

(2001) 07 AP CK 0010

Andhra Pradesh High Court

Case No: Writ Petition No. 560 of 1994

Visakhapatnam Port Trust,
Visakhapatnam

APPELLANT

Vs

Commerical Tax Officer,
Intelligence, Visakhapatnam and
another

RESPONDENT

Date of Decision: July 5, 2001

Acts Referred:

- Andhra Pradesh General Sales Tax Act, 1957 - Section 2, 2(1), 35, 37

Citation: (2001) 5 ALD 76

Hon'ble Judges: S.R. Nayak, J; S. Ananda Reddy, J

Bench: Division Bench

Advocate: Mr. K. Srinivasa Murthy, for the Appellant; Government Pleader for Taxes, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

The short question that arises for decision in this writ petition is whether the activity of the Visakhapatnam Port Trust, the petitioner herein, in selling drinking water to various ships stationed in the waters of Visakhapatnam Port area to an extent of Rs.78,28,096/- can be treated as "business" within the meaning of that term in Section 2(IXbbb) of the Andhra Pradesh General Sales Tax Act, 1957.

2. This question arises in the following factual background:

The petitioner is a Port Trust, constituted under the Major Port Trust Act, 1963. It is also a Port within the meaning of Indian Port Act, 1908. It is charged with the duties and functions enumerated in the above two enactments. To be specific and relevant for the purpose of this case, Section 37 empowers the Board to order sea-going vessels to use docks, wharves etc., and Section 35 provides that the Board may

execute such works within the limits of the Port and provide such appliances as it may deem necessary or expedient; and Section 35(i) grants power to the Board for sinking of tube-wells and user of equipments and use of boats, barges and other appliances for the purpose of supplying drinking water at the port. Thus, it is the statutory duty of the Port to provide water to the visiting vessels, which call on the Port.

When the matter stood thus, the Commercial Tax Officer, Intelligence, the 1st respondent herein issued impugned Notice in Ref. CTI No.169, dated 20th December, 1993 informing the petitioner that it is a "Dealer" within the meaning of that term u/s 2(d) of the Andhra Pradesh General Sales Tax Act, 1957 (for short "APGST Act") and therefore it is liable to pay tax at the rate of 8.25 per cent in respect of the water supplied to the ships and demanding payment of tax of Rs.15,55,179-00 for the assessment year 1991-92 within seven days from the date of receipt of the said notice. Hence, this writ petition assailing the validity of the above notice issued by the 1st respondent and for a consequential direction restraining the respondents from giving effect to the said notice.

3. In response to rule nisi, the respondents have filed counter-affidavit opposing the writ petition.

4. Arguing for the petitioner Port, its Standing Counsel Sri K. Srinivasa Murthy, placing reliance on the judgment of the Supreme Court in [State of Tamil Nadu and Another Vs. Board of Trustee of the Port of Madras](#), and the judgment of this Court in [Board of Trustees of the Visakhapatnam Port Trust Vs. Commercial Tax Officer and Another](#), would contend that selling water to the ships is only an incidental activity of the petitioner port and it is not a dominant or primary activity of the Port, and if it is so, the ratio of the judgment of the Supreme Court in State of Tamil Nadu v. Board of Trustees of the Port of Madras (supra) would squarely cover the issue that arises in this case and therefore, the impugned notice issued by the 1st respondent is illegal and without authority.

5. On the other hand, Sri Bhaskar Reddy, learned Special Government Pleader for Taxes, placing reliance on the judgment of the Supreme Court in 1998 (102) ELT 513 (SC) , and a judgment of the Full Bench of this Court in the Union of India v. State of A.P. (1996) 23 APSTJ 84, would maintain that no exception can be taken to the impugned notice of the 1st respondent demanding tax treating the sale of water as exigible.

6. In State of Tamil Nadu v. Board of Trustees of the Port of Madras (supra), the Madras Port Trust provided services of landing, shipping or trans-shipping, receiving, shifting, transporting, storing or delivery of goods brought into the premises of the Port Trust. Goods are brought into the Port Trust and delivered to the importees/ consignees or their clearing agents, etc. In the case of uncleared or abandoned goods, in terms of the statute those goods are brought to sale in public

auction after the approval of the customs authorities. In this factual background, the question that arose before the Apex Court for consideration and decision was "whether the activity carried on by the Madras Port Trust in selling the uncleared or abandoned unserviceable goods would attract the tax under the provisions of the Tamil Nadu General Sales Tax Act? "the Apex Court on consideration of the relevant provisions including the definition of "dealer" and the concept of "business" came to the conclusion that the activity carried on by the Port is only an incidental activity and not dominant activity and therefore, the Port cannot be treated as a "dealer" within the meaning of that term as defined u/s 2(d) of the Act. The ratio decidendi of the judgment is that if the activity carried on by the Port is an incidental activity and not a dominant business activity, then such activity cannot be treated as "business" within the meaning of that term occurring in the definition of the term "dealer" in Section 2(d) of the Act. Therefore, the question that arises for consideration in the premise of above ratio is "whether the activity of the petitioner herein in selling drinking water to the ships is a dominant or incidental activity of the Petitioner port or not. As pointed out supra, the drinking water is supplied by the Port in discharge of its statutory obligation imposed on it u/s 35(i) of the Major Port Trust Act, 1963. A careful perusal of the provisions of the Major Port Trusts Act, 1963 would indicate that selling of water to the ships is only an incidental function of the Port and not its dominant or primary activity. If it is so, the ratio of the judgment of the Supreme Court in State of Tamil Nadu v. Board of Trustees of the Port of Madras (supra) would squarely govern the situation.

7. A Division Bench of this Court in Board of Trustees of Visakhapatnam Port Trust v. Commercial Tax Officer (supra) has opined that the Visakhapatnam port Trust is not a "dealer" within the meaning of the APGST Act, while considering the question "whether the Visakhapatnam Port-Trust could be considered to be a dealer within the meaning of APGST Act in carrying out its activities, such as supply of water to visiting vessels; bunkering of visiting vessels with liquid fuel; offering of tender documents for a consideration to prospective contractors; supply of water and issue of stores to accepted contractors; supply of water and issue of stores of its own engineers and staff; and disposal of unserviceable material or surplus material by auction or by inviting tenders. The view taken by this Court in the above judgment was specifically referred to by the Apex Court with approval in paragraph 43 of its judgment in State of Tamil Nadu v. Board of Trustees of the Port of Madras (supra).

8. The decisions cited by the learned Special Government pleader for taxes are of no help to the Department. In Collector of Customs v. State of West Bengal (supra), the only question advanced before the Supreme Court was "Whether Article 285 of the Constitution debars the imposition of tax upon property belonging to the Customs Department? "The apex Court placing reliance on its earlier judgment of Nine-Judge Bench in [In Re: The Bill To Amend S. 20 of The Sea Customs Act, 1878 and S. 3 of The Central Excises and Salt Act, 1944](#), , and [New Delhi Municipal Committee Vs. State of Punjab, etc. etc.](#), , opined that the Customs Department was a "dealer" within the

meaning of definition of that word in the Bengal Finance (Seals Tax) Act, 1941. We are at a loss to understand how that judgment would have any bearing on the decision-making in this case. The judgment of the Full Bench of this Court in *The Union of India v. State of A.P.*, (supra) is an authority to state that the Customs Department could be treated as a "dealer" within the meaning of the definition of that word u/s 2(d) of the APGST Act. Both the judgments cited by the learned Special Government Pleader for Taxes do not deal with the precise question that arises for our decision in the instant case.

9. In the result, we allow the writ petition and quash the impugned notice. No costs.