
(1970) 01 AP CK 0008

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No's. 27 and 29 of 1966 and 3, 4 and 61 of 1967

Gurram Venkata Subbarao and Another

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 28-01-1970

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 11, 5

Citation : (1970) 2 AnWR 369 : (1971) 27 STC 91

Hon'ble Judges : Ramachandra Raju, J;Obul Reddi, J

Bench : Division Bench

Advocate : T. Veerabhadrayya, for the Appellant; Principal Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Raju, J.—A common question is involved in all these five tax revision cases. In all the five cases, the assessee, which is a firm is common. The five cases relate to the assessment years 1961-62 to 1964-65. T.R.C. No. 29 of 1966 relates to the year 1961-62 and T.R.C. No. 27 to the year 1962-63, T.R.C. No. 3 to the year 1963-64 and T.R.C. Nos. 4 and 61 to the year 1964-65. It appears that there was a change in the partners of the firm during the year 1964-65 and therefore there were two assessments for that year and the two cases relate to those two assessments.

2. The assessee-firm was transacting business both directly and through commission agents. With regard to the transactions, namely, sales made by the commission agents they were assessed separately and tax was collected. The common dispute involved in the five cases relates to the sales of "green ginger" conducted by the commission agents. It appears with regard to those sales conducted by the commission agents they were assessed and tax was collected on the sales of "green ginger". The present tax revision cases relate to the assessments of the principal firm. In the returns filed by the firm in the total turnover were shown the sales of "green ginger" conducted both directly by the

firm and those conducted by the commission agents on behalf of the firm. But, however, with regard to the turnover relating to the sales conducted by the commission agents deduction was claimed from the total turnover. Before the assessing authority the firm claimed exemption from paying tax on the sales of "green ginger" on the ground that "green ginger" is a vegetable and payment of tax was exempted by the Government on the transactions of vegetables. The claim of the firm that "green ginger" is a vegetable was negated by the assessing authority and accordingly assessed the sale transactions of "green ginger" also. In the appeals preferred by the firm to the Assistant Commissioner of Commercial Taxes, the firm pressed for the same exemption. The Assistant Commissioner of Commercial Taxes also negated the claim of the firm and confirmed the orders of the assessing authority. In all the five cases the matter was again taken by the firm in appeal to the Sales Tax Appellate Tribunal.

3. Before the Sales Tax Appellate Tribunal the appeals relating to T.R.C. Nos. 27 and 29 of 1966 were dealt with together and disposed of by a common order dated 6th December, 1965. The Tribunal found that "green ginger" is a vegetable and is exempted from tax as per G.O. Ms. No. 1091 Revenue dated 10th June, 1957, and accordingly allowed the appeals and set aside the assessments on the disputed turnover and directed the assessing authority to revise the taxable turnover accordingly. It may be mentioned at this stage that the firm in all the five cases was claiming exemption and refund of tax not only with regard to the sales of "green ginger" conducted directly by the firm but also with regard to the sales conducted by the commission agents.

4. After the Tribunal has disposed of the appeals thus the Government filed petitions under Rule 50 of the Andhra Pradesh General Sales Tax Rules stating in effect that the assessments of the firm relate only to the sales of "green ginger" effected directly by the firm and they do not relate to the sales effected by the commission agents, that the firm has no right to contest the legality of the levy in the hands of the commission agents who had been separately assessed and there should be a clarification that the tax collected from the commission agents which has become final is not touched by the order made by the Tribunal. On those petitions the Tribunal passed a common order dated 6th April, 1966, in which it was observed that as the firm has no right to contest the legality of the levy in the hands of the commission agents who had been separately assessed, the appeals before them only relate to the assessments made on the turnover of the firm for the relevant periods and, therefore, there is no need to make any amendments with regard to any portion of the order as the order says that the assessments of the disputed turnovers are set aside and the word "assessments" refers to the assessments of the firm and not of its agents. But, however, for the purpose of making it more clear the Tribunal gave the actual figures of the turnovers relating to the sales conducted directly by the firm as the disputed turnovers, the assessments of which alone were set aside. It is against this order that the firm has preferred T.R.C. Nos. 27 and 29 of 1966. As already stated earlier, the commission agents were separately assessed on the sales conducted

by them and tax was collected and they have not preferred any appeals questioning the correctness of the levy of tax and their assessments have become final. Notwithstanding that, it is the claim of the firm that it is entitled to claim refund of the tax paid by its commission agents in its assessments. It is this question which is common to all these five tax revision cases.

5. The additional case of the assessee with regard to T.R.C. Nos. 27 and 29 of 1966 is that as provided under Rule 50 of the Andhra Pradesh General Sales Tax Rules, the Tribunal is empowered only to rectify clerical or arithmetical mistakes apparent from the record and what was done by the Tribunal in the review petitions is not merely rectification of any clerical or arithmetical mistakes but it has gone into the merits of the case and therefore it is not sustainable and on that ground also those two cases should be allowed. We do not think that this second, question involved in T.R.C. Nos. 27 and 29 of 1966 need detain us long. From the order in question of the Tribunal it is clear that it did not deal with any merits of the case. The Tribunal said that what they were dealing with in the appeals was only the disputed turnovers relating to the assessments of the firm, which means the sale transactions effected by them directly and, therefore, as a matter of fact, there is no need to make any amendment with regard to any portion of the order as the order says that the assessments of the disputed turnovers are set aside and the word "assessments" refers to the assessments of the firm and not of its agents. But, however, by way of clarification in the order made in the petition the Tribunal has given the figures with regard to those disputed turnovers also. Under these circumstances, we do not think that it can be said the Tribunal was dealing with the matter on its merits and the order made by the Tribunal is not the one that was contemplated under Rule 50. Accordingly, we hold that there is no force in this contention raised on behalf of the firm.

