PETITIONER:
STATE OF TAMIL NADU

Vs.

RESPONDENT:
SHAKTI ESTATES & ANR.

DATE OF JUDGMENT01/02/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1989 AIR 945 1989 SCR (1) 408
1989 SCC (1) 636 JT 1989 (1) 191
1989 SCALE (1)252

ACT:
Tamil Nadu General Sales Tax Act, 1959: Section 2(d) and (G)-- Assessee--Acquiring reserve forest for coffee and cardamom plantation unwanted trees felled--Sold as firewood, timber, sleepers and charcoal--Assessee whether liable to sales tax--'Adventure in the nature of trade'---What is.

HEADNOTE:
The respondent in each of the appeals is the assessee. It was a firm of 10 individuals. They acquired a reserve forest, by a lease which entitled them to enjoy the usufruct of the forest by its exploitation. The partnership deed provided that the firm will carry on the development and exploitation of lands. The acquisition was effected with a view to raise a coffee and cardamom plantation thereon. For doing this, the assessee had to clear a portion of the forest and in the process fell the unwanted trees standing thereon as natural growth. The cut trees were sold by the assessee in the form of firewood as well as in the form of cut sizes of timber as well as sleepers. Some of the growth was also converted into charcoal and the resultant charcoal sold.

The firm had been functioning for the past 7 years and had been paying sales tax on its sale of firewood, timber and sleepers. But for the first time in the assessment year 1968-69, it put forward a claim that the above turnover was not assessable in its hands.

The assessing officer and the first appellate authorities held that the turnover in question to be taxable. But the Tribunal reversed this decision, and held that the turnover was not liable for assessment to sales tax.

The High Court dismissed the revision petition filed by the State. It held that it was a case of a lease. It did not involve any sale of trees. Merely because the trees were sawn to sizes, would not by itself make out a sale. The suggestion that the sizing of trees into timber of their conversion into sleepers could make a difference was not accepted by the High Court, which following the decision of the Kerala High Court in Kuttiravin & Co. v. State of Kerala, [1976] 38 STC 282 affirmed the Tribunal's order.
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The State appealed to this Court.

Allowing the appeals and setting aside the order of the High Court and Tribunal, the Court,

HELD: l(a) The fact that the assessees are business entities, the size of the tract developed, the extent and value of the trees standing on the land, the inevitability of the jungles having to be cleared and the standing trees disposed of before commercial crops would be grown, the manner in which the forest trees were disposed of, are all insignia that mark out the entire set of activities as a concern in the nature of trade. [414D-E]

l(b) In the area of income tax law, it has been held that no adventure in the nature of trade can be spelt out where all that a person does a mounts to a mere realisation of his capital assets. [414E-F]

l(c) The assessees in the instant case, did not merely realise the value of a capital asset belonging to them. They went in for the acquisition of an asset fully realising its potentialities for exploitation not merely as a plantation but also, incidentally, by disposing of the existing growth on the land. [414G-H]

l(d) If one purchases an asset with a view to turn it to account in such manner, one is certainly carrying out an adventure in the nature of trade. [414H; 415A]

2(a) The definition of 'business' in the T.N. General Sales Tax Act, 1959, includes 'any transaction in connection with or incidental to or ancillary' to a trade. The activities carried on by the assessee were incidental and ancillary to the business which the assessee was carrying on or definitely intended to carry on. It is also immaterial, on this definition, that the assessee may not have had a 'motive of making a profit or gain' on these sales, though on the facts, it is clear that such motive must have existed and, in any event, could not be ruled out. [415B-C]

2(b) Even the sales effected before the plantation started yielding results would be covered by the definition, as the venture undertaken by the assessee has to be considered as an integral whole and there can be no doubt that the sale of the forest produce was part of activities in the contemplation of the assessees right from the beginning. [416B]

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Kuttiravin & Co. v. State, [1976] 38 STC 282, over ruled. L.N. Plantation Co. v. State, [1981] 47 STC 210; Tamil Nadu Trading Co. v. State, [1981] 52 STC 7, approved. Deputy Commissioner v. Shree Shamungam Estates, [1979] 43 STC 226 Mad. reversed State v. Surmah Shell, [1973] 31 STC 426; District Controller of Stores v. Assistant Commercial Tax Officer, [1976] 37 STC 423 referred to, Deputy Commissioner v. Palampadam Plantation, [1969] 24 STC 231, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2705 of 1977.

