

(1972) 08 MAD CK 0035

In the Madras High Court

Case No : Tax Case No. 67 of 1967 (Appeal No. 8 of 1967)

C.V. Ramaswamy Gounder and Sons Erode

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 07-08-1972

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 34

Citation : (1973) 32 STC 350

Hon'ble Judges : V. Ramaswami, J; Ramanujam, J

Bench : Division Bench

Advocate : P.R. Ranganathan, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—This tax case has been filed by the assesseees against the Order of the Board of Revenue passed in a suo motu revision u/s 34 of the Tamil Nadu General Sales Tax Act, 1959. The assesseees are dealers in turmeric and oil at Erode and they were assessed to tax for the year 1961-62 on a taxable turnover of Rs. 4,95,597.74 by the assessing authority on 9th July, 1964. While determining the taxable turnover the assessing authority rejected the claim of the assesseees for exemption, inter alia, on a turnover of Rs. 1,23,878.50 being the commission sales of turmeric to self on behalf of agriculturist-principals.

2. Aggrieved against the rejection of the claim, the assesseees preferred an appeal before the Appellate Assistant Commissioner, who, by his Order dated 6th January, 1966, cancelled the assessment on the said turnover of Rs. 1,23,878.50 holding that the assesseees have acted only as agents of the agriculturist-principals, that they have not sold goods to anybody except themselves and that, therefore, the transactions do not fall under sales liable to tax.

3. The Board of Revenue examined the Order of the Appellate Assistant Commissioner with the connected records and found that the assesseees were the

selling agents of agriculturists on commission basis, that they had also at times effected purchases of turmeric for resale on their own account from the agriculturist-principals, that out of the turmeric received from the agriculturists for sale on commission basis, the assesseees have appropriated to their own account the turmeric valued at Rs. 1,23,878.50 during the assessment year and that, therefore, the assesseees are liable to tax on the sales effected by them as selling agents of the agriculturist-principals to themselves, even though they had in fact paid tax on their own sales of turmeric to third parties. According to the Board of Revenue, the transaction by which the turmeric reached the hands of the third parties involved two sales, one by the agriculturists to the assesseees and the other by the assesseees to third parties and that though the latter sales effected by the assesseees to third parties had been subjected to tax, the assesseees cannot escape their liability to pay tax on the sales effected by them as selling agents of the agriculturist-principals to themselves. In this view the Board restored the Order of the assessing authority and subjected the turnover of Rs. 1,23,878.50 to tax at 2 per cent.

4. Before us, it is contended on behalf of the assesseees that the assesseees having paid tax on their sales to third parties they are not liable to pay tax once again on the purchases effected by them from the agriculturist-principals. We are not willing to accept the contention of the assesseees that tax is levied on the assesseees in respect of the turnover in dispute as the buyers of turmeric from the agriculturist-principals. It is true that turmeric is taxable only at the sale point and it is the seller who is liable to tax. But, in this case, the assesseees have not been taxed as buyers of turmeric from agriculturists, but as the selling agents of the agriculturist-principals, who had effected sale of turmeric to themselves. There is no dispute that the assesseees sold turmeric on behalf of the agriculturist-principals to themselves for resale on their own account and earned their selling agency commission. Therefore, there cannot be any doubt that the assesseees sold goods of the agriculturist-principals to themselves.

5. The learned counsel for the assesseees then contends that, even assuming that the assesseees acted as selling agents of the agriculturist-principals in effecting the sales of turmeric to themselves, they cannot be made liable to tax, as their agriculturist-principals themselves are exempt from tax. According to the learned counsel, the assesseees must be equated with agriculturist-principals and held eligible for exemption from tax in view of Section 2(r). It is further urged that the liability of the principal and the agent should be taken to be co-extensive in the matter of taxation and if the principal is exempted from tax, his agent also should have the benefit of that exemption. On the facts of this case, there is no dispute that the turmeric sold by the assesseees as selling agents of the agriculturist-principals had been grown within the State by the principals in their own land and that, therefore, the sale proceeds of the turmeric will not amount to "turnover" as defined in the Act, in their hands and they are not liable to tax on the sale proceeds of the turmeric. But the question is whether the assesseees who have acted as selling agents of the said agriculturist-principals could claim

