

The respondents are registered dealers carrying on the business of tanning hides and skins and selling the tanned skins. The authorities under the Hyderabad General Sales Tax Act, 1950 assessed the respondent for the total turnover which included the price paid by the respondent for purchasing tanning bark used in the tanning process. The respondent contended that the price paid for the purchase of tanning bark should be excluded from the taxable turnover because the tanning bark was bought by the respondent for consumption and not for sale and hence the respondent was not "dealer" *qua* the tanning bark. His contention was not accepted by the Tax authorities. In a petition to the High Court under s. 22(1) of the Hyderabad General Sales Tax Act the contention of the respondent was accepted and the assessment was modified. In appeal filed with special leave,

Held: The High Court was in error in holding that a purchaser is liable to pay tax under r. 5(2) of the Sales Tax Rules only when he is carrying on a business of buying and selling a commodity specified in sub-r. (2) and not when he buys it for consumption in a process for manufacturing a commodity to be sold by him.

(ii) To regard an activity as a business there must be a course of dealing either actually continued or contemplated to be continued with a profit motive and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. The Act requires merely that buying of the commodity mentioned in r. 5(2) must be in the course of business; that is it must be for sale or use with a view to take 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.

(iii) In the present case the tanning bark was not bought by the respondent for any purpose unconnected with the business. Consumption of the tanning bark in the manufacturing process did not therefore exclude the respondents from the definition of dealer *qua* the tanning bark.

Sadak Thamby and Company v. *State of Madras*, 14 S.T.C. 753, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 473 of 1963. Appeal by special leave from the judgment and order March 22, 1960, of the Andhra Pradesh High Court in Tax Revision Case No. 88 of 1960.

A. Ranganadham Chetty, B. R. G. K. Achar and *R. N. Sachthey*, for the appellant.

The respondent did not appear.

April 8. 1964. The Judgment of the Court was delivered by

SHAH, J.—The respondents who are registered as dealers under the Hyderabad General Sales Tax Act, 1950 carry on the business of tanning hides and skins and of selling the tanned skins in the town of Hyderabad. For the purposes of their business the respondents purchase undressed hides and skins and also tanning bark and other materials required in their tannery. For the assessment year 1954-55 the Sales-tax Officer, Circle IV, Hyderabad, found that the total turnover of the respondents was Rs. 5,70,417-12-4 (O.S.) in respect of the hides, skins, wool and tanning bark. The respondents disputed their liability to pay tax on Rs. 61,431-14-9 (O.S.) included in the turnover contending that this amount represented the price paid for buying tanning bark required in their tannery. They submitted that tanning bark was bought for consumption in the tannery and not for sale, and they were accordingly not dealers in tanning bark and therefore the price paid for buying tanning bark was not liable to duty under the Hyderabad General Sales Tax Act. The Sales-tax Officer rejected the contention of the respondents, and his order was confirmed in appeal by the Deputy Commissioner, C. T., Hyderabad Division and also by the Sales Tax Appellate Tribunal, Hyderabad. But the High Court of Andhra Pradesh in a petition under s. 22(1) read with rule 40 framed under the Andhra Pradesh General Sales Tax Act VII of 1957 modified the order passed by the taxing authorities and excluded from the computation of the taxable turnover the price paid by the respondents for the tanning bark used in the tannery. With special leave, the State of Andhra Pradesh has appealed to this Court.

Section 2(e) of the Hyderabad General Sales Tax Act defines "dealer" as meaning any person, local authority, company, firm, Hindu undivided family or any association or associations of persons engaged in the business of buying, selling or supplying goods in the Hyderabad State whether for a commission, remuneration or otherwise and includes a State Government which carries on such business and any society, club or association which buys or sells or supplies goods to its members. Section 2(m) defines "turnover" as meaning an aggregate amount for which goods are either bought by or sold by a dealer, whether for a cash or for deferred payment or other valuable consideration. By. s. 4 a tax at the rate of three pies in the rupee in I. G. currency on so much of the turnover for the year as is attributable to transactions in goods other than exempted goods is imposed. Rule 5(1) provides that save as provided in sub-rule (2) the turnover of a dealer for the purpose of the rules shall be the amount for which goods are sold by the delear. Rule 5(2) provides that in the case of certain commodities the turnover

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of a dealer for the purpose of the rules shall be the amount for which the goods are bought by the dealer. Those commodities are:—

(a) Groundnut (shelled or unshelled);
(b) Bidi leaves;
(c) Tarwar and other tanning barks;
(d) Til, karad and castor seed;
(e) Cotton including kappas;
(f) Linseed, turmeric, dhania and other agricultural produce including all kinds of dhals and paddy (husked or unhusked) not otherwise exempted under the said Act, but excluding cotton seed, sugarcane, tea and coffee seeds;
(g) Hides and skins;
(h) Wool, bones and horns.

The High Court of Andhra Pradesh rejected the claim of the taxing authories to tax the tanning bark bought by the respondents on the ground that a purchaser is liable to pay tax under Rule 5(2) only when he is carrying on business of buying and selling a commodity specified in the sub-rule (2) and not when he buys it for consumption in a process for manufacturing an article to be sold by him. Therefore, in the view of the High Court if a dealer buys any commodity included in Rule 5(2) for consumption in his business but not for sale, he is not to be regarded as engaged in the business of buying, selling or supplying that commodity and the price paid for buying the commodity is not liable to tax.

We are unable to agree with this view of the High Court. A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression "business" though extensively used 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. But to be a dealer a person need not follow the activity of buying selling and supplying the same commodity. Mere buying for personal consumption i.e. without a profit motive will not make a person, dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a 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.

It cannot be said in the present case that the tanning bark was bought by the respondent for any purpose unconnected with the business carried on by them, viz., manufacture and sale of dressed hides and skins. Consumption in the business and not sale of the commodity bought therefore does not exclude the respondents from the definition of dealer *qua* the tanning bark. This is the view which has, in our judgment, been rightly taken by the Madras Hight Court in the interpretation of a similar statute in operation in the State of Madras in *L.M.S. Sadak Thamby and Company* v. *The State of Madras*(1).

The appeal is therefore allowed and the order passed by the High Court is set aside and order passed by the Sales-tax Appellate Tribunal restored. No order as to costs.

Appeal dismissed.