ANDHRA PRADESH HIGH COURT

Irri Veera Raju

Vs

The Commercial Tax Officer

(P Jaganmohan Reddy, C.J. K Rao,J.)

01.04. 1967

JUDGMENT

P. Jaganmohan Reddy, C.J.

1. The main question in this batch of writ petitions and the tax revision case is whether the total turnover of a commission agent doing business for several principals is liable to be assessed to sales tax. We will take the facts in W.P. No. 562 of 1967 as typical of the common question arising in all the cases.

2. The petitioner carries on business of jaggery as a commission agent on behalf of the ryots, who bring jaggery to his premises at Tadepalligudem, by selling the jaggery on their behalf. The ryots pay a commission to the petitioner for the services rendered by him; and in addition they also pay other incidental expenses and customary charges like dharmam etc. It is the case of the petitioner that he was submitting monthly returns for purposes of sales tax under Rule 17 of the Andhra Pradesh General Sales Tax Rules (hereinafter called "the Rules") in Form A-2. Under Rule 17(2) of the Rules the petitioner has to pay the taxes if any due as per the return. It is also the case of the petitioner that as none of the principals on whose behalf he was selling the jaggery has a taxable turnover of over Rs. 10,000, in his returns he was showing that no tax was payable for such of those principals whose turnover is below Rs. 10,000. For the year 1965-66, the assessing authority, ignoring the returns, made provisional assessments for some months ; whereupon the petitioner filed W.P. No. 281 of 1966 for a writ of prohibition, which was admitted on 28th February, 1966. A stay of all further proceedings was also granted in that petition. It is stated that the assessing officer again issued a notice on 31st Jaunary, 1967, proposing to make provisional assessment for the months of April to December, 1966. In the show cause notice the assessing officer while admitting that the petitioner filed a statement giving all the particulars of the principals, he stated that the petitioner should file proper stamped affidavits to show that the principals had no other turnover.

3. It is contended before us firstly, that having regard to the provisions of Section 11 of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called "the Act") read with Section 5, an agent of a resident principal can be held liable for the turnover of his principal if his principal has a taxable turnover of Rs. 10,000 or more and if he has a turnover of less than Rs. 10,000 he would not be liable. The Commercial Tax Officer was not justified in taking the turnover of all the principals on whose behalf the petitioner was selling jaggery and making him liable to tax; nor is he justified in calling upon him to file stamped affidavits of all the principals.

4. Sri Ramachandra Reddi, the learned Principal Government Pleader, on the other hand, contends for the extreme proposition that a commission agent who is a "dealer" as defined under Section 2(1)(e)(iv) of the Act is liable for payment of tax on his turnover irrespective of the question whether he is an agent for one or several principals. According to him, the tax is on the agent's turnover and it is these transactions that are assessable under Section 11.

5. In order to appreciate these rival contentions, it is necessary to examine the relevant provisions of the Act which are given below Section 2(1)(e): 'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

(i) to (iii) * * *

(iv) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal.Explanation I.-Every person who acts as an agent of a non-resident dealer, that is, as an agent on behalf of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as-

(i) to (iii) * * *

shall be deemed to be a dealer for the purposes of this Act.

Section 5(1): "Every dealer (other than a casual trader and an agent of a non-resident dealer) whose total turnover for a year is not less than Rs. 10,000 and every agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year, at the rate of two naye paise on every rupee of his turnover. Every casual trader shall pay a tax at the rate of two naye paise on every rupee of his turnover :

Provided that if and to the extent to which such turnover relates to articles of food or drink...
(2) and (3) * * *

(4) The taxes under this section shall be assessed, levied and collected in such manner as may be prescribed :

Provided that-

(i) in respect of the same transaction, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed ;

(ii) where a dealer has been taxed in respect of the purchase of any goods, in accordance with the rules referred to in Clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

Section 11 : The tax or penalty due under this Act, in respect of a transaction of sale or purchase effected by an agent on behalf of a principal who is a resident of the State shall be assessed or levied and collected from the agent, in every case where such principal would be otherwise liable to pay such tax or penalty in respect of that transaction. Where the agent has paid the tax or penalty in respect of such transaction, he may, without prejudice to his other rights to recover from his principal such tax or penalty, retain, out of the moneys payable to the principal, a sum equal to the amount of tax or penalty so paid by him:

Provided that the tax or penalty assessed or levied on, or due from the agent, may be recovered by the assessing authority from the principal, instead of from the agent.