the said exemption on the ground that the turnover having been exempted from tax in the hands of the principals, it should also be exempted in the hands of the assesseees, their selling agents. It is true that under the general law the liability of an agent is co-extensive with that of the principal. But this rule is subject to the provisions of the Tamil Nadu General Sales Tax Act with which we are concerned. The statute specifically brings in a commission agent who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal within the definition of a "dealer" in Section 2(g). "Turnover" as defined in Section 2(r) takes in the aggregate amount for which goods are bought or sold or supplied or distributed by a dealer, either directly or through another, on his own account or on account of others. Therefore, the statute contemplates a commission agent having a separate turnover of his own as a dealer even though the principal may or may not have turnover of his own. This court for the first time considered the scope of the proviso in the definition of "turnover" in Section 2(i) of the Madras General Sales Tax Act, 1939, which is similar to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, in *Kanyakaparameswari Ginning and Groundnut Oil Mill Contractors Co. v. State of Madras* [1955] 6 S.T.C. 38, where the Bench has observed:

The pronouns "himself, "he" and "his" in the proviso to Section 2(i) obviously all refer to a "person" as mentioned in the proviso to Section 2(i), i.e., the person who sells the produce grown by himself or grown on any land in which he has an interest. We have already pointed out that the pronoun "his" in the expression "his turnover" can refer only to the dealer. That by itself should be sufficient to hold that all the three pronouns "himself, "he" and "his" in the proviso to Section 2(i) also refer to the dealer mentioned earlier in Section 2(i)

6. The Bench, therefore, held that sales by a producer, that is, by a person who grows agricultural or horticultural produce on his own land or any land in which he has an interest, will not fall within the scope of Section 2(i), unless the producer is also a dealer. The Supreme Court, dealing with an analogous provision, namely, Section 2(m) of the Hyderabad General Sales Tax Act, 1950, had observed in *Konduri Buchirajalingam v. State of Hyderabad* [1958] 9 S.T.C. 397

The main portion of the definition (of dealer), however, shows that "turnover" only refers to the turnover of a dealer and not of an agriculturist. Therefore, the proviso deals with a person who is both an agriculturist and a dealer and it excludes the proceeds of the sale by him of his own agricultural produce from his turnover as a dealer in goods.

7. In *State of Madras v. T. C. M. Society Ltd.* [1965] 16 S.T.C. 760, Ramakrishnan and Ramamurti, JJ., held that an agent with dominion over the goods of the principal and with authority to transfer the property in such goods and, consequently, effect sales and acquire a turnover in respect of such transactions, cannot be treated on the same footing as the agent of a non-resident principal and the turnover acquired by him is in law as well as in fact his own turnover for

the purposes of sales tax assessment and it cannot be considered as the principal's turnover. According to the learned Judges, where the turnover is that of the agent himself under the statutory definition of "dealer" given in the 1959 Act, the exemption under the proviso to Section 2(r) can be granted only if the agricultural produce is grown by the agent himself or grown on a land in which he has an interest, whether as owner, etc. and so long as the produce does not satisfy this condition, the benefit of the proviso will not be available to the agent. The correctness of the above decision was questioned before a Full Bench of this Court in Deputy Commissioner of Commercial Taxes v. Anantharama Nadar & Sons [1970] 25 S.T.C. 276 and Veeraswami, C. J., speaking for the Full Bench, had expressed the view that where an agent himself, as a commission agent, is also a dealer, on a strict reading of the proviso to Section 2(r), he would not be entitled to the exclusion from the turnover of sales of agricultural produce, unless he had himself grown the produce on his own land or on land in which he had an interest and that "turnover" as defined in Section 2(r) is relatable to the sales effected by the dealer and the proviso should naturally be taken to be concerned with the turnover in his hands as is clear from the language of the proviso and that the word "himself" in the proviso refers to the dealer in the first part of the definition of the turnover. In that view, the Full Bench approved the decision of the Division Bench of this Court in State of Madras v. T. C. M. Society Ltd. [1965] 16 S.T.C. 760. The facts of this case are on all fours with the facts of the case considered by the Full Bench in Deputy Commissioner of Commercial Taxes v. Anantharama Nadar and Sons [1970] 25 S.T.C. 276. In view of the above decision of the Full Bench, the assessee's contention that their liabilities are co-equal with that of their agriculturist-principals and that as the agriculturist-principals are exempted from tax in respect of the turmeric grown by them in their own lands, the assessee is also not liable to tax has to be rejected.

