
(1953) 07 MAD CK 0029

In the Madras High Court

Case No : Appeal No. 636 of 1949

C.S. Narasiah and Another

APPELLANT

Vs

Province of Madras

RESPONDENT

Date of Decision : 15-07-1953

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 6

Citation : (1953) 07 MAD CK 0029

Hon'ble Judges : Subba Rao, J; Ramaswami, J

Bench : Division Bench

Advocate : T.S. Narasinga Rao and M. Balachandrudu, for the Appellant; Govt. Pleader and Balkrishna Eradi, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This is an appeal against the decree and judgment of the District Judge of Anantapur in O. S. No. 27 of 1948, a suit filed by the appellants for a declaration that the assessment of the plaintiffs to pay Rs. 9046-7-11 as sales tax is illegal and void.

2. The plaintiffs are merchants carrying on the business of commission agency in the village of Thimmancherla in Guntakkal. From 1-4-1944 to 8-12-1944, they showed a turnover of Rs. 8,61,243-14-7 and from 9-12-1944 to 31-3-1945, the turnover was Rs. 7,18,276-4-6. In regard to the turnover for the first period, the plaintiffs' contention is that they were exempted from taxation as they must be deemed to have had a licence u/s 8 of the Act for that period. In regard to the second period, the Board of Revenue gave them exemption in respect of Rs. 5,45,146 and odd. Out of the balance, in regard to Rs. 77,143-11-3 it is conceded that it related to independent dealings. It is also not disputed that a turnover of a sum of Rs. 6534 representing dealings with nonresident principals is also liable to tax. The result is that the appellants question the validity of the tax in respect of Rs. 75,380-14-0 for the second period.

3. In regard to the first period, i.e., from 1-4-1944 to 8-12-1944, it is conceded that no licence has, as a matter of fact, been issued to the plaintiffs u/s 8 of the Act. But it is contended that a sum of Rs. 20 was paid as licence fee in March 1944 and another sum of Rs. 130 in May 1944, and that therefore, at any rate, from May 1944 it must be held that they had a licence u/s 8 of the Act. Rule 6 (3), Sales Tax Rules, governs the situation. It reads :

"If an application for the grant or renewal of a licence is received after the date prescribed therefor, the licence shall not ordinarily be granted or renewed with effect from a date prior to the date of the receipt of the application provided that the Commercial Tax Officer of the district may, in any deserving case, direct a licencing authority to accept an application for the grant or renewal of a licence received after the prescribed date and issue licence with retrospective effect on the applicant's paying as penalty such sum not exceeding nine times the licence fee in addition to the usual licence fee."

In this case the plaintiffs should have applied for licence before 1-4-1944. They did not do so. The learned District Judge rejected the evidence of P. W. 1 when he deposed that an application for a licence was made. It is said that the application was made to D. W. 1, the Assistant Commercial Tax Officer of Guntakkal, but D. W. 1 deposed that during the crucial period he was not the Assistant Commercial Tax Officer of Guntakkal. We do not see any reason to take a different view of the evidence of D. W. 1. If so, it follows that the plaintiffs carried on the business of commission agents without a permit u/s 8 of the Act, and therefore they are not liable to be exempted from the assessment of sales tax.

4. Even so, learned counsel for the appellants contended that in view of the later decisions there is a distinction between an agent, who is a dealer, and one who is only a broker, in the sense he brings the two contracting parties together, and that in this case his clients are only brokers. But this aspect of the case was not raised anywhere in the pleadings. It was not even argued before the learned Judge. This argument has been inspired only by the judgment of the Full Bench in -- *Kandula Radhakrishna Rao and Others Vs. The Province of Madras and Another*, . The plaintiffs proceeded on the basis that they were dealers but that they were exempted by reason of the licence issued u/s 8 of the Act.

5. Coming to the second period, learned counsel argued that amounts collected by the plaintiffs towards "mamul" charity, "rusum" etc. should be exempted from sales tax on the ground that they formed part of the agreed commission. The plaintiffs' case is that they were collecting the miscellaneous charges and designated them for entertainment of customers, for "bakshis" to servants, and others, and for station expenses, etc.; that under the heading "Vidyarthi" they collected amounts and paid them over to the Guntakkal High School; and that the amount collected under the heading "rusum" was paid over to the Kanyakaparameswari temple. In support of this version P. W. 1 has been examined. The learned Judge who had seen the witness expressed the view that

he was not impressed with his evidence in the witness-box, and therefore he did not accept his evidence. The learned Judge also observed that he did not believe the entries in the plaintiffs' accounts. We must observe that the observations of the learned Judge in respect of the accounts is not based upon any reasons. When a subordinate Court refused to act upon apparently regularly kept accounts, which were admittedly submitted to the Sales Tax authorities, it is the duty of the Court to give reasons why it thought fit to reject them.

But assuming the entries are true, in our view they do not carry the plaintiffs' case further. They would only show that some amounts were collected by the plaintiffs and paid for the purposes mentioned in the accounts. The plaintiffs could succeed only by adducing reliable evidence and by establishing that the collections and the payment of the "rusums" etc. were part of the agreed commission. They must establish that there was either an agreement between the agent and the principal to the effect that these "rusums" etc. should be treated as part of the agreed commission, or at any rate, there should be some acceptable evidence to show that there was a custom governing the transactions in question. Except the oral evidence of P. W. 1, which has rightly been not accepted by the Court below, we cannot discover any evidence to support the case of agreement or custom.

6. It is then contended that in respect of a turnover of Rs. 1,35,666-12-0 the plaintiffs are not the sellers and therefore the said turnover was not liable to be taxed. It is said that though the plaintiffs entered into contracts to sell groundnuts with Messrs, Louis Dreyfus and Co. and Rally Brothers etc., they assigned those contr`s to third parties who sold the goods directly to Messrs. Louis Dreyfus and Co. and Rally Brothers. In short, the contention is that there was a "novatio" and the plaintiffs were out of the picture. The argument appears to be plausible but there is no evidence, except the oral evidence of P. W. 1, to show that there was any such assignment with the consent, and to the knowledge, of Louis Dreyfus and Co. and Rally Brothers. None of the alleged assignees were examined; nor were their account books produced. In the circumstances, the learned Judge had no option but to hold that the plaintiffs failed to establish that there was any "novatio" as pleaded by them. On the materials placed before us we are not in a position to disturb the finding of the learned Judge.

7. In the result the appeal fails and is dismissed with costs.