From the Judgment and Order dated 28.10.1975 of the Madras High Court in Tax Case No. 492 of 1975.

AND

Civil Appeal No. 512(NT) of 1989.

From the Judgment and Order dated 13.2.1978 of the Madras High Court in Tax Case No. 332 of 1975.

R. Mohan and R.A. Perumal for the Appellant.

A.T.M. Sampath for the Respondent in C.A. No. 2705 of 1977.

Mrs. Janaki Ramachandran for the Respondent in C.A. No. 5 12 (NT) of 1989.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. The question involved in these two matters is the same. So we ant leave in SLP 2440 of 1979 and proceed to dispose of both the appeals together.

The respondent assessee in each of these cases acquired a reserve forest. It is common ground that the acquisition was effected with a view to raise a coffee and cardamom plantation thereon. For doing this, the assessee had to clear a portion of the forest and in the process fell the unwanted trees standing thereon as natural growth. The cut trees were sold by the assessee in the form of firewood as well as in the form of cut sizes of timber as well as sleepers. Some of the growth was also converted into charcoal and the resultant charcoal sold. On these facts, the question arose in each of these cases whether the price

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realised by the assessee on the sale of firewood, timber, sleepers and charcoal was assessable to sales tax.

We are concerned with the assessment year 1969-70. The assessee's turnover, in respect of these items in the case of Shanmugha Estate was Rs.3,00,396.16 which included a turnover in charcoal of Rs.86,829.24. In the case of Shakti Estate, the disclosed turnover was as follows:

Firewood	1,98,687.08
Sized timber	83,490.89
Sleepers	28. 164,00
	3,10,47.97

The Deputy Commercial Tax Officer added 5% towards omissions and assessed a turnover of Rs.3,25,859.07.

The further facts disclosed in the case of Shakti Estate are these. The assessee is a firm of 10 individuals. It had not purchased the forest but had got a lease which entitled them to enjoy the usufruct of the forest by its exploitation. Clause (4) of the partnership deed recites that "the firm will carry on the development and exploitation of the lands". The firm had been functioning for the past 7 years and had been paying sales tax on its sales of firewood, timber and sleepers. But for the first time in assessment year 1968-69, it put forward a claim that the above turnover was not assessable in its hands. The full facts in the case of Shanmugha Estate are not on record but, except for the fact that this was a case of a purchase of a forest by the assessee, and that the plantation does not seem to have started yielding crops, the facts are broadly similar to those in the case of Shakti Estate. The assessing officers and the first appellate authorities held the turnover in question to be taxable. But the Tribunal reversed this and held that the turnover was not liable for assessment to sales tax.

The High Court had dismissed the revision filed by the State in the case of Shakti Estate in respect of assessment year 1968-69 by a short order which read:

"We are of the view that the Tribunal was right in its order. This was a case of a lease. It did not involve any sale of trees. Merely because the trees cut were sawn to sizes, that would not by itself make out a sale."

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In respect of assessment year 1969-70 also, the States revision was dismissed following the above order. In the case of Shanmugha Estate the department challenged the Tribunals finding only in respect of sales of sized timber.

The suggestion that the sizing of trees into timber or their conversion into sleepers would make a difference was not accepted by High Court, which, following the decision of the Kerala High Court in Kuttirayin & Co. v. State, [1976] 38 STC 282, affirmed the Tribunals order by its judgment reported in (1979) 43 STC 226. The State appeals from the judgments in both the cases.

