

(1957) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 68 of 1951, Original Suit No. 200 of 1948 and S.A. No. 300 of 1955

Gollapudi Pullayya Company

APPELLANT

Vs

State of Andhra (Now Andhra Pradesh)

RESPONDENT

Date of Decision : 08-10-1957

Acts Referred:

Citation : (1958) 1 AnWR 36 : (1958) 9 STC 24

Hon'ble Judges : Bhimasankaram, J

Bench : Single Bench

Advocate : B. V. Ramanarasu, G. V. R. Mohan Rao and M. Seshachalapathi, for the Appellant;

Judgement

Bhimasankaram

1. This second appeal is by the plaintiff (a firm) in O.S. No. 200 of 1948 on the file of the Subordinate Judge, Guntur. It instituted the suit for a declaration that the order of assessment made against it under the Madras General Sales Tax Act by the Deputy Commercial Tax Officer, Guntur, dated 28th March, 1947, is null and void and for recovery of the sum of Rs. 3, 215-3-0 which had been collected from it by the Government pursuant to that order. The plaintiff-firm had a licence as a commission agent u/s 8 of the Madras General Sales Tax Act and was also doing independent business of its own. It submitted its return for the year 1945-46 on 31st March, 1946, and showed its commission agency turnover therein as Rs. 3, 07, 394-4-6, for which it claimed exemption. The Deputy Commercial Tax Officer was not satisfied with the return and a notice Ex. B-3 dated 5th March, 1947, was issued under rule 9 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, by the Special Deputy Commercial Tax Officer, Guntur, intimating the plaintiff that the return submitted appeared to be incorrect and incomplete and that it should produce its accounts and prove the correctness and completeness of the return at the time and place specified therein. One of the partners of the firm duly appeared before the Deputy

Commercial Tax Officer, produced the accounts and offered his explanation. The Deputy Commercial Tax Officer passed the assessment order now in question on 28th March, 1947. The order was confirmed by the Commercial Tax Officer, Guntur, on 15th July, 1947, and also by the Board of Revenue on 24th February, 1948. (Vide Exs. A-12 and A-16 respectively). The present suit was thereupon instituted on 6th November, 1948, impeaching the validity of the order of assessment. In the present second appeal, three points are made by Mr. Ramanarasu, learned counsel on behalf of the appellant-firm. The first contention urged by him is that the Special Deputy Commercial Tax Officer had no jurisdiction to issue the notice, Ex. B-3, under rule 9 above-mentioned and therefore the order of assessment is wholly illegal. His contention may be elaborated thus : Rule 9 of the Madras General Sales Tax (Turnover and Assessment) Rules authorises only the "assessing authority" to give such notice and the words "assessing authority" are defined in section 2(a-2) of the Act as meaning "any person authorised by the State Government to make any assessment under this Act." The State Government issued G.O. No. 819 published in the Fort. St. George Gazette dated the 15th September, 1939, authorising the Deputy Commercial Tax Officer to exercise the powers of an assessing authority in the case of dealers whose turnover exceeds Rs. 20, 000. The contention is that a Special Deputy Commercial Tax Officer is not a Deputy Commercial Tax Officer within the meaning of this Government Order. for the appellant relies upon a statement made by the Deputy Commercial Tax Officer himself as D.W. 1 in the case to this effect :

"A Special Deputy Commercial Tax Officer has no power to assess As Special Deputy Commercial Tax Officer, I could not issue Ex. A-21 (which is equal to Ex. B-3). When I signed Ex. A-21 I was not Deputy Commercial Tax Officer."

