

# ORISSA HIGH COURT

Dasarathi Mohapatra

Vs

State of Orissa

O.J.C. No. 160 of 1955

(Narasimham, C.J. and Das, J.)

16.07.1957

## JUDGMENT

### **Narasimham, C.J.**

1. This is a petition under Article 226 of the Constitution against an order of the Orissa Sales Tax authorities directing payment of sales tax in respect of the supply of gunny bags containing paddy and rice to the Government.

2. An agreement was entered into between the petitioner and the Government of Orissa on the 4th December, 1953 for the purchase of paddy and rice by the petitioner for Government purposes and a copy of the agreement between the two has also been filed along with the petition. The salient features in the terms of the agreement are as follows : The petitioner agreed to serve as an Agent Of the Government of Orissa for the purchase of paddy and rice in the district of Puri. His responsibilities as an Agent were as follows :

- (i) the purchase of food grains in the area of operation allotted to him by the Collector on behalf of the Government;
- (ii) taking custody, packing, transport to depot and safe storage of food grains so purchased by the Agent or of food grains compulsorily purchased in the district and made over to the Agent : and
- (iii) subsequent disposal of the foodgrains purchased by the Agent or of food grains compulsorily purchased in the district and made over to the Agent in accordance with the directions of the Collector or any officer authorized by him in this behalf. The petitioner as an agent was required to act under the orders of the Collector on all matters connected with the agency. For the purpose of enabling the petitioner to purchase paddy and rice, provision was made for granting him advances from time to time. He was allowed a liberal commission on the food-grains purchased and was also allowed consolidated charges including transport charges. The quality of food grains supplied by him was required to conform to a standard specified in the agreement. It was further stipulated that

"the Agent shall use gunny bags the standard of which shall be prescribed by Government from time to time and for purposes of export the Agent shall use only B. T. gunny bags." This is the only provision in the agreement dealing expressly with gunny bags. There is no express provision dealing with payment of the price of the gunny bags by the Government to the Agent or payment of sales tax thereon.

3. The petitioner contended that as gunny bags were absolutely necessary for the storage and transport of paddy and rice, his purchase of the gunny bags for that purpose from third parties was not an independent transaction but was done by him in his capacity as an Agent of the Government and that consequently there was no "sale" between him and the Government when he made over the food grains contained in gunny bags to the Government in pursuance of the various orders of the Collector. According to him, he was merely an Agent to the Government even in respect of the purchase of gunny bags from other persons and there was no "transfer of property" in gunny bags from him to the Government so as to constitute 'sale'. Hence, while submitting his bill for payment to the Collector, he included the actual cost price of the gunny bags plus the sales tax which he had paid when he purchased them from other persons. The Sales Tax authorities, however, though that the agency between the petitioner and the Government did not, include the purchase of gunny bags and that it was an independent transaction. Hence, when he supplied gunny bags to the Government and charged for their price there was a separate transaction of 'sale' between him and the Government and sales tax was payable on that transaction. He was, therefore, called upon to pay sales tax and penalty was also levied on him for his failure to apply for registration as a dealer.

4. The main point of law for decision, is whether the petitioner is liable to pay sales tax on the cost of gunny bags in which he supplied food grains to the Government in pursuance of the agency agreement. It is admitted that his purchase of paddy and rice was as an Agent to the Government and consequently when he subsequently supplied the same to the Government there was no transfer of property in paddy and rice. Section 188 of the Contract Act says that an Agent having an authority to carry on a business has also the implied authority to do every lawful thing which is necessary for that business including those things which are usually done in the course of conducting such business. Paddy and rice are ordinarily collected and supplied in gunny bags and consequently the purchase of gunny bags and the storage and transport of paddy and rice in such gunny bags would come within the scope of Section 188 of the Contract Act. Hence, the relationship of principal and agent which existed between the Government and the petitioner for the primary purpose of procuring paddy and rice would, by implication, subsist for the ancillary purpose of purchasing gunny bags for storage and supplying of such foodgrains. It is difficult to conceive how the relationship of seller and buyer would exist between the petitioner and the Government so far as the supply of gunny bags is concerned, when in respect of the supply of food grains the relationship of agent and principal admittedly existed between the two. There is no express provision in the agreement to indicate a distinct jural relationship between the two in respect of these two transactions. On the other hand, it was expressly stated that as Agent the petitioner was responsible for taking custody, packing, transport to depot and safe storage of foodgrains. Packing of food grains was obviously to be done in gunny bags. Again, the quality of gunny bags used for such packing was required to be in accordance with the standard prescribed by the Government. On a fair reading of the terms of the agreement, I am of the view that even in respect of the supply of gunny bags for the storage and supply of food-grains the relationship of

principal and agent subsisted between the two. It is true that there is no express provision in the agreement as to which party should bear the cost of gunny bags. But once it is held that the supply of gunny tags is also impliedly included in the terms of the agency it is obvious that the petitioner is entitled to be reimbursed for the actual expenses incurred by him for that purpose.

