

Jonnala Narasimharao and Co. and Others, Etc. Etc.

Vs

State of Andhra Pradesh and Others

And

G. Jayarama Naidu and Others

Vs

Govt. of Andhra Pradesh and Others

And

Abbina Veeraraghulu and Others Etc.

Vs

State of Andhra Pradesh and Others Etc.

(Civil Appeals Nos. 2126-2128 Of 1970).

(Civil Appeal No. 33 Of 1971).

Civil Appeals Nos. 2116, 2217, 2218 of 1970 and 144, 157, 159, 163 and 164-165 of 1971,

(G. K. Mitter, K. K. Hegde, A. N. Grover JJ)

05.04.1971

JUDGMENT

REDDY, J. -

This batch of appeals is by certificate against a common judgment of the Andhra Pradesh High Court dismissing the writ petitions filed by several dealers in jaggery who challenged the vires and constitutionality of Sections 2, 5, 8 and 9 of the Andhra Pradesh General Sales Tax Amendment Act 9 of 1970 (hereinafter called the "Amendment Act"). The Appellants are Commission Agents carrying on trade in jaggery. Agriculturists who prepare jaggery out of surplus sugarcane which they are unable to sell to the sugar factories employ the appellants as their Commission Agents to sell that jaggery.

2. We will take the facts in Civil Appeal No. 2116 of 1970 as typical of the common question arising in all these appeals. The appellants carry on business of Commission Agent in jaggery in Anakapalli, Visakhapatnam and at various places in West Godavari. In the course of their business the appellants arrange for the sale of jaggery charging a small commission for their services and renders an account to the respective principals in respect of these sales. In the Pattis issued to the Agriculturists the name of the persons to whom jaggery is sold is specifically mentioned. The

baskets of each principal are separately marked. The stock register also indicates the number of baskets of jaggery held in the name of the Commission Agents. Every buyer is fully apprised of the fact that he is purchasing the jaggery of specified agriculturist principals and not that of the appellants. This procedure it is said has been vogue for a long time.

3. Till about 1963 under Section 11 of Madras General Sales Tax Act as well as under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called the "Principal Act") Commission Agents were required to obtain and were being issued licences and if they conformed to the conditions of those licences they were not subjected to tax. In 1963 the Principal Act was amended by Andhra Pradesh General Sales Tax Amendment Act, 16 of 1963 which substituted a new Section 11 for that which was in force till then. The new Section 11 changed the pre-existing structure of assessment in that, the Agents of Resident Principals were made liable for assessment and collection of tax though the liability of the Agent was made co-extensive with that of the Principal. The Sales Tax authorities however were making assessments of the turn-over of the Agents in respect of the purchase and sales of jaggery of several principals notwithstanding the fact that the turn-over up to Rs. 10,000/- of each was not exigible to tax. These assessments were challenged in a batch of Writ Petitions in *Irri Raju and Others v. The Commercial Tax Officer, Tadepalligudem and Another*, (Sales Tax Cases, Vol. XX (1967), p. 501) in which the High Court of Andhra Pradesh held that the provisions of the Principal Act indicated that the Agent is a dealer in respect of each of the principals, that he is deemed to be as many dealers as there are principals, and therefore the total turn-over of the Agent in respect of the several principals could not be computed for assessing him when in fact the turn-over of each of the principals was below the limit i.e. Rs. 10,000/-. As a consequence of this decision the Andhra Pradesh General Sales Tax Amendment Act 5 of 1968 was enacted and a new Section 11 was substituted for the then existing section. This Section 11 was given retrospective effect from the 1st August, 1963. The object of this amendment was to enable the taxing authorities to assess, levy and collect tax or penalty under the Sales Tax Act from the Agent irrespective of the fact that such principal is not liable to pay the tax or penalty in respect of that transaction on account of the turn-over of the principal being less than the minimum turn-over specified in sub-section (1) of Section 5. The proviso to the new Section 11 however authorised the tax or penalty assessed or levied on or due from the Agent to be recovered by the assessing authorities from the principals instead of from the Agents, only if the principal is liable to pay tax or penalty. This new section was also challenged on various grounds in a batch of Writ Petitions in *Sri Kenathala Venkata Ramana and Budha Apparao v. State of Andhra Pradesh and Another*. (Sales Tax Cases, Vol. XXIV (1969), p. 367).

