

CRIMINAL REVISION.

Before Jack J.

BURMAH-SHELL OIL STORAGE AND DISTRIBUTING COMPANY OF INDIA, LIMITED

1936
Mar. 10.

v.

SUDHANGSHU BHOOSHAN CHATTERJI.*

Trade license—Carrying on trade, Meaning of—Calcutta Municipal Act (Beng. III of 1923), s. 175.

B and Company has its principal place of business in Calcutta where all contracts are made. The company stores its goods in their godowns at Howrah, from where deliveries are made against delivery orders sent from Calcutta.

Held that the company carries on trade in Howrah, within the meaning of s. 175 of the Calcutta Municipal Act and is liable to take out a separate trade license at Howrah.

Sulley v. Attorney-General (1); Grainger & Son v. Gough (2) and S. N. Banerjee v. Bengal Paint and Varnish (3) distinguished.

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The material facts of the case are set out fully in the judgment.

Narendra Kumar Basu, Jitendra Nath Ray and Sudhangshu Shekhar Kar for the petitioners.

In considering where the company carries on trade the following factors only need be taken into account: (i) its principal place of business, (ii) where the contracts are made and (iii) where the profit is received. *Sulley v. Attorney-General (1); Grainger & Son v. Gough (2) and S. N. Banerjee v. Bengal Paint and Varnish (3).* The storage at Howrah and the

*Criminal Revision No. 101 of 1936, against the order of J. De, Additional Sessions Judge of Howrah, dated Dec. 20, 1935, confirming the order of M. A. Huq, Magistrate, First Class, of Howrah, dated Oct. 16, 1935.

(1) (1860) 5 H & N. 711 ;
157 E. R. 1364.

(2) [1896] A. C. 325.
(3) (1928) 48 C. L. J. 54.

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deliveries made from there are merely auxiliary to the business of the company and it cannot be said that any profit is made in Howrah.

Santosh Kumar Basu and *Deba Brata Mukherji* for the opposite party. The word "trade" means exchange of goods for goods or profit. The delivery of goods is as essential a part of trade as the making of contracts. Part of the trade is admittedly storing and distributing the oils and that takes place in Howrah.

The cases cited for the petitioners relate to English Income-tax and the accrual of profits within jurisdiction was considered necessary for charging tax. In this case, the tax is payable even if no profits are made; so long as the company carries on trade it must take out a trade license. The facts of all the cases, cited by the petitioners, are also quite different. And in this case, the company clearly made profits as a result of the deliveries made at Howrah.

The trade in Howrah cannot be said to be auxiliary to that carried on in Calcutta, and even if it were so there can be no exemption from trade license unless both the principal and the auxiliary trade is within the same municipality. In a case like this separate licenses must be taken out in Calcutta and in Howrah.

JACK J. This Rule was issued on the District Magistrate of Howrah and the opposite party to show cause why the conviction of the petitioners, namely, The Burmah-Shell Oil Storage & Distributing Company of India, Ltd., under s. 492 of the Calcutta Municipal Act (Bengal Act III of 1923, as extended to Howrah) and the order sentencing the company to pay a fine of Rs. 370 should not be set aside on the ground that the learned Judge was wrong in holding that the petitioners carried on trade at Howrah because goods were delivered from their storage godown at Howrah. The complaint was

made by the License Inspector of the Howrah Municipality to the effect that the accused company was carrying on trade in engine oil, lubricating oil and other kinds of oil at 97/1, Foreshore Road, Howrah, for which they were required to take out a license under s. 175 of the Municipal Act for such purpose. They were assessed by the Howrah Municipality as liable to pay an annual fee of Rs. 250 in terms of Sch. VI of the Act. A demand notice was sent to the company but they failed to take out a license. They are, therefore, liable under s. 492 of the Calcutta Municipal Act.

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The defence of the company is that they do not carry on trade in Howrah and, hence, they are not bound to take out any license.

The only question for decision is whether the company was actually carrying on trade in Howrah so as to be liable to take out a license. Section 175 is as follows :—

Every person who exercises or carries on in Calcutta, either by himself or by an agent or representative, any of the professions, trade or callings indicated in Sch. VI, shall annually take out a license and pay for the same such fee as is mentioned in that behalf in the said schedule.

