CRIMINAL REVISION.

Before Henderson and Biswas JJ.

LANDALE & CLARK, LTD.

1937

May 24, 25, 31.

v.

JALPAIGURI MUNICIPALITY*.

Tax—Trade tax, when to be paid—" Trade ", Meaning of—Bengal Municipal Act (Ben. XV of 1932), ss. 123, 182 ; Sch. IV.

A taxing statute must be construed strictly, and the subject to be taxed must be brought not merely within the spirit but within the letter of the law.

Tennant v. *Smith* (1) referred to.

No license or tax can be required from a company under s. 182 of the Bengal Municipal Act, 1932, unless the company exercise a trade specified in Sch. IV. The charging section is s. 182, and not Sch. IV, and the terms in the schedule can have no independent efficacy in imposing liability.

The words " transacting business for profit " in column 2 of item 1 of Sch. IV, in the case of companies, amount to specification of a trade within the meaning of s. 182.

Schedule IV does not strictly correspond to s. 182 in so far as it does not give a list of the trades, professions or callings, but indicates them by reference to the persons exercising the same. But the words used in the designation of companies in the schedule are sufficient to constitute specification of a trade.

Observations of Patterson J. in *Baranagar Municipality* v. *Baranagar Jute Factory Company, Limited* (2) dissented from.

Corporation of Calcutta v. *Standard Marine Insurance Company* (3) and *Municipal Council, Cocanada* v. *Standard Life Assurance Company* (4) explained.

The word " business " in Sch. IV does not exclude trade. Ordinarily speaking, " business " may be said to be synonymous with " trade ", though in certain connections " business " may be a much larger word than trade. Every business is not a trade, but every trade is business.

Where a company transacts business for profit, or as a benefit society, though not for profit, it is trade.

*Criminal Revision, No. 321 of 1937, against the order of T. B. Jameson, Sessions Judge of Jalpaiguri, dated April 7, 1937, affirming the order of B. Sen Gupta, Magistrate, First Class, at Jalpaiguri, dated Mar. 2, 1937.

(1) [1892] A. C. 150.
(2) I. L. R. [1937] 2 Cal. 211.
(3) (1895) I. L. R. 22 Cal. 581.
(4) (1900) I. L. R. 24 Mad. 205.

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Delany v. *Delany* (1); *Rolls* v. *Miller* (2) and *Doe Dem Wetherell* v. *Bird* (3) referred to.

It is not essential to the carrying on of a trade that the person carrying it on should make or desire to make a profit by it.

In Re *Duty on Estate of Incorporated Council of Law Reporting for England and Wales* (4) and *Shaw* v. *Benson* (5) referred to.

It is not necessary under Sch. IV that the profit must be received and realised within the municipality: all that is required is that the business should be for profit. It is also not necessary that all the operations connected with the business constituting the trade of the company should be carried on within the municipality. It would be enough if the transactions within the municipality are carried on as part of the business.

Grainger and Son v. *Gough* (6); *Hajee Shaik Meera Rowther* v. *President of the Corporation of Madras* (7); *Sulley* v. *Attorney-General* (8) and *Burma-Shell Oil Storage and Distributing Company of India, Limited* v. *Sudhangshu Bhooshan Chatterji* (9) referred to.

Where the buying, bailing and despatch of jute formed an essential part of the business of a company of jute dealers, the ultimate object of which was to make profit, and these operations were carried on within the municipality, though under orders issued from and contracts entered into elsewhere,

held that the company was liable to take out a license and pay the trade-tax to the municipality under s. 182 of the Bengal Municipal Act, 1932.

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The material facts of the case and arguments in the Rule appear sufficiently from the judgment.

Chandra Kumar Chatterji for the petitioner.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharjya, for the Crown.

Prabodh Chandra Chatterji and *Bhoodeb Mukherji* for the opposite party.

Cur. adv. vult.

BISWAS J. The question in this case is as to the legality of a conviction under s. 500 of the Bengal Municipal Act, 1932 (Ben. XV of 1932). The offence charged is failure to take out a trade-license

(1) (1885) L. R. 15 Ir. 55.
(2) (1884) 27 Ch. D. 71.
(3) (1834) 2 Ad. & El. 161; 111 E. R. 63.
(4) (1888) 22 Q.B.D. 279.
(5) (1883) 11 Q. B. D. 563.
(6) [1896] A. C. 325.
(7) (1909) I. L. R. 33 Mad. 82.
(8) (1860) 5 H & N. 712; 157 E. R. 1364.
(9) (1936) I. L. R. 63 Cal. 1203.