4. The High Court held that even after the amendment the liability of the Agent continues to be based on the principal of representation and whether he is a dealer in respect of all the principals or only one principal, his liability is co-extensive with that of the principal. It also held that while there is no conflict between Section 5 and Section 11 of the Act, Section 11 which authorises the imposition of a tax independently of the liability of the principal or which takes away or limits the rights of the Agent to reimburse himself or withhold moneys due to the principal only where the principal is liable is discriminatory and is hit by Article 14.

5. In view of this judgment, which in fact restored the legal position to that prevailing prior to the Amendment, large sums of money in which assessments had been made and tax collected became refundable. To meet this situation the Legislature enacted the Andhra Pradesh General Sales Tax (Amendment) Act 9 of 1970. The effect of the amendments made by Sections 2, 5, 8 and 9 of the Amendment Act is that a proviso was added to Section 5(1), a new Section 11 was substituted for the old Section 11 with retrospective effect from August 1, 1963. The amended Section 11 it may be

noticed was identical with the Section 11 as it stood on August 1, 1963. The first schedule to the Principal Act was also amended by adding jaggery as Item 77 which was made taxable at the point of first sale at 5 paise in the Rupee. It was further provided that as soon as this entry came into force on the date fixed by a Notification the proviso to Section 5(A) added by Section 2 of the Amending Act would cease to have effect. Section 8 of the Amending Act purported to validate the assessments already made while Section 9 granted exemption from liability to pay tax in certain cases.

6. We have already noticed that jaggery was being taxed at the point of the first purchase of its sale between February 1, 1960 and July 31, 1963 but by reason of the amendment introduced by Act 16 of 1963 a multiple point tax on sale subject to an exemption of a turn-over of Rs. 10,000 became leviable at 2 paise per rupee from August 1, 1963 which rate was enhanced to 3 paise from April 1, 1966 by Amendment Act 7 of 1966. A single point taxation was however levied on items in Schedules 1 and 2 of the Act which became chargeable as such under Section 5(2). We are not concerned with Schedule 3 which deals with declared goods but Schedule 4 specified the goods which are exempt in terms of Section 8. All other sales which do not fall within the schedules are as earlier stated exigible to multiple point tax under Section 5(1) of the Act subject to the minimum of Rs. 10,000/-.

7. The appellants had before the High Court of Andhra Pradesh raised several contentions but the principal attack was confined to three aspects of the Amendment Act. Firstly that Section 11, read with the new proviso to Section 5(1) makes an invidious distinction between dealers in jaggery on the one hand and dealers in other commodities on the other by perpetuating an unreasonable classification which is based on no intelligible differentia nor can any reasonable nexus be discerned with the object that the amendment seeks to achieve. Secondly that Section 9 has to be read as part of Section 2 of the Amendment Act by which a new proviso is added to Section 5(1) of the Principal Act and is a part of Section 11 substituted by the Amendment Act. If so read the new proviso to Section 5(1) and the new Section 11 would be violative of Article 14 inasmuch as the dealers in jaggery similarly situated have been invidiously discriminated by levying tax from those dealers who have collected the tax and the dealers who have not collected the tax. Thirdly that the basis of the amendment is an imposition of a tax not on the transaction of sale or purchase of jaggery but on the collection or non-collection of the tax by the dealers, as such it is also hit by Article 14 of the Constitution.

8. The High Court rejected all these contentions except the one relating to the validity of Section 9. The State of Andhra Pradesh as well as the appellants in Civil Appeal No. 33 of 1971 had contended that provision which granted an exemption from payment of tax to dealers who had not in fact collected the tax from their principals was valid and did not suffer from the vice of discrimination under Article 14 because not only was the classification reasonable but that it was based on an intelligible differentia having a nexus with the object of the impugned Act.

9. We shall however deal with last mentioned aspect presently but before we do so on the threshold of the argument of the appellants there is a valid objection to the maintainability of the writ petitions filed by the dealers who as agents of the principals had collected tax from the purchasers which as a consequence of the two decisions of the High Court referred to earlier was illegal. After the Amendment Act the levy and collection by the dealers became prima facie legal. In so far as jaggery is concerned there was also no question of any exemption of the minimum turn-over of the principal, of Rs. 10,000, so that the hardship which a Commission Agent dealer had to undergo in trying to determine whether the turn-over of each of his principals was below Rs. 10,000 before he could collect sales tax was no longer there. After the amendment by removing the exemption of Rs.

