

(1956) 03 AP CK 0021
In the Andhra Pradesh High Court
Case No : T.R.C. No. 22 of 1955

Golla Venkata Subramanyam

APPELLANT

Vs

State of Andhra

RESPONDENT

Date of Decision : 30-03-1956

Acts Referred:

Citation : AIR 1957 AP 916 : (1956) ALT 695 : (1956) 7 STC 599

Hon'ble Judges : Viswanatha Sastry, J;M. Krishna Rao, J

Bench : Division Bench

Advocate : N. Rajeswara Rao, M.S.R. Sastry and M. Seshachalapathi, for the Appellant;

Final Decision : Dismissed

Judgement

Viswanatha Sastry, J.—The petitioners were commission agents for the purchase of commodities taxable on sales under Madras Act IX of 1939 on behalf of principals resident within and outside the State of Andhra. They also supplied on their own account gunnies and other packing materials to their principals and their turnover under this head amounted to Rs. 5, 195-14-6 for the assessment year 1950-51. Their liability to pay sales tax on this sum was not disputed. The agency transactions of the petitioners on behalf of non-resident principals for 1950-51 were of the value of Rs. 1, 00, 708-2-9 and the transactions on behalf of principals resident within the State amounted to Rs. 3, 34, 865-0-3. The petitioners were registered dealers but they did not obtain a licence u/s 8 of the Act. In respect of all their purchasing agency transactions, the petitioners billed for and collected "russum" at the rate of Rs. 1-9-0 per cent from their principals on the purchases made for them in addition to an agreed commission of 2% and incidental charges and expenses. The Deputy Commercial Tax Officer assessed the petitioners to tax on all the purchasing agency transactions aggregating to Rs. 43, 557-13-0, on the grounds that they had collected sales tax under the guise of "russums" in addition to the agreed commission and that they had not taken out a licence u/s 8 of the Act. On appeal, the Commercial Tax Officer

cancelled the assessment in respect of the agency transactions on behalf of non-resident principals and confirmed the assessment in respect of those concerning resident principals. The Sales Tax Appellate Tribunal, by a majority, upheld the order of the Commercial Tax Officer. Hence this revision petition. Before finally deciding the case, the Appellate Tribunal called for a report from the Commercial Tax Officer whether the "russums" collected by the petitioners from their principals at the rate of Rs. 1-9-0 per cent could be treated as a part of the agreed commission or as an amount, the collection of which was sanctioned by trade custom. The Commercial Tax Officer reported that it fell under neither category and this finding was accepted by the Appellate Tribunal. Under the terms of the contract the principals agreed to pay the petitioners "all the incidental charges and expenses besides a commission at the rate of 2% on the purchases to be made by you on our behalf". The "russum" of Rs. 1-9-0 per cent was therefore a payment in addition to the commission and obviously represented an amount equivalent to that which would have been payable by the petitioners to the State by way of sales tax in case they were chargeable under the Act. The petitioners, who had not taken out a licence u/s 8 of the Act, were evidently apprehensive of a demand for tax being made on them and took the precaution of providing themselves against that contingency. The interpretation of the Act and the Rules framed thereunder is sometimes beset with difficulty as pointed out by the Courts and perhaps the petitioners were not sure of the correct legal position as regards their liability to tax. The majority of the Tribunal observed that as the petitioners earned an extra amount over and above the pure agency commission, they were "liable to tax as dealers purchasing at lower and selling at higher rates" and concluded their order as follows :-

"In view of the collection of extra sums under the head "russums" which is neither customary nor a part of agreed commission, the turnover in dispute cannot be accepted strictly as purchasing agency business not liable to tax."

2. The majority also observed that "the infliction of sales tax cannot also cause any hardship as they (the petitioners) would pay what they had already collected." The Chairman of the Tribunal dissented from the view of his colleagues in a brief order pointing out that the russum had been openly demanded by the petitioners and paid to them by their principals presumably with full knowledge and that "the immunity is not forfeited by the appellants by reason of the collection of the russum."

3. The discussion of the case by the Tribunal has been obscured to some extent by a consideration of matters not strictly germane and by an omission to attach due weight to the relevant statutory provisions. The fact that the petitioners collected from their principals by way of russum sums equivalent to the amount of sales tax on the turnover of the purchases made by them for their principals, does not entitle the State to recover these sums from the petitioners. The question of hardship or no hardship to the petitioners is not the main consideration. The real question is whether the words of the Act have reached