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and pay the half-yearly trade-tax under s. 182. This was not included in the list of offences under s. 500 of the Act as originally passed, but was made an offence by an amending Act (Ben. XI of 1936). The petitioners, Messrs. Landale & Clark, Ltd. (hereinafter referred to as the company), were convicted by the Magistrate of Jalpaiguri and sentenced to pay a fine of Rs. 250, out of which Rs. 200 was ordered to be paid to the complainant, the Jalpaiguri Municipality, as tax for one half-year. An appeal was taken to the Sessions Judge of Jalpaiguri, but without result. Then this Rule was obtained.

The petitioners' case is that they are not liable under the law to take out the license or pay the tax.

It will be observed that s. 123, sub-s. (*1*), cl. (*f*) gives the statutory authority to the municipality to impose a trade-tax, and s. 182 creates the liability to take out a trade-license and pay the trade-tax. Both sections require that the trade, on which the tax is imposed or in respect of which the license is to be taken out and the tax paid, must be specified in Sch. IV of the Act. The question raised must, accordingly, turn on the construction of these provisions of the Act and on their applicability to the facts of the case.

A trade-tax, under s. 182 read with s. 123, sub-s. (*1*), cl. (*f*), is different from a license-fee in respect of a place where the trade is carried on, which is provided for in s. 370. The payment of the one is no excuse for not paying the other. See in this connection *Bipin Behari Ghose* v. *Corporation of Calcutta* (1). As it is sometimes put, the trade-tax is collected by virtue of the taxing power, the license-fee by virtue of what is called the police-power.

The relevant provisions of the Bengal Municipal Act, 1932, may now be set out.

(1) (1907) I. L. R. 34 Cal. 913.

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Section 123, sub-s. (*1*) runs as follows :—

The Commissioners may from time to time, at a meeting convened expressly for the purpose, subject to the provisions of this Act, impose within the limits of the municipality the following rates, taxes, tolls and fees, or any of them—

and then follow a number of clauses, of which we are concerned with cl. (*f*), which reads thus :—

(*f*) a tax on the trades, professions and callings specified in Sch. IV at such rates as may be fixed by the commissioners within the maximum rates fixed in the said schedule.

Section 182 provides as follows :—

When it has been determined that a tax shall be imposed on professions, trades and callings, every person who exercises in the municipality, either by himself or by an agent or representative, any of the professions, trades or callings specified in Sch. IV, shall take out a half-yearly license and pay the tax imposed under cl. (*f*) of sub-s. (*1*) of s. 123.

Schedule IV, which is headed "Tax on Trades, "Professions and Callings" provides :—

Every license shall be granted under one or other of the classes mentioned in the second column of the following table and there shall be paid half-yearly for the same a tax not exceeding the amount mentioned in that behalf in the third column of the table.

Then follows the table made out in three columns : 1. SERIAL NUMBER, 2. CLASSES, and 3. MAXIMUM HALF-YEARLY TAX IN RUPEES. It is obviously to the second column that we have to turn for specification of the trade, profession or calling. There are four items in all in the table, of which the first relates to companies and the remaining three to individuals. The entry under item 1 (so far as is applicable to the present case) is as follows :—

	Col. 2.	Col. 3.
Company transacting business within the municipality for profit or as a benefit society of which the paid-up capital is equivalent to—		
(*a*) More than Rs. 10,00,000	.. .. ..	Rs. 200

It is not disputed that the petitioners are a company with a paid-up capital of more than rupees ten lakhs. But it is their contention that they are not reached by the words of s. 182 read with Sch. IV.

It cannot be questioned that a taxing statute must be construed strictly, and that the subject to be taxed must be brought not merely within the spirit but within the letter of the law. See Craies on Statute Law, Fourth Ed., pp. 107-108. As Lord Halsbury put it in *Tennant* v. *Smith* (1) :—

> Cases under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation.

It is necessary, therefore, to see whether in the present case the petitioners can be brought within the words of the Act.

The relevant provisions of the Act use the expression "trades, professions and callings", but it is nobody's case that any profession or calling is in question here : all that we are concerned with is "trade"

Relying on the wording of s. 182 read with s. 123, sub-s. (*1*), cl. (*f*) the petitioners' first submission is that they cannot be made liable unless it is shown that they are exercising a trade *specified in Sch. IV*. Such specification is indeed a *sine qua non*. This may be conceded at once : the charging section is s. 182 as well as s. 123, sub-s. (*1*), and not Sch. IV, and the terms used in the schedule can have no independent efficacy in imposing liability. It follows, therefore, that unless a trade is specifically indicated in Sch. IV, no license and no tax can be demanded under s. 182.