The answer to the question posed depends on the interpretation of the expressions "dealer" and "business", as defined under the Tamil Nadu General Sales Tax Act. These definitions read thus:

> "Business includes:
> (i) any trade, or commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and
> (ii) any transaction in connection with, or incidental to ancillary to such trade, commerce, manufacture, adventure Or COnCern."
> "Dealer means:
> any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes--
> (i) a local authority, company or Hindu undivided family, firm or other association of persons which carries on such business;
> (ii) a casual trader ..... "

It is seen that, in the case of Shakti Estate, the plantation has
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started functioning and there is turnover in coffee and cardamora to the extent of Rs.58,000 while it is stated that the Shanmugha Estate has not yet started deriving income from its plantation. The principal contention of the assessees is that they are, or may, no doubt, become, dealers in coffee or cadamore or other crops grown, or to be grown, on the estates but that they are by no means dealers in firewood, timber, sleepers or charcoal. They say that their intention in acquiring the forest or rights therein was not to deal in the forest produce--whether as firewood, timber, charcoal or otherwise--but to start a plantation thereon. That business could not be started or carried on without clearing the forest trees and so the activity of clearing the jungle was one that was not only unconnected with the assessees business as such but was something the assessees were constrained to indulge in. This amounted to nothing more than a mere realisation by an owner of a part of his property to the best advantage and cannot be described as a trading activity or as partaking of the character of an adventure or concern in the nature of trade.

We do not, however, think that the above contention of the assessees can be accepted. The facts show that each of the assessees has acquired a huge forest area which contains a large number of trees. When the asseessee purchased the forest or got it on lease for starting a plantation thereon, it was aware of the existence of trees (some of them quite valuable) on the land and the price paid must inevitably have included some value for these trees as well. The asses-

sees also knew full well that before they could start the plantation, as well as during the running of it, they would have to clear the forest in stages by cutting off the trees standing thereon and disposing of the same from time to time. Each of these assessees is a firm the purpose of which is to carry on business. It will be quite proper and natural to infer that the intention of the assessees at the time of purchase included not only an intention to grow and sell coffee and cardamom and other crops but also an intention to dispose of the trees standing on the land to the best advantage in the circumstances. Indeed the lease deed in the case of Shakti Estate clearly talks of an intention of "development and exploitation of the lands", words which cannot be merely confined to the cultivation of commercial crops thereon. In the face of such a declared purpose, it is of no relevance whether the exploitation and development was under the terms of a lease deed or a purchase deed and the distinction made by the High Court between the two would appear immaterial. The extent of the lands acquired or leased out is so vast that the clearance has to be done in stages and the sale of forest trees extends over several years. Indeed, it is bound to be a
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recurring feature even after the plantation starts working as there will always be a certain number of trees retained in the plantation as shade trees and the like. The nature of the task undertaken by the assessee is really one in the nature of a venture to carry out sustained, systematic and organised activities in the nature of business. These activities do not merely cover the running of a plantation. They commence right from the beginning when the assessee went in for the land with a view to developing it. They fully intended, as a first stage in the business which they intended to start, to exploit the trees standing on the land to the maximum advantage. Moreover, they did not merely sell the forest trees haphazardly. They took steps to exploit them in a commercial manner. When the trees yielded timber, the assessee not only had them sawn and cut to sizes but even converted them into sleepers and sold them. They reduced a part of the jungle growth to charcoal and sold the same. Taken all together, one is left in no doubt that when the assessees went in for a purchase or lease of the forest for starting a plantation they also knowingly let themselves in for engaging in a trade in the forest produce. The fact that the assessees are business entities, the size of the tract developed, the extent and value of the trees standing on the land, the inevitability of the jungles having to be cleared and the standing trees disposed of before commercial crops could be grown, the manner in which the forest trees were disposed of are all, we think, insignia that mark out the entire set of activities as a concern in the nature of trade.

