

ANDHRA PRADESH HIGH COURT

Poosarla Sambamurthi

Vs

State of Andhra

(K.S Rao, C.J. and Viswanatha Sastry, J.)

23.03.1956

ORDER

Viswanatha Sastry, J.

1. In T.R.C. No. 51 of 1955 the assessee, a merchant of Chodavaram, seeks revision of an order of the Andhra Sales Tax Appellate Tribunal, Guntur, relating to the assessment year 1951-52. Objection is taken to two sums of Rs. 85, 003-9-0 and Rs. 14, 826 included in his turnover, the first relating to the turnover in a commission agency business in jaggery carried on by the assessee and the second relating to the value of 1059 bags of bran alleged to have been kept outside the books. The assessee held a licence under section 8 of the Madras General Sales Tax but exemption on the turnover of Rs. 85, 003-9-0, representing the price of jaggery sold by the assessee as commission agent, was refused on the ground that he had not included the amounts collected by him by way of dharmam (charity), valtar (subscriptions to a local merchants' association) and katha cooly (accountancy charges) aggregating to Rs. 780-9-9 in his turnover or in the pattials issued to his principals. It is admitted on behalf of the assessee that this sum of Rs. 780-9-9 did not form part of his agreed commission. The contention is that the above sums did not also form part of the sale price but were paid by the buyers of jaggery for the specific purposes for which they were intended and applied by the assessee for those purposes and did not therefore appear in his turnover or the pattials issued to the sellers. It was also urged that these were customary payments made by purchasers of jaggery and were well-known to the principals. It was argued on behalf of the respondent that the amounts in question formed part of the consideration for the sale of jaggery and that the omission to include them in the turnover and in the pattials issued to the principals constituted a breach of the conditions of section 8 and of the license and disentitled the assessee to the exemption granted by section 8 of the Act. A commission agent in the position of the assessee having control over or possession of the goods and having authority from the owners of the goods to pass the property in and title to the goods is a "dealer" within the definition in section 2(b) of the Madras General Sales Tax Act which includes a person carrying on the business of selling goods : Radha Krishna v. The Province of

Madras (1952 3 S.T.C. 121; I.L.R. 1952 Mad. 571). "Sale" is defined in section 2(h) of the Act as meaning every transfer of property in goods by one person to another in the course of trade or business for cash or other valuable consideration. Jaggery was sold by the assessee to different buyers during the assessment year for a price. Under section 3 of the Act every dealer has, subject to the provisions of the Act, to pay for each year a tax on his total turnover. Under rule 4(1) of the Turnover and Assessment Rules the gross turnover of a dealer is the amount for which the goods are sold by the dealer. But for the exemption given by section 8 of the Act the assessee would be liable to pay tax as a dealer on the sales of jaggery effected by him. Section 8 of the Act, so far as it is here relevant, runs as follows :-

"8. The State Government may, on application and on payment of such fee as may be prescribed in that behalf, license any person under this section, who for an agreed commission or brokerage, buys or sells on behalf of known principals specified in his accounts in respect of each transaction and may exempt from the tax or taxes payable under section 3, such of the transactions as are carried out in accordance with the terms and conditions of his licence :Provided always that, save where the transaction consists of a sale by a grower of produce grown by him or on his land, no such exemption shall be given unless the amounts for which the goods concerned in such transactions are sold, are included in the turnover of the principals or of the dealers from whom purchases were made, or would have been so included but for an exemption provided under this Act."

2. Licences under this section are issued in Form No. 5 and are subject to the various conditions set out in that Form of which those that are now relevant require the licensee to show in the patti or account rendered to the principal, the price of the goods sold, the agreed commission, the amount debited to the principal under each head of legitimate and incidental charge and the net amount credited to the account of the principal. for the assessee stated that jaggery was sold by him on behalf of agriculturist producers who were not liable to tax. In order to entitle him to the exemption under section 8 the amounts for which the goods were sold should have been included in the turnover of the principals and shown in the pattials furnished to them by the assessee.

3. Now it was argued by counsel for the assessee that dharmam, valtar and katha cooly were paid by the buyers of jaggery as charges incidental to the transaction of sale and for the objects indicated by the appellation given to these payments, and not as consideration for the sale or as the price of the goods and therefore they were not included in the turnover of the principals or shown in the pattials issued to them by the assessee. The contention of the respondent is that there has been a violation of the conditions of the licence because the amounts collected by the assessee as dharmam, valtar and katha cooly must really be deemed to be part of the price of the goods and these amounts should have been included in the turnover of the seller-principals as part of the price. It might here be observed that the knowledge of the seller-principals that these

amounts were being realised by the assessee from the buyers of jaggery - assuming that they had such knowledge - is, from a legal point of view, irrelevant, because it is not the case of the assessee that these payments were part of the agreed commission. The recent amendment of the definition of "turnover" in section 2(i) of the Act by the Andhra Amendment Act (XIII of 1954) renders it unnecessary for us to embark upon a lengthy discussion of the arguments advanced by the assessee without taking into account the effect of the amendment. "Turnover" in section 2(i) of the Act, as amended, reads as follows :

"'Turnover' means the total amount set out in the bill of sale (or if there is no bill of sale, the total amount charged) as the consideration for the sale or purchase of goods (whether such consideration be cash or deferred payment or any other thing of value), including any sums charged by the dealer for anything done in respect of the goods sold at the time of or before delivery of the goods and any other sums charged by the dealer, whatever be the description, name or object thereof :Provided that in the case of a sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, the amount of the consideration relating to such sale shall be excluded from his turnover."