The petitioners argue that the words used in the schedule in the case of companies do not amount to such specification, and are thus wholly ineffective for the purpose of creating any liability. In support of this argument, strong reliance is placed on certain observations of Patterson J. in a recent case under

(1) [1892] A. C. 150, 154.

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this Act, *Baranagar Municipality* v. *Baranagar Jute Factory Company, Limited* (1), purporting to be based on the decision in *Corporation of Calcutta* v. *Standard Marine Insurance Company* (2) and in *Municipal Council, Cocanada* v. *Standard Life Assurance Company* (3).

This is what the learned Judge says :—

> Now it seems to me that "the transacting business for profit" is an expression which might be applied to almost any kind of trade, profession or calling, and I find it quite impossible to hold that it amounts to a *specification* of a trade, profession or calling.

And he proceeds :—

> If then the legislature intended by means of the description given under Class I of Sch. IV to make a company liable *qua* company, that attempt was doomed to failure, and has failed, for the reasons already indicated. If, on the other hand, the legislature intended to make a company liable to pay the tax, whatever was the nature of the trade, profession or calling it carried on within the municipality, it should have said so in so many words : it has not said so, and the company cannot therefore be held to be liable in that way.

If Patterson J. is right, the legislature must have failed to effectuate the purpose it had in view, and though class I of Sch. IV expressly refers to companies, no company can be liable, as, in the case of companies, the schedule does not do what s. 182 or s. 123, sub-s. (*1*), cl. (*f*) requires it to do. It is worthy of note that Jack J., who was a party to the decision, did not express any opinion on the point, and the case was actually disposed of on the ground that from the nature of the business transacted, it could not be said that the company exercised a trade within the municipality.

With all respect to my learned brother Patterson J., I am afraid his opinion is based on a mis-appreciation of the words of the Act and on an erroneous assumption that there is a similarity in all material respects between the relevant provisions of this Act

(1) I. L. R. [1937] 2 Cal. 211. (2) (1895) I. L. R. 22 Cal. 581.
(3) (1900) I. L. R. 24 Mad. 205.

and those of the other Acts which fell to be considered in the two cases relied on by him. Not only is there no similarity, but it seems to me that the words in the Bengal Municipal Act, 1932, have been purposely made different in view of the two earlier decisions.

The Calcutta case was earlier in point of time, and the Act under consideration was the old Calcutta Municipal Act (Ben. II of 1888). Section 87 of that Act (corresponding to s. 182 of the Act with which we are concerned) provided as follows :—

> Every person who shall exercise in Calcutta any of the professions, trades or callings prescribed in the second schedule, shall annually take out a license and shall pay for the same such sum as is in the second schedule mentioned.

Here the word is "prescribed" instead of "specified", but the meaning is the same. Now, the reference to companies in the second schedule was under two classes, and was as follows :—

> *Class I—Rs. 200—*
>
> Every Joint Stock Company, the paid-up capital of which amounts to ten lakhs of rupees or upwards.
>
> *Class II—Rs. 100.*
>
> Every other joint stock company.

The point to observe is what Patterson J. overlooked, namely, that joint stock companies are mentioned *simpliciter* without any reference to any business; and it was for this reason that it was possible to hold, as in fact was held, that this did not amount to the prescribing of any trade as required by s. 87 for which a company could be made liable. It was pointed out that the fact that business is carried on by a company could not make the business one of those prescribed in the schedule, whatever the nature of the business might be. Such a construction would have the effect of taxing a company because it is a company, and not because it carries on a taxable business or trade, and thus be opposed to s. 87.

The Act which had to be construed in the Madras case was the District Municipalities Act (Mad. IV of 1884). It appears that the schedule of this

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Act was amended in 1897 in consequence of the Calcutta decision referred to above, the words "carrying on business as a company" being introduced in the list of denominations. The object evidently was to tax every company, no matter what might be the nature of the business carried on by it. It was held, however, that the amendment was ineffective for the purpose, as the transaction of the business of a company could not by itself be designated as a trade. It is difficult to believe, say the learned Judges, that all companies, without reference to the nature of their business, were intended to be included. No limitation, it is pointed out, is placed on the meaning of the word "company", and therefore, it must denote companies incorporated not for purposes of gain, as well as ordinary trading companies. The effect of this decision is that the use of the words "carrying "on business as a company" was not enough to indicate a trade for which a company could be taxed.