It is true that, in the area of income tax law, it has been held that no adventure in the nature of trade can be spelt out where all that a person does amounts to a mere realisation of his capital assets. It has been held thus that an owner of a huge estate who does not want to retain it any longer cannot be taxed on the surplus accruing to him on the sale of his capital assets even though he might carry out the realisation to best advantage in a commercial manner such as by forming a company, developing the lands, plotting them out, advertising them for sale, waiting for a favourable market and selling them over a period of several years. But this line of cases is of no help in the context of the facts of the present case and in the view we have taken

above of the assessees transactions. Here the assessees did not merely realise the value of a capital asset belonging to them. They went in for the acquisition of an asset fully realising its potentialities for exploitation not merely as a plantation but also, incidentally, by disposing of the existing growth on the land. It seems impossible to say that they did not intend to do this also while going in for the acquisition. If one purchases an asset with a view to turn it to account in such manner, we
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think, one is certainly carrying out an adventure in the nature of trade.

Moreover, we have also to give full effect to the definitions in the statute we are concerned with. The definition of a "business" also includes "any transaction in connection with or incidental to or ancillary" to a trade and thus, even on the assessees own arguments, these activities were incidental and ancillary to the business which the assessee was carrying on or definitely intended to carry on. It is also immaterial, on this definition, that the assessees may not have had a "motive of making a profit or gain" on these sales though on the facts, it is clear that such motive must have existed and, in any event could not be ruled out. The reference to a "casual" dealer in the second definition also renders it immaterial that the assessees may not have intended to be regular dealers in sleepers, timber, firewood or charcoal but that this was something casual or incidental to the acquisition and exploitation of a forest for running a plantation.

Before concluding, we may refer to the decisions cited before us. The decisions of the High Court in the present cases and in Kuttirayin's case (supra) support the assesses contention but, for reasons given above, we are unable to accept them as correct. The decision of the Madras High Court in L.N. Plantation Co. v. State, [1981] 47 STC 210 supports the department's contention and we approve of the same. In Tamil Nadu Trading Co. v. State, [1981] 52 STC 7 the Madras High Court was dealing with a case where the assessee was found to be a dealer in timber. But, in the course of their judgment, the Court made the following observations which support the case of the department:

> "Even if it were to be assumed, without accepting, for the sake of argument, that the assessee purchased the land for the purpose of coffee plantation, the sale of timber and firewood fall under "any transaction" in connection with or incidental or ancillary to the business of coffee plantation and would therefore, fail within the definition of "business" under s. 2(d) of the Act."

We agree.

There decisions of this Court were also referred to by counsel. State v. Burmah Shell, [1973] 31 STC 426 and District Controller of Stores v. Assistant Commercial Tax Officer, [1976] 37 STC 423 were cases where an assessee, carrying on a business, had to dispose of unserviceable or useless material and such disposals were held taxable
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as "business" sales, the transactions being incidental or ancillary to the principal business carried on by the assessee. The disposals effected by the Shakti Estate whose plantation business had started in full swing will certainly fall squarely within the principle of these decisions. But, as we have discussed above, in our view, even the sales effected before the plantation started yielding results

would be covered by the definitions as the venture undertaken by the assessee has to be considered as an integral whole and there can be no doubt that the sale of the forest produce was part of the activities in the contemplation of the assessees right from the beginning.

As against the above decisions, reliance was placed, on behalf of the assessees, on Deputy Commissioner v. Palampadam Plantation, [1969] 24 STC 231 where, it is said, it was held that an assessee could not be held taxable as a dealer on the sale of trees of spontaneous growth in a plantation. But that decision clearly turned on the specific language of the definition of "dealer" contained in s. 2(viii)(e) of the Kerala General Sales Tax Act, 1963, and does not lay down any general proposition as contended for on behalf of the assessees.

For the reasons discussed above, we allow the appeals and set aside the order of the High Court and Tribunal in these cases. In the result, the turnovers in dispute in the two cases before the High Court will stand included in the assessees turnover and the assessments modified accordingly. We, however, make no order regarding costs.

N.V.K. Appeals allowed.

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