the subject sought to be taxed and liability for the tax has been imposed in clear and express terms. As observed by the Judicial Committee in *Ram Tuhul Singh v. Bisseswar Lal* (L.R. 2 IndAp 131), "it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. The question is not to be concluded by nice considerations of what may be fair and proper according to the highest morality. To support such a claim there must be an obligation, express or implied, to repay." If this is the position with regard to the immediate parties on whose behalf or for whose benefit money was paid it is an a fortiori case, where a stranger, like the State, seeks to recover the money. Unless the levy is justified by the express terms of the Act and the Rules the petitioners are not bound to pay the tax merely because they had collected it from their principals. u/s 8-B(1) of the Act a registered dealer is authorised to collect amounts due by way of tax under the Act subject to prescribed restrictions and conditions and u/s 8-B(2) every person who collects any amount by way of tax under the Act has to pay to the State Government all amounts so collected by him if they were in excess of the tax, if any, paid by him for the period during which the collections were made. Rule 5-A(7) of the Turnover and Assessment Rules provides that a registered dealer might collect any amounts by way of tax at rates not exceeding those specified in section 3 or 5 or notified u/s 6(1) of the Act and, if he so collects, should pay in full to the State Government the amounts so collected. The petitioners are no doubt registered dealers. Even if they collected sales tax under the name of *russum* in order to protect themselves against a possible contingency of their being called upon to pay sales tax on the purchase turnover, it has still to be shown that the amounts collected were lawfully payable by way of tax to the State before they could be called upon to account for the collections. Section 8-B is not a charging section but only an enabling provision authorising a registered dealer to collect what is lawfully payable as sales tax. Neither the State nor the dealer has the right to collect anything other than the tax lawfully payable under the Act. Section 8-B(2) does not impose an absolute obligation on the dealer to pay over all amounts collected by him whether they were lawfully leviable or not. It is only if the levy of tax in the circumstances was authorised by the Act, the petitioners would come under a liability to pay over the collections to the State. There is no obligation on the petitioners as registered dealers to pay over to the Government amounts not lawfully collected by them as tax. The petitioners might be liable to refund the *russums* collected by them to their purchaser-principals but unless it is shown that the levy of tax was authorised by the Act and the Rules, the petitioners are not liable to pay over the collections to the State. In *Tata Iron and Steel Co. Ltd. v. State of Madras* (1954 5 S.T.C. 382) the learned Judges interpreted the words "by way of tax" in section 8-B(2) as meaning "taxes under the Act", that is to say, taxes lawfully leviable under the Act. The question for consideration is not whether the petitioners acted properly in collecting *russums* from their purchaser-principals but whether a liability to tax was attracted under the Act. It is rather unfortunate that the nature of the business transacted by the petitioners as commission agents has not been investigated by the Tribunal as fully as it should

have been. We have looked into the correspondence, patties and hundies. It is common ground that the petitioners have been acting as agents for several purchaser-principals who placed orders with them for chillies, coriander seeds, pulses and tamarind at specified prices. Though these purchasing-principals were known to the petitioners still, so far as the sellers were concerned, the transactions were only between them and the petitioners and not between them and the purchaser-principals. The petitioners bought the goods and made themselves directly liable to the sellers for the price. They took delivery of the goods from the sellers and despatched them to their principals and realised the price through the ordinary commercial channels. No privity of contract was established between the sellers and the purchaser-principals as would have been the case in a case of agency, pure and simple. In this respect the commission agency differs from an ordinary agency. The goods were despatched by the petitioners on their own account, mostly by railway. The railway receipt together with a copy of the patti or invoice and a hundi for the aggregate amount of the price of the goods, freight, commission, incidental charges and russum was sent to local bankers who delivered these documents to the purchaser-principals against payment. No separate bank accounts were kept by the petitioners for each of the purchaser-principals. In a few cases a small initial advance was made to the petitioners by their constituents. The petitioners purchased goods from all and sundry, stocked them for a while without differentiating between the different purchases and sent such quantities of goods out of the entire stock as might be required by their various customers. In truth and in substance the goods were sold by the petitioners to several purchasers spread throughout the State. To a commission agency of this kind the following observations of Vivian Bose, J., in *Kalyanji v. Tikaram* (A.I.R. 1938 Nag. 254) aptly apply :

"Commission agents are of course agents up to a point and to that extent they stand in a position of active confidence towards their principals but beyond that they are not agents in the real sense of the term and the relationship between the parties from then is one of debtor and creditor."

4. The Full Bench decision in *Radhakrishna Row v. Province of Madras* (I.L.R. 1952 Mad. 571; 3 S.T.C. 121) decided that a commission agent buying for undisclosed principals in the manner set out above would fall within the definition of a "dealer" in section 2(b) of the Act. Following that decision, we must hold that the petitioners are such "dealers."

5. Section 3 of the Act provides that every dealer shall pay each year a tax on his total turnover for such year, "turnover" being defined in section 2(i) as the aggregate amount for which goods are bought or sold by a dealer. Under the proviso to section 3 the possibility of double taxation of the same transactions is avoided and the tax is levied only at the point of sale on the seller or at the point of purchase on the purchaser as may be prescribed by the rules. Under rule 4(1) the turnover in the case of goods, with which we are here concerned, is the amount for which the goods are sold by the dealer. It follows therefore that the

petitioners are not liable to pay tax on their purchase turnover though they are dealers. The fact that they have not taken out a licence u/s 8 of the Act would not matter so far as the purchases are concerned for they relate to goods which are taxable only on sales or on the sales turnover.

6. Though the matter is not so clearly brought out as it might have been, the view of the majority of the Appellate Tribunal appears to be that the petitioners are liable to tax as "dealers" because they sold the goods to their so-called principals resident within the State and that they are liable to tax as dealers on their sales turnover in the absence of a licence u/s 8 and compliance with the terms of the section and the conditions of the licence. The petitioners charged their buyers not merely the agreed commission of 2% and incidental charges but an extra 1-9/16% as *russum* which did not form part of the commission. In other words, the petitioners earned not only a profit of 2% under the head of commission but another 1-9/16% under the head of *russum* by selling the goods which they had purchased. It is unnecessary and indeed it is not possible, to say, as the majority of the Appellate Tribunal did, that this *russum* of 1-9/16% "was slipped in" in the invoices sent by the petitioners. There is no room for holding that the *russum* was clandestinely inserted in the patties. The purchasers were businessmen who presumably scrutinised every item of charge before payment and the payments of *russum* were made by the purchasers with knowledge and approval. Be it as it may, the petitioners are liable to tax as dealers on their sales turnover and they are not protected by the exemption u/s 8 of the Act. For these reasons, the revision petition fails and is dismissed with costs. Advocate's fee Rs. 250.