2. In my opinion, there is no force in this argument. It seems to me that the statements made by the officer D.W. 1 in the witness box are based upon a misapprehension. It is to be noticed that the officer was first appointed a Deputy Commercial Tax Officer and was later on assigned the special duty of checking the accounts of assesseees and was therefore called a "Special" Deputy Commercial Tax Officer. The words "special" was added to his official designation in order to describe the nature of the duties which were departmentally assigned to him. For the purposes of the Act, he was a Deputy Commercial Tax Officer but by the directions of his superiors, he was to perform only particular specified duties. The fact that he was assigned by a departmental superior a particular task does not, in my opinion, detract from the jurisdiction that vested in him under the Act by virtue of the office which he held, viz., that of Deputy Commercial Tax Officer. When the officer said in the witness box that he had no power to assess, he only meant that departmentally he could not do so, because he would be doing something which he was not officially authorised to do. That however does not alter his position under the Act. In my view, the word "special" is only descriptive and does not imply that the officer is other than a Deputy Commercial Tax Officer. I therefore think that he could issue Ex. B-3. Even apart

from that, I am unable to follow the contention that the invalidity of a notice preceding an assessment order such as Ex. B-3 would render the assessment void. It may be when a notice is issued by a person not authorised to issue it, the person who receives the notice may ignore it without risk. But if he complies with the terms of that notice and has had an opportunity of making the explanations to the proper officer which the notice directed him to offer, then the resulting order passed after hearing him cannot be challenged. I therefore hold in agreement with the lower Courts that there is no substance in this submission made by the learned counsel of behalf of the appellant.

3. The next point urged by Mr. Ramanarasu on behalf of the appellant is that the Commercial Tax Officer enhanced the taxable turnover by a sum of about Rs. 8, 409-8-0 and this he had no jurisdiction to do under rule 14(1) of the Madras General Sales Tax Rules, 1939, without previous notice to the assessee. It is true that where the result of a proposed variation of an order under appeal would be an enhancement of the tax, the Commercial Tax Officer has to issue prior notice to the assessee to show cause why it should not be so enhanced. But in the present case, the appellant does not seem to have complained at any stage before the departmental authorities of want of notice. It appears from the Commercial Tax Officer's order that the items making up the aggregate sum of Rs. 8, 409-8-0 under the head of independent business were not disputed by the appellant. The appellant cannot complain of want of notice in regard to a matter which he did not dispute. In any case, this objection can only relate to the amount by which the tax was enhanced and does not affect the validity of the original order of assessment. I reject this contention. The third submission made on behalf of the appellant is that the various objections raised by the departmental authorities to overrule its claim for exemption are without substance and do not disentitle it from claiming the exemption. The plaintiff was denied exemption in respect of the whole turnover claimed by him as agency turnover on the following grounds :-

4. First, it purchased on its own account ghee of the value of Rs. 4, 097-15-9 which had been sent to it for sale as a commission agent and collected commission on the item from the selling principals. It was explained on behalf of the plaintiff that this item was included in its turnover of commission business by mistake - vide Ex. B-1, the statement of the assessee furnished in response to the notice under rule 9 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. It is not as if this explanation was rejected by the department. Their only point was that the fact of this inclusion by itself disentitles the plaintiff to the claim for exemption in respect of the whole commission turnover. According to them, it is a violation of the terms of the licence entailing total disqualification from exemption. I am of opinion that a mere mistake such as this cannot be said to be a violation of any of the terms of the licence granted to the plaintiff.

5. The second ground upon which the department overruled the claim for

exemption was that the plaintiff was pledging the goods of its selling principals in its own name. The lower appellate court held that the plaintiff as a mercantile agent was entitled under law to pledge the goods entrusted to it for sale. I agree with that view. The Deputy Commercial Tax Officer further stated that the plaintiff violated the terms of the licence granted to him by his borrowing from the banks at a lower rate of interest and debiting his principals with a higher rate and was thus making a profit over and above the agreed rate of commission. This was only based upon suspicion and the view of the Deputy Commercial Tax Officer was not justified by any evidence. The lower appellate court was right in thinking that there is no substance in this objection raised by the department. The third ground related to the sale of gin cotton of the value of Rs. 5, 705-8-0. The sale purported to have been effected on behalf of one Sriramulu Company. The explanation offered on behalf of the plaintiff before the Commercial Tax Officer was that it was a commission transaction carried out by the plaintiff on behalf of a firm consisting of Sriramulu, one Subba Rao and the plaintiff. This transaction was not included in the return of its independent business but in the plaintiff's turnover as a commission agent. It was objected by the department that the plaintiff having a proprietary interest in the transaction could not treat it as part of its commission agency turnover. The plaintiff's explanation was that all the partners contributed capital for the venture, that the profits were shared equally by the partners and that the plaintiff-firm acted only as the selling agent of the partnership. It is pointed out for the appellant that as a matter of fact it did not charge any commission in respect of the same. This transaction may not be covered by the terms of the licence and should rightly be included in the independent business of the plaintiff but the mere inclusion of this in the commission agency business does not in my view militate against the claim for exemption of other items.