It will be seen that the difficulty has arisen mainly from the form in which the schedule is made to satisfy the requirements of the charging section. The section requires the trades, professions and callings to be specified or prescribed in the schedule, but the schedule does not strictly correspond to the section. It does not give a list of the trades, professions and callings as one would expect, but merely indicates them by reference to the persons exercising the same. In the case of individuals, their very designation denotes their trade, profession or calling, but in the case of a company obviously something more is necessary than mere mention of a company, or even of some such words as "carrying on business as a com- "pany". It would certainly be a more satisfactory method of dealing with the matter to treat the case of companies separately, preferably in the charging section itself, leaving it to the schedule, in the case of individuals, to indicate their professions, trades or callings by their very designations. This was in

fact done in the Calcutta Municipal Act, 1899 (Ben. III of 1899) which repealed the earlier enactment of 1888 on which the decision was given in *Corporation of Calcutta* v. *Standard Marine Insurance Company* (1) : see s. 198 and Sch. II.

The Bengal Municipal Act, 1932, has not attempted this method, but has added words in the designation of companies in Sch. IV which in my opinion are sufficient to constitute specification of a trade as required by s. 182 or s. 123, sub-s. (*1*), cl. (*f*). The reference to companies in the schedule is not simply to companies or to companies carrying on business, but to companies transacting business *for profit* or *as a benefit society*. Surely, in these words we have something specific, something more than a mere designation of a company, which should take the case outside the scope of the Calcutta and Madras decisions relied on by Patterson J. Transacting business for profit, or transacting business as a benefit society is certainly not the same as simply carrying on business as a company, but definitely points to business of a particular kind, and would render the company taxable, not *qua* company, but because of its carrying on that particular kind of business. It may be argued that the words "for profit", though apt enough to indicate a trade, are still not a specification of any particular trade, and thus fall short of what s. 182 or s. 123, sub-s. (*1*), cl. (*f*) requires. I do not think this is necessary. Just as in the case of individuals, their designation in general terms such as merchant, wholesale trader, retail trader or shopkeeper, or broker, under classes 2, 3 and 4 of Sch. IV, seems to be enough, without any more precise specification, so it seems to me to be enough in the case of a company to use words to indicate the exercise of a trade without specifying the nature of the particular trade in which the company may be engaged. So far as the words "as a benefit society" are concerned, the specification is obviously more definite.

(1) (1895) I. L. R. 22 Cal. 581.

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I do not think it can be argued that the word "business" used in the schedule excludes "trade". Ordinarily speaking, business may be said to be synonymous with trade [*per* Chatterton V. C. in *Delany* v. *Delany* (1)], though in certain connections "business" may be a much larger word than "trade". Compare *Rolls* v. *Miller* (2). Every business is not a trade, but every trade is business: *Doe dem Wetherell* v. *Bird* (3). There is authority for saying that it is not essential to the carrying on of a "trade" that the person carrying it on should make or desire to make a profit by it: *per* Coleridge C. J. in *In Re Duty on Estate of Incorporated Council of Law Reporting for England and Wales* (4). But where a company transacts business for profit, it hardly admits of argument that it is trade. As for the business of a benefit society, it has been held in *Shaw* v. *Benson* (5) that a Mutual Benefit Society, whose object is to lend money to its members, carries on "business", and I venture to think that such business may be regarded as "trade", even if no profit is made or intended to be made.

In my opinion, therefore, the first point taken on behalf of the petitioners must fail.

It is next argued from the nature of the business carried on that the company is not a company transacting business for profit (*i.e.* exercising a trade) within the Jalpaiguri Municipality. The facts as found by the learned Sessions Judge are as follows:—

> The admitted facts are that the branch office in Jalpaiguri purchased jute within the limits of the municipality at rates not exceeding those intimated from the head office in Calcutta, and presumably within a certain maundage. The jute purchased here is pressed, baled and stored, and is then distributed direct to customers from Jalpaiguri according to instructions issued from Calcutta. It is a fact that no direct sales are negotiated by the branch office, largely I suppose as a matter of convenience, all orders for jute going to the head office in Calcutta and being accepted or rejected there..... The railway receipts are not sent direct to the customers, but are forwarded to Calcutta and sent on from there to the customers.