Explanation :--For the purposes of this section, 'agent' shall have the meaning assigned to the expression 'dealer' in Sub-clause (iv) of Clause (e) of Sub-section (1) of Section 2.

6. Rule 17 of the Rules lays down the procedure for levy, assessment and collection of taxes.

7. Rule 17-A provides thus :

For the purposes of levy, assessment and collection of taxes due under Section 11, the procedure laid down in Rule 17 shall, subject to the following modifications, generally apply-

(a) every dealer who is liable to pay tax under Section 11 as agent for the purchase or sale of any goods effected by him on behalf of a resident principal, shall, in addition to the return or returns that he may be liable to submit under these rules, submit so as to reach the assessing authority, on

or before the 25th day of every month, a return in Form A-4 showing the turnover in respect of the transactions carried on by him on behalf of his principal or principals for the preceding month. Along with the return, he shall also submit a receipt from the Government Treasury or a crossed cheque in favour of the assessing authority for the full amount of the tax or taxes payable under Section 11 for the month to which the return relates ;

(b) it shall be lawful for the assessing authority to assess the dealer provisionally by a single order to the tax payable under Sections 5, 5-A, 6 and 11 read with Section 9 ;

(c) the 'patti' (statement of account) rendered by an agent to his principal shall contain the following certificates, namely-

'Certified that the tax due on the purchases/sales effected on your behalf has been/will be paid by me/us.'

8. The statement showing the purchases and sales, which should be in Form A-4 contains the following particulars to be filled in, viz., the name and address of the principal on whose behalf the purchase, or the sale, as the case may be, is made, the name and quantity of the commodity purchased, sold, the value of the goods, turnover taxable and tax due on the turnover.

9. A perusal of the above provisions leaves no doubt that a commission agent of either a resident or a non-resident principal is also, like the principal, a dealer. In the case of an agent of a non-resident principal, he is deemed to be a dealer and is liable for the tax on whatever the turnover may be, irrespective of the fact that it is less than Rs. 10,000. It is apparent from the definition of "dealer" that a commission agent who is transacting business on behalf of several principals will be considered to be a "dealer" for each of the principals. The words "on behalf of any principal" occurring in the definition "carries on the business of buying, selling, supplying or distributing goods on behalf of any principal" would clearly indicate that he is a dealer in respect each of the principals; that is, he is deemed to be as many dealers as there are principals. Section 5, which is the taxing section, if read with this definition, would show that every agent of a principal or dealer whose total turnover per year is not less than Rs. 10,000 is liable to be taxed. It should not be forgotten that the principal also is equally liable like his agent and we should think that he would be primarily liable. It may also be noticed that what is taxable is the total turnover, and if that is less than Rs. 10,000, neither the principal nor the agent through whom he transacts the business would be liable. It may be that a principal may have several agents through whom he is doing business, each of whom may have sold or purchased taxable goods of a turnover of less than Rs. 10,000 but the sum total of all the transactions of all the agents on behalf of that principal may exceed Rs. 10,000 in which case what would be the position and who would be liable to tax? It is contended by Mr. Ramachandra Reddi, as we have already observed, that all