5. Mr. Misra on behalf of the Sales Tax Department cited several decisions dealing with the liability to pay sales tax for containers and packing cases used for the supply of commodities. The earliest is a Madras decision reported in *Varasuki and Co. v. Province of Madras*<sup>1</sup>, There it was held that where salt was sold in gunny bags and salt was exempted from payment of sales tax such tax was leviable in respect of the sale of the gunny bags. That case is clearly distinguishable. There was admittedly a "sale" of the salt and the gunny bags in which the salt was kept. There was no relationship of principal and agent between the parties so far as the supply of salt was concerned. As the sale of gunny bags was not exempted from payment of sales tax even though the sale of salt was exempted, sales tax was held to be leviable notwithstanding the fact that salt is ordinarily supplied in gunny bags. Similarly, the Assam case reported in *Mohanlal Jogani Rice and Atta Mills v. State of Assam*<sup>2</sup>, is distinguishable because there rice was sold in gunny bags to the Government. In a later Hyderabad case reported in *Nizam Sugar Factory Ltd. v. Commr. of Sales Tax*<sup>3</sup>, where sugar was sold in gunny bags to the Government sales tax was held to be payable in respect of the sale of the gunny bags also even for the period when no sales tax was payable for sugar as an exempted commodity.

6. There are, however, two decisions where though there was no relationship of buyer and seller in respect of the main commodity, sales tax was held to be payable in respect of the packing materials. In *A. S. Krishna and Co. Ltd. v. State of Andhra*<sup>4</sup>, the assesseees redried in their plant raw tobacco given to them by their customers. After such redrying they packed it with necessary packing materials and then delivered the tobacco to the customers. They charged the customers for redrying and packing. But they were held liable to pay sales tax on the sale turnover on the packing materials. It was held that so far as the process of redrying of the tobacco was concerned, there was no sale between the assesseees and their customers but only a contract of work and labour. But so far as the packing materials were concerned there was a sale and hence sales tax was payable. That case is also distinguishable because there the assesseees' position in respect of the raw tobacco supplied to them by their customers was not that of an agent. Hence, they could not rely on Section 188 of the Contract Act and contend that the supply of packing materials was ancillary to the supply of goods. There are similar distinguishable features in a later decision of Madhya Pradesh reported in *Jaikishan Gopikishan v. Commr. of Sales Tax, M.P. Govt*<sup>5</sup>, Where an assessee was carrying on the business of ginning and pressing cotton in a factory and delivering the same to the customer in the form of bales covered with hessian cloth and secured by iron hoops. It was held that there was a sale so far as the hessian cloth and iron hoops were concerned and sales tax was payable.

7. The fundamental distinction between the present case and all the aforesaid cases has already been emphasised. The primary relationship between the petitioner and the Government was one of agent and principal for the supply of foodgrains and the supply of gunny bags was ancillary to the supply of foodgrains and necessary for such supply in the ordinary course of business. Hence, as there was no relationship of buyer and seller between the two in respect of the foodgrains it is difficult to imagine how such a relationship could exist in respect of the gunny bags in which such foodgrains were supplied.

8. I would, therefore, allow this petition, set aside the order of the Sales Tax authorities and direct that no sales tax shall be levied in respect of the supply of gunny bags. The order for payment of penalty for failure to register as a dealer is also set aside. The petitioner is entitled to costs. Hearing fee is assessed at Rs. 100/-.

**Das, J.**

9. I agree.

Order accordingly.

Cases Referred.

<sup>1</sup>1951-2 STC 1 (Mad) (A)

<sup>2</sup>1953-4 STC 129

<sup>3</sup>1957-8 STC 61

<sup>4</sup>1956-7 STC 26 : (AIR 1957 Andhra 706)

<sup>5</sup>1957-8 STC 286