4. This amendment is expressly made retrospective by section 12 of Act XIII of 1954 which provides that it "shall be deemed to have effect from the commencement of the Madras General Sales Tax (Amendment) Act, 1947". According to the amended definition of "turnover" the consideration for the sale of goods includes sums charged by a dealer for anything done in respect of the goods at the time of or before their delivery and any other sums charged by the dealer, whatever be the description, name or object. Dharmam, valtar and katha cooly would clearly fall within this extended definition of "turnover". The payments are made to the assessee by the buyer of jaggery as part of the transaction of sale at a fixed percentage of the value of the goods sold. But for the sale, the buyer would not have made these payments and the assessee could not have realised them. The fact that a small part of the payments made by the buyer is not appropriated by the assessee for his commission or by his principals for their own use but is set apart by them for certain specified objects or purposes, does not mean that the payment is gratuitous or dissociated from the sale. In substance, though not in form, the payments must be regarded as part of the consideration for the sale. In any case the Amending Act treats these payments as part of the consideration for the sale and that too, retrospectively so as to apply to the assessment now in question. The assessee should have included the sums in his turnover and should also have included them in the pattials issued by him to his principals. His omission to do so disentitled him to the exemption granted by section 8 of the Act. Reference was made on behalf of the assessee to the decision in *Narasiah v. Province of Madras*¹ where it was held that exemption from tax could not be claimed by a commission agent simply by stating that amounts

received by him towards mamul, charity and russum were collected and paid by him for the purposes indicated by their names without proving that the payments were part of the agreed commission, either under an express contract with the principal or a contract implied from the usage of the particular trade. As already observed, it is the case of the assessee here that dharmam, valtar and katha cooly were not part of his commission at all and were therefore not shown as such in the pattials. Reliance was placed on a recent decision of this Court in *The State of Andhra v. Tungabhadra Industries Ltd*². where it was held that even after the recent amendment of the definition of "turnover" with retrospective effect by Andhra Act XIII of 1954 sales tax, though included as an item in the bill given by the dealer to the buyer and realised by the dealer from the buyer, is not part of the turnover of the dealer. The reasoning of the learned Judges was that the total amount set out in the bill could have reference only to the consideration for the sale and that sales tax collected by a dealer on behalf of and for payment to the Government, could not be said to be part of the consideration for the sale and was therefore not liable to be included in his turnover. There were earlier decisions of the High Courts to the effect that a dealer collected sales tax only as an agent of the State and he should not be subjected to sales tax on such collections and these decisions were followed by the learned Judges in the above case even after the amendment of the definition of "turnover" by Andhra Act XIII of 1954. This decision has no bearing on the point now under consideration. It was further argued that even if the assessee should have included the sums now in question as part of his turnover and shown them in the pattials sent to his principals, his failure to do so would only disentitle him to exemption from sales tax on the aggregate sum of Rs. 780-9-9 omitted to be so included, and not on the entire sum of Rs. 85, 003-9-0 representing the price paid by the buyers, which, except for the omission of Rs. 780-9-9, had been shown in his turnover and pattials. This is a fallacious argument. The exemption granted by section 8 of the Act is conditional on the assessee showing the entire consideration for the sale of goods in his turnover and his conforming to the conditions of the licence issued to him and a breach of any of these conditions disentitles him altogether to the exemption under section 8. The assessee who has broken the condition is therefore not entitled to the exemption and it is not open to him to claim an exemption from tax proportionate to the extent of the amount which he has shown as the consideration for the sale in his turnover and pattials. For these reasons, the contentions of the assessee with regard to his liability for tax on the sum of Rs. 85, 003-9-0 fail. The second objection of the assessee relates to Rs. 14, 826 included in his turnover as the price of 1059 bags of bran not entered in his regular books of account but traced by the department to a secret book or memorandum kept by him. The explanation of the assessee that the bulk of the goods had been kept in his godowns for and on account of other dealers and sold by them has not been accepted by the assessing and appellate authorities. The fact that the other dealers sold bran as shown by their books does not mean that the 1059 bags traced to the godown of the assessee were the goods of those dealers. The Tribunal

referred to the fact that Butchiraju, one of the purchasers, was the brother-in-law of the assessee, as indicating that the assessee bought and sold the goods without entering the transactions in his books. No question of law arises with reference to this item and the assessee's objection has therefore to be rejected. T.R.C. No. 51 of 1955 is therefore dismissed with costs. Advocate's fee Rs. 100.

Cases Referred.

1(1953 4 S.T.C. 376)

2(1955 6 S.T.C. 379; 1955 A.L.T. 465)