8. The learned counsel for the assessee then contends that, even assuming that the assessee is liable to pay tax treating the sale proceeds of the agricultural produce as their turnover as dealers under the definition, their liability has to be determined with reference to each of their agriculturist-principals. What in effect the learned counsel contends is that there should be as many assessments as there are principals and the aggregation of the turnover relatable to the sales effected on behalf of each of the principals was not legally possible. In support of that contention the learned counsel refers to the decision in Irri Veera Raju v. Commercial Tax Officer [1967] 20 S.T.C. 501, where the Andhra Pradesh High Court has held that the words "on behalf of any principal" occurring in the definition of "dealer" in Section 2(1)(e)(iv) of the Andhra Pradesh General Sales Tax Act, 1957, indicate that the agent is a dealer in respect of each of the principals, that he is deemed to be as many dealers as there are principals and that, therefore, the total turnover of the agents in respect of several principals could not be computed for assessing them when in fact the turnover of each one of the principals was below the non-taxable limit, i.e., Rs. 10,000 each. But we find that in that decision the scope of the definition of the "turnover" had not

been-considered and the emphasis has been laid only on the words "on behalf of any principal" occurring in the definition of "dealer" as carrying on the business of buying, selling, supplying or distributing goods on behalf of any principal as clearly indicating that the agent is a dealer in respect of each of the principals. In *K. Venkata Ramana v. State of Andhra Pradesh* [1969] 24 S.T.C. 367, again the Andhra Pradesh High Court reaffirmed its view that even after the amendment of the Andhra Pradesh General Sales Tax Act, 1957, by Act 5 of 1968, making the agent liable in respect of the transactions of several principals irrespective of the liability of the principals, the liability of the agent continues to be based on the principle of representation, that is, whether he is a dealer in respect of all the principals or one principal, his liability is co-extensive with that of the principal and that the amendment which does not recognise the principle of representation and seeks to fix the liability on the agent for the turnover of several principals as if it is the turnover of the agent irrespective of whether each of the principal was liable or not is not valid. Even in the above decision the effect of the definition of "turnover" on the commission agent's transactions have not been considered. Reference was also made to the decision of the Supreme Court in *State of Madras v. Cement A. & C. Organisation* [1972] 29 S.T.C. 114, where it has been held that an agent of a cement manufacturer was entitled to deduction of the packing charges shown separately in the bills issued to the buyers when cement was sold in packages, under Rule 6(c) of the Madras General Sales Tax Rules, 1959, as the principal would have claimed it had the principal sold the cement itself. The reasoning of their Lordships of the Supreme Court is this:

Under the general law the agent merely represents his principal. Therefore, while functioning within the scope of the agency he can exercise all the rights which his principal could have exercised. In fact, in the case of an ordinary agency, the agent merely acts for his principal. This provision must hold good even under the Madras General Sales Tax Act unless otherwise provided therein. The fact that for the purpose of that Act an agent is considered as a dealer does not alter the legal position in other respects. Excepting to the extent otherwise provided in the Madras General Sales Tax Act the agent must be held to represent his principal while dealing with the goods of his principal; he merely steps into the shoes of his principal. He is entitled to the same exemptions as his principal would have got had he dealt with the concerned goods himself.

9. In the above case, the Supreme Court was considering a case of exemption which an agent claimed on the ground that his principal was entitled to such exemption. But the question here is whether the transactions effected by the agent as a dealer could be grouped together for the purpose of finding out the total turnover in his hands. The statute which specifically made the agent a dealer in particular circumstances makes all the transactions effected by him in that capacity as forming part of his turnover. "Turnover" has been defined in Section 2(r) of the Act as follows:

"Turnover" means the aggregate amount for which goods are bought or sold, or

supplied or distributed, by a dealer, either directly or through another, on his own account or on account of others 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, other than tea grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

10. This definition makes the position clear that all the transactions effected by the agent, either on his own account or on account of others, should be aggregated for finding out the turnover of the agent as a dealer. We are, therefore, of the view that the definition of "turnover" in Section 2(r) squarely answers the contention put forward on behalf of the assesseees.

11. The result is the tax case is dismissed with costs. Counsel's fee Rs. 150.