According to the terms of the schedule, any company or association whose paid up capital is equivalent to 20 lakhs of rupees or upwards exercising any trade must take out a license. In the absence of evidence to the contrary; we must take it that the word "trade" is used in its ordinary sense in the section, that is to say, exchange of goods for money or goods for goods with the object of making a profit. It is admitted that the company has a capital of not less than 20 lakhs and that they receive oil from various places, and store it in their Howrah premises and distribute it to their customers from there, the transactions being negotiated in Calcutta. Undoubtedly, in the ordinary sense of the term, they must be said to be

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carrying on their trade both at Howrah and in Calcutta, although their headquarters are in Calcutta and although it is in Calcutta that the business is arranged—the evidence being that deliveries are made from Howrah on delivery orders which are sent from the Calcutta office. But, as all the business arrangements are made in Calcutta, it is urged that it should be held that they were exercising their trade in Calcutta only. In support of this, reference is made to some English cases, in particular to the case of *Sulley v. Attorney-General* (1). In this case, Cockburn C.J. states:—

Wherever a merchant is established, in the course of his operations his dealings must extend over various places, he buys in one place and sells in another. But he has one principal place in which he may be said to trade, viz., where his profits come home to him. That is where he exercises his trade.

In that case, a firm of merchants had their principal establishment at New York and had also branch establishments in England and other countries carrying on the business of buying goods in America, England and other European countries and selling them at a profit in New York. The defendant was a partner resident in England in charge of the branch establishment there. It was held that the firm was not liable to be assessed to income-tax in respect of the profits earned by the firm from the purchase of goods in England as it was considered that the firm did not exercise trade in that country within the meaning of the Income-tax Acts but in America where the profits were received and the principal place of business was situated. In arguing the case, counsel urged that income-tax is a tax on profits and is not a tax on the carrying on of a trade or on exporting goods, that if no profits are derived no tax is due. It is only if the same thing applies in the case of taking out a municipal license that we can apply the dictum from this income-tax case. The question is whether the taking out a license is meant

(1) (1860) 5 H. & N. 711 (717); 157 E. R. 1364 (1367).

to be a tax on the profits made by the firm or whether it is intended to control the carrying on of a trade. I think that, in the absence of any authority to the contrary (and there appears to be no ruling directly in point), the words of the section must be taken as they stand and, if (as appears to be the case) the company was carrying on trade in Howrah, whether they were collecting their profits in Howrah or not, and though negotiating the transactions elsewhere, it should be held that they were liable to take out a license. The other cases referred to on behalf of the petitioners are also income-tax cases. One of these cases is *Grainier & Son v. Gough* (1). In that case it was held that the place where the contracts were made was the essence in deciding whether the trade was being carried on there or not and in that case it was held that a foreign merchant, who canvasses through agents in the United Kingdom for orders for the sale of his merchandise to customers in the United Kingdom, does not exercise a trade in the United Kingdom within the meaning of the Income-tax Acts, so long as all contracts for the sale and all deliveries of the merchandise to customers are made in a foreign country. This case is distinguishable inasmuch as there not only all contracts for sale were made outside the United Kingdom but all deliveries to customers were made in foreign countries. In the present case, although the contracts were made outside Howrah deliveries were made to customers within Howrah.

The only case referred to, which is not an income-tax case, is the case of *S. N. Banerjee v. Bengal Paint and Varnish* (2), where it was held that a firm which had its place of business in Calcutta but supplies goods to the Howrah Municipality without having any place of business in Howrah cannot be said to exercise a trade or carry on business in Howrah and as such no trade license need be taken from the Howrah Municipality. That case is, of course, distinguishable as there was no place of business of the company

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in Howrah. A firm does not, of course, necessarily carry on business at the places to which it sends goods sold or where its customers reside.

On the other hand, it is pointed out that in the present case storage was an essential part of the business of the company, their business being to store oil at convenient centres for supply to the public. Taking the word "trade" in its ordinary meaning, I think that it can hardly be said that the company does not carry on trade in Howrah merely because the contracts for sale of their goods are made in Calcutta.

It is suggested for the petitioners that the storage and delivery of the goods in Howrah are merely auxiliary to their business in Calcutta in the sense referred to in Sch. VI, s. 5 of the Act, which provides that separate licenses shall not be required in respect of any business carried on in adjacent premises which form one place of business or in any yards, godowns or factories which are auxiliary to any place of business. This appears to indicate that even where the trade is carried on at different premises within one municipality more than one license will not be required within that municipality. But it is different where the trade of a company is carried on partly in one and partly in another municipality. In that case, it would appear that separate licenses will be required in each municipality. In this case, no claim on behalf of the company is pressed on the ground of hardship.

A license is required merely because some part of the trade of the company is carried on within the municipality. It is not suggested that the tax is levied because the municipality has to make special arrangements for big business, and it seems probable

that the tax merely means that the municipality are taking advantage of their position to levy a tax on a big company. Even so, the income-tax cases where the tax is levied on profits are not quite analogous and I think the words of the section should be taken in their ordinary meaning instead of putting an unusual construction on them in accordance with a special meaning given to the word "trade" in reference to income-tax charges on firms having international business.

This Rule is accordingly discharged.

Rule discharged.

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