the agents would be liable if their total turnover of this principal as well as other principals exceeds Rs. 10,000. That this could never have been the intention of the Legislature is clear when we come to Section 11, which uses the word "transaction" and not turnover. Section 11 provides for the assessment, levy and collection of tax from the agent of a resident principal. It begins with the words "The tax or penalty due under this Act...." which necessarily implies that unless the tax or penalty is due, the agent who has effected the transaction of sale or purchase on behalf of a principal who is a resident of the State will not be assessed, nor is the tax levied and collected from him. The agent is only liable in every case in which his principal would be otherwise liable to pay such tax or penalty in respect of that transaction. It will be observed that the co-relation is between the agent and the principal, that is, that the transaction in respect of which the principal is held liable can be assessed, and the tax levied and collected in the hands of his agent. The necessary condition of the tax liability is that the principal should be liable under the Act and the principal is liable only if the transaction is one which is not less than Rs. 10,000. If the liability of an agent directly arises as a consequence of the liability of his principal, then there would be no force in the contention that the total transactions of the agent in respect of the several principals would make him liable to tax on his total turnover of these several principals under Section 5, when in fact in respect of the transactions of each of the principals he is not liable under Section 11. The proviso to Section 11 furnishes a key to the intention underlying that section, because under it the assessing authority could recover from the principal a tax or penalty assessed or levied on or due from the agent, instead of from the agent; and if the agent is liable to be assessed and taxed on the sum total of the transactions of the several principals, then what is the tax that is recoverable from each of the principals? Under the proviso, if the contention of the Government Pleader is valid, surely the legislative intent could not have been to permit the assessing authority to recover tax on the total turnover of the several principals levied on the agent from any one of the principals or each of the principals; nor does it envisage the agent making separate apportionment of the tax between the principals. The very fact that it empowers the assessing authority to recover the tax due from the agent from the principal instead of from the agent, would again show that it is a tax due from the agent on account of the principal. The explanation further lends support to this interpretation, when the word "agent" has not been denned but has been assigned the same meaning as that assigned to the expression "dealer" in Sub-clause (iv) of Clause (e) of Sub-section (1) of Section 2. It will be observed that in the definition of "dealer" in Section 2(1)(e)(iv) the word "agent" has not been used, but commission agent, del credere agent, mercantile agent, etc., were used and that is the reason for adding an explanation to Section 11 of the Act. In India Coffee and Tea Distributing Co. Ltd., Madras v. State of Madras [1958] 9 S.T.C. 769, a Bench of the Madras High Court consisting of Rajamannar, C. J., and Ramachandra Iyer, J., was dealing with a case under Section 14-A of the Madras General Sales Tax Act, 1939, and foreign principals, i.e., non-resident principals. In that

section it was provided that in respect of the business of the non-resident, his agent residing in the State shall be deemed to be the dealer; and that the agent of a non-resident shall be assessed to tax or taxes under that Act at the rate or rates leviable thereunder in respect of the business of such non-resident' in which the agent is concerned, irrespective of the amount of the turnover of such business being less than the minimum specified in Section 3, Sub-section (3), of that Act.. It was also provided that such an' agent may retain out of any moneys payable to the non-resident by the agent, a sum equal to the amount of the tax or taxes assessed on or paid by the agent. Under this section if the turnover of a non-resident principal was less than the minimum under Sub-section (3) of Section 3, he was entitled to apply to the assessing authorities for the refund of the amount collected from the agent. It may be observed that under the Madras General Sales Tax Act, 1939, the definition of "dealer" was not comprehensive as that in the Andhra Pradesh General Sales Tax Act. What was provided in explanation I to Clause (iv) of Section 2(1)(e) of the Andhra Pradesh Act, was to be found in Section 14-A of the Madras Act in respect of an agent of a non-resident principal. In considering that provision, Ramachandra Iyer, J., delivering the judgment of the Bench cited a passage from a judgment of the Bench of that Court in T.R.C. Nos. 38 to 40 of 1955 dealing with the provision for refund in Section 14-A with approval. That passage given at page 776 is as follows :-