(1) (1885) L. R. 15 Ir. 55.
(2) (1884) 27 Ch. D. 71.
(3) (1834) 2 Ad. & El. 161; 111 E. R. 63.
(4) (1888) 22 Q.B.D. 279, 293.
(5) (1883) 11 Q. B. D. 563.

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On the findings I do not think it can be disputed that what the company did through its agents within the Jalpaiguri Municipality was "business", and that such business was "for profit". It is not necessary under Sch. IV that the profit must be received or realised within the municipality: all that is required is that the business should be for profit. It is not denied that the purchase of jute and its despatch thereafter were operations by which the company intended to make a profit. The memorandum of association of the company has not been proved, but it is common case that they are dealers in jute, and the buying of jute must necessarily form an essential part of their business. The ultimate object of such business must be profit. It is hardly necessary to point out that the object of s. 182 is not to tax profits, and hence the question as to the place of accrual of profit or whether profit has actually accrued or not, is perfectly immaterial. Any argument based on cases on Income-tax Acts would be, therefore, wholly irrelevant. Great stress was laid by the learned advocate for the petitioners on the decision of the House of Lords in *Grainger & Son* v. *Gough* (1), for the purpose of making out that because the transactions in Jalpaiguri were controlled from Calcutta, it could not be said that the businesss was carried on within the Jalpaiguri Municipality. This case, however, does not lend any support to such a view. In the first place, it was an Income-tax Act case, and secondly, it was a case of an agent in London, G, procuring orders in the United Kingdom for a wine-merchant in France, R. All that G did was to transmit the orders when received to R in France, and until R accepted them, there was no contract. The actual sale took place in France, and the delivery also took place in France, though the customers were in the United Kingdom. On these facts it was held that R could not be said to be exercising his trade within the United Kingdom. The facts in the present case are wholly dissimilar;

(1) [1896] A. C. 325.

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the petitioners here did not employ an agent at Jalpaiguri to solicit or transmit orders, but were actually carrying out the orders of the head office as part of the business of the company. It is not necessary under Sch. IV that all the operations connected with the business constituting the trade of the company should be carried on within the municipality; it would in my opinion be enough if the transactions within the municipality are carried on as part of the business, and here they formed an essential part. Not only was the buying of the jute at Jalpaiguri, but the delivery also was here, seeing that the jute pressed and baled was put into railway waggons at Jalpaiguri station within municipal limits for despatch to customers.

Reference was also made by the petitioners' advocate to the case of *Sulley* v. *Attorney General* (1). That, again, was an Income-tax Act case, in which a firm of merchants had their principal place of business at New York and had also a branch establishment in England among other places, buying goods at these places and selling them at a profit in New York. It was held that the firm could not be said to be exercising trade with the meaning of the Income-tax Acts, and was not, therefore, liable to be assessed to income-tax in respect of profits earned from the purchase of goods in England. This case is clearly not applicable here.

On the principle of this case, it was held in *Hajee Shaik Meera Rowther* v. *President of the Corporation of Madras* (2) that where a trader in piecegoods had a shop at Tinnevelly, where he sold the goods and earned his profit, but had a servant at Madras who purchased the goods for him and forwarded them to him at Tinnevelly, he could not be said to be carrying on his trade at Madras. The decision was given on the particular facts of the case: it was

(1) (1860) 5 H. & N. 711; 157 E.R. 1384.

(2) (1909) I. L. R. 33 Mad. 82.

found that the trader had no office at Madras, and the servant merely carried out his orders. But the learned Judges pointed out that in certain kinds of business the buying of the goods might be the most important and difficult part of the business, and that it was not a conclusive test in such cases that the profits were earned elsewhere. It was further pointed out that it was not necessary that all the acts incident to the carrying on of the trade should be done in the place where the tax was levied. The present case clearly comes within these observations.

It remains only to refer to a decision of Jack J. in a recent case under corresponding sections of the Calcutta Municipal Act, 1923 (Ben. III of 1923), *Burmah Shell Oil Storage and Distributing Company of India, Limited* v. *Sudhangshu Bhooshan Chatterji* (1). If I may say so with respect, the test applicable to such cases as the present one was correctly laid down there.

The second ground taken on behalf of the petitioners must, therefore, also fail.

The result is that the Rule must be discharged.

HENDERSON J. I agree.

Rule discharged.

A. C. R. C.

(1) (1936) I. L. R. 63 Cal. 1203