
(1975) 10 AHC CK 0011
In the Allahabad High Court
Case No : S.T.R. No. 775 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

Kraya Bikraya Samiti

RESPONDENT

Date of Decision : 27-10-1975

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 2(c)

Citation : (1976) 38 STC 548

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Gopal Bihari and L.N. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The Additional Revising Authority, Sales Tax, Varanasi, has u/s 11(1) of the U. P. Sales Tax Act referred the following question for our opinion:

Whether, in view of the above facts and in the circumstances of the case, the society would come within the purview of "dealer" as defined u/s 2(c) of the U. P. Sales Tax Act ?

2. The assessee is a co-operative society and sells foodgrains of its constituent members. On a notice being sent to it by the Sales Tax Officer, the assessee denied working as a commission agent, and contended that it was not a "dealer" and, as such, not liable to payment of any tax. This contention was not accepted by the Sales Tax Officer and he fixed the net turnover for 1960-61 at Rs. 90, 117.06, for 1961-62 at Rs. 4,10,225.18 and for 1962-63 at Rs. 6,17,680.78. An appeal was filed by the assessee but the contention that he was not a dealer was not accepted. A revision was thereafter filed. The Judge (Revisions) accepted the plea that the petitioner was not a dealer and, as such, set aside the assessment. It would be convenient to set out the definition of a dealer as contained in Section 2(c) of the Act. Section 2(c) defines a dealer thus :

2. (c) "dealer" means any person or association of persons carrying on the

business of buying or selling goods in Uttar Pradesh, whether for commission, remuneration or otherwise, and includes any firm or Hindu joint family and any society, club or association, which sells goods to its members and also includes any department of the State Government or the Central Government which carries on such business and any undertaking engaged in the generation or distribution of electrical energy or any other form of power.

3. Explanation I reads:

A factor, a broker, a commission agent or arhati, a del credence agent, an auctioneer, or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying or selling goods...on behalf of his principals or through whom the goods are sold or purchased shall be deemed to be a dealer for the purposes of this Act.

4. The facts relevant for the purposes of this reference are these. The assessee is a co-operative society and has as its members agriculturists. The members pledge their agricultural produce with the assessee for securing loans. These loans are either paid directly or adjusted after goods of the constituent-members are sold. The assessee used to sell the goods on terms given by the members, or on more profitable terms negotiated by the assessee, and received commission on the sales. After completing the sales, the assessee used to issue purchase vouchers giving out the details of the purchase without naming the constituent-members as sellers. The Sales Tax Officer taking these facts into account, and also the fact that the assessee had its own place of business, and its own capital, and had been issuing sale receipts in its own name after making certain deductions, held that the assessee was a dealer. While making assessment, he had also examined a number of purchasers who had stated that they had no direct contact with the constituent-members, while effecting purchases, and all the purchases used to be made from the society directly. The Appellate Assistant Commissioner found that the assessee pledged the goods of its members and made advances to them. It issued sale receipts in its own name, which did not disclose the names of the constituent-members. It charged commission on the sales. He relied on paragraph 24 of the pawning agreement which showed that the society had absolute right to sell the hypothecated goods. In the course of the appeal, the assessee had filed a register which showed that some of the owners of the foodgrains sold the foodgrains themselves. The Appellate Assistant Commissioner did not give much weight to this document, as he took the view that the control over the goods was that of the assessee and no person other than the assessee could sell the goods. The Judge (Revisions) held that the statements of the purchasers could not be relied upon, as the assessee had not been given any opportunity to cross-examine them. Further, that the register produced by the assessee which showed that some members sold the foodgrains themselves was sufficient to counteract the evidence of the purchasers. He also referred to clause 15 of the Adarsh Upvidhian of the society, which laid down that

the society could not enter into transactions of sales without the consent of the owners. He held that all that the assessee did was to search out customers for the owners, and on finalisation of the sales charged commission. In his view, on these facts the assessee was not a dealer as defined in the Act.

5. The reference seems to be concluded by two decisions of this court: (1) Co-operative Marketing Society Ltd., Kalpi Jalaun v. Commissioner of Sales Tax, U. P. 1972 U.P.T.C. 86. and the other (2) Commissioner, Sales Tax v. Co-operative Marketing Society, Khaga, Fatehpur 1975 U.P.T.C. 276. In view of the findings, recorded by (the Judge (Revisions) we take it that the foodgrains pawned by the members could not be sold by the assessee without their consent. The fact, however, remains that it was the assessee who used to finalise the sales and make every other arrangements for this purpose, and also charge its commission for effecting the sales. It has been found by the Appellate Assistant Commissioner that the sales receipts were being issued by the assessee in his own name and that the assessee had full control over the goods that were pawned with it. This finding has not been reversed by the revising authority. It is also clear that the activity of the society is carried on regularly as a business. This being so, the mere fact that the assessee could not sell the goods without the consent of the members cannot take it out of the mischief of Section 2(c) and explanation I thereof. In view of the wide definition of the word "dealer" as given u/s 2(c) of the Act a person who sells goods for commission is also a dealer.

6. Accordingly, we answer the question referred in the affirmative, in favour of the department and against the assessee. The department is entitled to costs which is assessed at Rs. 100.