

# ANDHRA PRADESH HIGH COURT

State of Andhra

Vs.

Commr. of Commercial Taxes

Tax Revn. Case No. 131 of 1953

(Chandra Reddy and Umamaheswaram, JJ.)

15.11.1952. 18.03.1955

## JUDGMENT

### **Chandra Reddy, J.**

1. The assessee is a manufacturer of gunnies and twine. The assessment year is 1950-51. This revision case relates to the amount collected by the assessee by way of sales tax from the purchasers under Rule 5, sub-rule (7) of the Turnover and Assessment Rules. In the year of assessment, the assessee submitted a statement of gross-turnover of Rs. 40,82,555-4-3 claiming a deduction in respect of some sums with which we are not concerned. The assessing authority added to the turnover, a sum of Rs. 58,699-3-9 representing the taxes collected by the respondent on the goods sold by him. An appeal was preferred by the assessee against the order including the sales tax collected by him in his turnover for the year. But this appeal was rejected. A further appeal to the Sales Tax Appellate Tribunal resulted in the exclusion of this sum from his turnover. It is this order of the Appellate Tribunal that is impugned by the State Government in this Revision case.

2. It is urged in support of this case that the assessee is not entitled to deduct anything from the gross-turnover except those items that are specifically mentioned under Rule 5(1)(a) to (k) and that the sales tax collected by the assessee is not included in them.

We do not think we can give effect to this contention. The mere fact that this is not one of the items mentioned in Rule 5(1) of the Turnover and Assessment Rules does not enable the assessing authority to levy a tax on the amounts collected by the assessee from the purchasers by way of payable on sales. The purpose of Rule 5 (1) is to determine the net turnover and in assessing it certain amounts are deducted which are mentioned in clauses (a) to (k).

3. The non-mention of this particular head in Rule 5(1) will be significant if it could be treated as a part of the turnover. In our opinion, it cannot come within the ambit of the definition 'turnover'. Under Section 2(1) of the Act 'turnover' means the aggregate amount for which the goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the 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, shall be excluded from his turnover. It is thus seen that, it is only the amount collected by way of the price of the goods sold that would come within the scope of this sub-section. The sales tax is not a part of the price or consideration paid by the purchaser. In fact the tax is determined only on the price paid by the purchaser for the articles purchased. The question of tax comes up only after the bargain is struck between the parties. As such, it cannot be a part of the purchase price. Therefore, tax on sale is outside the consideration paid by the consumer for the goods purchased by him

4. The seller is authorised to collect the tax under the statute and required to pay it over to the Government. Although the main body of the Act does not contain any provisions to enable the seller to pass on the tax to the consumer, Sub-rule (7) of Rule 5 of the Turnover and Assessment Rules confers such an authority on the seller. In our opinion he acts as an agent of the assessing authority in collecting the tax and he is under an obligation to make it over to the Government, and no part of this money belongs to him. Any default in this regard involves him in prosecution under Section 15 of the Act. Under Section 8-B(2) of the Act,

"Every person who has collected or collects any amount by way of tax under this Act, on or after the 1st day of April 1947, shall pay over to the State Government within such time and in such manner as may be prescribed all amounts so collected by him, if they are in excess of the tax, if any, paid by him for the period during which the collections were made, and in default of such payment, the amounts may be recovered as if they were arrears of land revenue".

5. The fact that this tax is first collected by the seller does not make the amount so collected lose its character as tax. That such tax cannot form part of the turnover of the assessee, will become evident from a reference to form "A" prescribed for the return of income. That brings out the distinction between the two. Under Col.10, the assessee has to show the net turnover, liable to be taxed, and under Col.11, the amount actually collected by way of tax or taxes. This emphasizes the distinction between the turnover and the amount collected by the assessee by way of tax on the sale. It is thus clear that they are two different things, and the expression 'turnover' is not of such a wide import as to include even taxes collected by the assessee. If the contention of the Government is to be accepted, it will amount to permitting the department to levy tax on tax. We do not think there is any basis for this interpretation in the relevant provisions in the Act. This point is also, covered by authority. In - *'Deputy Commr. of Commercial Taxes, Coimbatore v. Messrs. M. Krishnaswamy Mudaliar and Sons'*,<sup>1</sup> a Bench of the Madras High Court held that the tax collected by the seller under sub-rule (7) of Rule 5 of the Turnover and Assessment Rules is not liable to be taxed against and cannot, therefore, be included in the net turnover of the assessee. With respect, we are in agreement with the principle laid down there. In our opinion the order under revision is correct and has to be affirmed.

6. In the result, the revision case is dismissed with costs, only advocate's fee Rs. 125/-  
This case coming on for further order the Court made the following Order.

<sup>1</sup> AIR 1954 Mad 856

7. We have taken the view in - *'State of Madras v. Messrs. Tungabhadra Industries Ltd., Kurnool'*<sup>2</sup>, that the definition of "Turnover" as amended by the Andhra Legislature does not bring in sales tax collected by the dealer. That being so, we do not find it necessary to alter our opinion

with regard to the decision of this case.

Revision dismissed.

<sup>2</sup> AIR 1955 And 245