In our opinion, this is a clear indication that though for the purpose of the machinery of collection the resident agent is treated as an assessee, the person whose tax liability is really sought to be reached is the non-resident principal and that is the entire ratio of the right to refund granted by Sub-section (iv). This aspect is emphasised by the provision in Sub-section (iii) by which the resident agent is entitled statutorily to retain out of the moneys of his principal the amount which he paid by way of tax. These features, in our opinion, ought to be taken into account in construing the scope of the fiction created by Sub-section (i) by which the resident agent is treated as a dealer. If it is really a vicarious liability that is fastened on the resident agent the person who really and ultimately has to pay the tax being the non-resident principal, it would be clear that the turnover in the hands of the agent who is by statutory fiction deemed to be the dealer, cannot be held to include what is statutorily exempted from the computation of that turnover. The turnover of the agent-dealer is the aggregate of the prices realised by the sales of the commodities belonging to the principal. This agent might be acting for several principals. He is deemed to be 'as many dealers' as there are 'non-resident principals' for whom he is dealing. If, therefore, there is an exemption attaching to the goods of one or more of these principals whose sale is included in that turnover it stands to reason that that exemption would be attracted to the sale of such goods by this agent for really it is the principal's goods that he sells and it is the sale of these goods that occasions the tax liability.

10. Though the learned Advocate for the Government sought to confine the effect of this passage

to the particular provision, namely Section 14-A of the Madras General Sales Tax Act, we find little justification in not applying either the reasoning or the basis of the decision to the provisions of Section 11 of the Act. If an agent of a non-resident principal is deemed to be as many dealers as there are non-resident principals, it is equally certain that an agent of a resident dealer can be deemed to be as many dealers as there are resident principals. We find no distinction or difference between an agent of a resident principal and an agent of a non-resident principal and it does not stand to reason to say that merely because he acts for nonresident principals he could be considered a dealer for each of the principals, while if he acts for a resident principal, he cannot be so considered and his aggregate turnover is liable to be assessed. It may be pointed out that a similar view as that was taken by the Madras High Court has recently been propounded by their Lordships of the Supreme Court in State of Mysore v. Hussain Kunhi & Co. [1967] 19 S.T.C. 215 While considering the effect of Section 14-A of the Madras Act, Rama-swami, J., delivering the judgment of their Lordships observed at page 220 of the report as follows :-

The scheme of Section 14-A of the Act is that it is really the 'non-resident' principal who is assessed to tax and the agent is deemed to be a dealer in respect of his business, as a convenient representative, for assessment, levy and collection of the tax. The assessment is with reference to the sales on the principal's account and the rates of tax are those applicable to the principal. The agent is given a statutory right to retain the moneys of the principal in his hands equivalent to the tax assessed or paid. Under Section 14-A, Sub-section (ii), the agent is made liable to pay the tax irrespective of the fact whether the amount of turnover of the business was less than the minimum specified in Section 3(3) or not. In the case the turnover happens to be less than the minimum specified in Section 3(3) the principal is given a right to obtain a refund under Section 14-A(iv). The reason for the rule excluding the provisions of exemption under Section 3(3) while assessing the agent appears to be that it might happen that the non-resident principal would be employing more than one agent and if the agents were allowed to take advantage of the provision as to minimum turnover in Section 3(3) the principal would be able to evade taxation by entrusting his sales to several agents each to the limit of a minimum turnover.

11. It will be observed from the above passage that the reason why an agent is being assessed in the case of an agent is that he is only a convenient representative for assessment, levy and collection of the tax of a non-resident principal who is not within the jurisdiction. It is, therefore, evident that the underlying basis for attaching liability to an agent under the scheme of taxation, whether he is agent of a resident or non-resident principal, is that it is a convenient mode of collection of tax.