6. The fourth item relates to a transaction of purchase of chillies by the plaintiff in the name of one Subbarao of Jonnalagadda. The commodity was sold at Madras for Rs. 4, 754-3-3. The purchase money was admittedly advanced by the plaintiff-firm. The plaintiff's explanation was that Subbarao's account has not been closed during the year, that it was only settled the next year and that it was therefore not shown in the return for the current year. This item however does not seem to have been relied on by the Commercial Tax Officer in his order though the Deputy Commercial Tax Officer thought that Subbarao was a fictitious person and that the transaction was not a commission agency transaction but the firm's own. The last of the objections was in respect of a sum of Rs. 1, 834-15-6 in regard to which *rusum* and *dharmam* were collected by the plaintiff on 8th April, 1945, which were not passed on to the principal. The plaintiff however stated before the Commercial Tax Officer that these items may be added to its own turnover. It has been held however by the Full Bench in *Radhakrishna Rao v. Province of Madras* (1952 3 S.T.C. 121; 1952 2 M.L.J. 494.) that such charges are made by all commission agents and have received the sanction of mercantile usage. It was stated by the learned Judges that the learned Advocate-General

did not address before them any argument in respect of these collections. They further pointed out that the Government appear to have recognised the fact of such collections, as was evident from condition 5 contained in the form of the licence which was substituted for the original form. The present case turns upon the terms of licence in vogue in the year 1945-46. Therefore it seems to me that the ruling of the Full Bench which dealt with a licence containing the same terms applies and that whatever the position may be under the latter form of licence and under the Act as subsequently amended these collections cannot be treated as unauthorised or improper in so far as they conform to mercantile usage.

7. Now I shall turn to the language of section 8 under which the licence was granted. That section empowers the Government to grant a licence to any person who for an agreed commission or brokerage buys or sells on behalf of known principals specified in his accounts in respect of each transaction and may exempt from the tax u/s 3 such of his transactions as are carried out in accordance with the terms and conditions of the licence. Now under this section that exemption is to be limited to transactions which are carried out in accordance with the terms and conditions of the licence. The terms and conditions of his licence therefore must be in relation to "the carrying out" of the transactions. The third of the conditions in the licence granted to the plaintiff states that the licence shall not apply to the transactions of the licensee, otherwise than for an agreed commission or brokerage on behalf of known principals (including firms) in the State specified in his accounts, in respect of each transaction, or to the transactions of the licensee on behalf of non-residents. The exemption itself is limited to transactions which the licensee can satisfy the department as having been carried out in the manner specified under the terms of this particular licence. It seems to me that only the offending transactions can be excluded and such transactions as are clearly proved to have been commission agency transactions are entitled to exemption. The mere fact that the licence is stated to be "subject to the provisions of the said Act and the rules made thereunder" does not mean that such a licence could impose any conditions unrelated to the manner of carrying out the transactions. I, therefore, hold that while it is open to the department to disallow items which are included in the commission agency business either because of mistake or because they are not proved to be clearly on behalf of known principals or in respect of which more than an agreed commission was collected, it is not open to them on the ground that merely there are such items to reject the claim for exemption in respect of the whole turnover. In my opinion, the case should go back to the trial court for ascertainment of such of the transactions of the plaintiff as were carried out in accordance with the terms and conditions of the licence. The plaintiff will be entitled to exemption in respect of such transactions. The plaintiff will prepare and submit to the court a tabular statement showing such transactions and it will be checked by the officers of the department. A decree in favour of the plaintiff will follow on the basis of the amount representing the turnover entitled to exemption. The court fee paid on the memorandum of appeal here and the lower

appellate court will be refunded to the plaintiff. Costs of this appeal will abide and follow the result. Leave refused.

8. Case remanded.