10,000/- on sale of jaggery which was given retrospective effect, the dealer agents could not now complain, which complaint had been held by the High Court to be justified, that while the principals were exempted from tax up to Rs. 10,000 the tax is being levied on the agent's turn-over irrespective of that exemption. In any case whatever objections the principals may have to the constitutional validity of the provisions introduced by the amending Act under Article 14 the agent dealers certainly have no locus standi to complain about discrimination between principals inter se. That apart the dealers are not expected to and in fact do not pay any money of their own towards that tax which is levied. The tax so levied and paid to the assessing authorities by the dealer agent is, under the provisions of the Act, not returnable nor can the principal under the provisions of the Act make any claim against such dealer agents.

10. Shri Gupte on behalf of the appellants was unable to tell us that there were among the appellants any principals who had a direct interest in challenging the validity of the provisions on the ground of discrimination. Shri Motilal Sitalvad on behalf of the appellants in Civil Appeals Nos. 2126 to 2128 of 1970 strenuously contended that the appellants have an interest and can maintain the writ petitions because they were dealers within the meaning of Section 2(e) and are persons who are aggrieved because of the assessment made or likely to be made and tax recovered from them. He has further contended that this Court has in several cases held that even a notice issued to any person under the provisions of an impugned Act which is likely to cause prejudice will entitle him to challenge the constitutional validity of the law under which the notice is given. If so, where an assessment has been made the assessee has a right to challenge the provisions of the Amendment Act under which the levy and collection of tax have been given retrospective validity. Apart from the question that this argument does not take into account the distinction between an attack under Article 14 and an attack under Article 19 it overlooks the fact that what is sought to be recovered from the appellant is in respect of a tax collected on the past dealings and not with respect to the future transactions. We had pointed out that tax had already been collected, no doubt at first illegally, but due to the Amendment Act that collection has become legal and as a dealer he is liable to pay that amount to the State in respect of the assessments made. As there is nothing to show that what is sought to be recovered from the dealer is more than what he has collected, he has not suffered any loss nor any disadvantage which we would entitle him to seek a remedy under Article 226 of the Constitution. Shri P. Ramchandrarao in Civil Appeal No. 2127 of 1970 had nothing new to add to the arguments advanced by the learned advocates for the appellants. On this short ground alone we dismiss all the appeals except Civil Appeal No. 33 of 1971 but in the circumstances without costs.

#Appeal in Civil Appeal No. 33 of 1971##

11. In this appeal Shri S. T. Desai contends that the High Court had erroneously struck down Section 9 of the Amendment Act. Section 9 of the Amendment Act is as follows :

"9(1) Where any sale of jaggery has been effected during the period between the 1st August, 1963 and the commencement of Section 5 of this Act in so far as it relates to Item 77, and the dealer effecting such sale has not collected any amount by way of tax under the Principal Act on the ground that no such tax could have been levied or collected in respect of such sale, or any portion of the turnover relating to such sale, and where no such tax could also have been levied or collected if the amendments made in the Principal Act by this Act had not been made, then, notwithstanding anything contained in Section 8 or the said amendments, the dealer shall not be liable to pay any tax under the Principal Act, as amended by this Act, in respect of such

sale or such part of the turn-over relating to such sale.

(2) For the purposes of sub-section (1), the burden of proving that no amount by way of tax was collected under the principal Act in respect of any sale referred to in sub-section (1) or in respect of any portion of the turn-over relating to such sale, shall be on the dealer effecting such sale."

12. This Section is enacted by the Legislature with the object of removing short-comings in the Principal Act which were found wanting by judicial interpretation. The interregnum between the declaration by the High Court of certain provision of the Act as being unconstitutional and the attempt of the Legislature to remedy the defects and to give retrospective effect thereto created two distinct categories between the same class of dealers namely those who had collected the tax whether they were assessed or not and those who had not collected the tax. This classification is certainly reasonable and is related to the object which the amendment Act seeks to achieve. The dealers who had not collected the tax could not have collected it as the law stood and therefore the Legislature did not think it just or proper to collect tax from those who were not liable. Even this exemption as can be seen is given to only those persons who can establish that they have not in fact collected it, the burden of which is upon those who claim the exemption. It is unnecessary to deal with hypothetical cases. The mere fact that in many cases it was not collected because the assessment could not be completed cannot be a valid ground nor can it even now be made in regard to those assessments which are now pending (a matter upon which we do not pronounce) cannot be valid grounds to declare the classification as arbitrary or unreasonable, which reason seems to have weighed with the High Court. We think not only the classification reasonable but there is an intelligible differentia furnishing a nexus with the object, the Amendment Act seeks to achieve. In this view we set aside the judgment of the High Court declaring Section 9 as unconstitutional and allow the appeal, but in the circumstances without costs.

</html