12. When we enquired as to the practice prevailing before the present attempt to tax the total turnover of the agent in respect of the total turnover of all the principals, Mr. Ramachandra Reddi

cited five cases, from which it is said to appear that the practice was as he contends for. They are *State of Madras v. North Madras Firewood Trading Co*[1]. *Public Prosecutor v. Sarisetty Venkatasubbiah*[2] *C. S. Narasiah v. Province of Madras*[3] *State of Madras v. P. Srinivasulu*[4] and *Ayyanna Setty & Sons v. State of Mysore*[5] In the first case there was no assessment at all; in the second, nothing turned on the turnover; and the third one is not relevant to the point under consideration. In the fourth case, there was only one sale and it was held that once an agent is taxed, the principal cannot be taxed, which rather supports the contention of the petitioners' learned Advocates, Sri Venkatappaiah Sastry and Sri Anantha Babu. In the fifth case, there were two types of dealers. In the first one, the question was whether the dealer is a mere broker and if so was he or was he not liable as agent. It was held that the assessee was a broker and as such not assessable as a dealer. In the second case, the Bench held that there is no evidence, as such the contention failed due to lack of proof.

13. When the Legislature enacts any Act, it is deemed to know the general law, and particularly when it is enacting a taxing measure, that the general law of principal and agent definitely fixes the limits of the responsibilities and liabilities of the agent as well as the principal. The agent is an agent qua the particular principal and his liability arises only in respect of that principal. A different note seems to have been struck by Ramakrishnan, J., speaking for the Bench in *State of Madras v. Tiruchengode Co-operative Marketing Society Ltd*[6]. where he observed at page 765 :

If the Society did in fact function as the agent of the agriculturist grower and in such capacity sold the produce to the buyer, the Society is certainly liable to be assessed to sales tax as dealer in accordance with the extended definition of 'dealer' in Section 2(g)(iii) of the Act. The turnover of the Society, in such circumstances, will be clearly its own turnover and it is not the turnover of the principal.

14. This enunciation was not in consonance with the principles adumbrated above and certainly the Andhra Pradesh Legislature did not want to leave the matter in doubt. It immediately brought out an amending Bill on 16th November, 1966, the Statement of Objects and Reasons of which specifically refers to the above case. It stated :Basing on the judgment of the Madras High Court in the *State of Madras v. Tiruchengode Co-operative Marketing Society Limited [1965] 16 S.T.C. 760(Supra),* the assessing authorities of the Commercial Taxes Department are levying tax on the commission agents of the agriculturist principals under Section 5 of the Andhra Pradesh General Sales Tax Act, 1957. Representations have been received by the Government against the levy of sales tax on commission agents of agriculturist principals, as such levy is causing hardship to the agriculturists. The Sales Tax Advisory Committee has recommended that the relevant provision of the Andhra Pradesh General Sales Tax Act may be amended suitably. In order to obviate the difficulty caused to the agriculturists, it is decided to accept the Committee's recommendation

and to amend the proviso to Section 2(1)(a) of the Andhra Pradesh General Sales Tax Act so as to extend the exemption of tax on the sale of agricultural produce by an agriculturist on such sale effected through an agent.

15. This amending Bill subsequently became an Act of the Legislature. Whatever may be the purpose of this amending Act, we have certainly no doubt in our minds that the total turnover of an agent in respect of several principals cannot be computed for assessing him when in fact the transaction of each one of the principals is below the non-taxable limit, i.e. Rs. 10,000 each. In this view, it is unnecessary to consider the further contention of Mr. Anantha Babu that the provisions of Section 11, if the interpretation given to it by the department and suggested by the learned Government Pleader is accepted, are discriminatory and, therefore, contravene Article 14 of the Constitution.

16. The result is that the Commercial Tax Officer is prohibited from acting otherwise than in accordance with what has been observed above. The writ petitions are accordingly allowed with costs. The T.R.C. is dismissed with costs. Advocate's fee Rs. 75 in each.

Cases Referred.

1[1953] 4 S.T.C. 39
2[1953] 4 S.T.C. 263
3[1953] 4 S.T.C. 376
4[1954] 5 S.T.C. 202
5[1961] 12 S.T.C. 731
6[1965] 16 S.T.C. 760