6. In the three other tax revision cases, namely, T.R.C. Nos. 3, 4 and 61 of 1967 no other question is involved except the one relating to the claim of the firm that it is entitled also to refund of the tax paid by the commission agents on the sales effected by them. On behalf of the Government the finding of the Tribunal that "green ginger" is a vegetable and therefore sales of green ginger are exempted from payment of tax is not disputed.

7. Therefore, the only question that remains to be considered is whether the firm is entitled to claim in its assessments the refund of the tax paid by its commission agents on the sales of "green ginger" effected by them.

8. Under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as the Act), the term "dealer" was described also as meaning, "commission agent".

9. u/s 11 of the Act the liability of the resident principal and his agent to pay tax was dealt with. It was provided thereunder that the tax or penalty due under the Act, in respect of a transaction of sale or purchase effected by any agent on

behalf of the principal who is a resident of the State, shall be assessed or levied and collected from the agent irrespective of the fact that such principal is not liable to pay tax or penalty in respect of that transaction on account of the turnover of the principal being below the minimum turnover specified in Sub-section (1) of Section 5 and where the agent has paid the tax or penalty in respect of such transaction of sale or purchase effected by him and where the principal would be otherwise liable to pay the said tax or penalty, the agent may retain, out of the moneys payable to the principal, a sum equal to the amount of tax or penalty so paid by him. In the proviso it was provided that the tax or penalty assessed or levied on, or due from the agent, may be recovered by the assessing authority from the principal instead of from the agent only if the principal is liable to pay the said tax or penalty. It was further laid down in the explanation under that section that for the purposes of that section "agent" shall have the meaning assigned to the expression "dealer" in Sub-clause (iv) of Clause (e) of Sub-section (1) of Section 2. Therefore, as provided u/s 11 with regard to a transaction of sale or purchase effected by an agent the primary responsibility to pay the tax or penalty due under the Act is that of the agent and not that of the principal. The agent was also brought within the definition of "dealer" and therefore as a dealer the agent also is liable to payment of tax or penalty as the case may be as provided u/s 5 of the Act, which is the charging section.

10. Section 33 of the Act governs the case of refunds. It was provided therein that the assessing authority shall refund the tax, if any, paid provisionally by an assessee for any particular period, if it is found to be in excess of the tax payable by him for the said period. It is not in dispute that with regard to the turnover in question it is only the agent who was assessed and he paid the tax. The question for consideration is if he paid the tax which was not really due and he was assessed to that tax wrongly and he failed to canvass the correctness of the levy of the tax on the assessment by taking the matter in appeal, can the principal claim refund of the tax, wrongly paid by the agent, in his assessment. When the agent as a "dealer" was separately assessed with regard to the sale transactions conducted by him, as under the provisions of the Act he being also a dealer and the primary responsibility to pay the tax on the transactions made by him, though on behalf of the principal, being his, the question for consideration is even then can it be said that the turnover of the agent will also be the turnover of the principal for the purpose of the Act and the assessment in the hands of the agent is also his. In the returns filed by the firm though the turnover relating to the sale transactions effected by its agents was shown in the total turnover it was claimed as a deduction and the balance alone was shown as the liability for assessment. The assessing authority assessed the tax only on the balance turnover. Of course, ultimately in the appeal the Tribunal found that the article relating to the sale transactions, namely, "green ginger", being a vegetable is not liable to tax having been exempted by the Government. As already stated the Tribunal set aside only the assessments relating to the sale transactions effected

directly by the firm. Now the assessee claims that in the assessments set aside should also be included the sale transactions effected by the commission agents to enable it to get refund of the tax paid by its agents for obviously the agents themselves cannot now get refund, their assessments having become final, no appeals having been preferred against them. Sri P. Ramachandra Reddy, the Principal Government Pleader, has argued that as provided u/s 11 of the Act the agent by himself is a dealer and the primary responsibility for payment of tax on the transactions effected by him, though on behalf of the principal, is his and not of the principal and if the agent was assessed to tax and he paid the tax without questioning the assessment made by the assessing authority and when that assessment became final it is not open to the principal in his assessment proceedings relating to the transactions effected by him directly to claim refund of the tax which was wrongly paid by the agent and which he did not claim by way of refund or question the assessment order passed by the assessing authority. Sri Ramachandra Reddy relied on the provision made u/s 33 of the Act in support of his contention where it was provided that the liability of the assessing authority to refund any tax is only to the assessee in whose assessment any excess of the tax was collected.

11. In support of his contention Sri Veerabhadrayya, the learned counsel for the assessee has placed reliance on a decision rendered by a Bench of this court consisting of P. Jaganmohan Reddy, C.J., as he then was, and Krishna Rao, J., in *Irri Veer a Raju and Ors. v. The Commercial Tax Officer, Tadepalligudem* [1967] 20 S.T.C. 501. In that case their Lordships were dealing with the nature of the liability of a commission agent when he is the agent of more than one principal and the turnover on behalf of each principal does not exceed the taxable limit. The learned Judges held that the words "on behalf of any principal" occurring in the definition of "dealer" in Section 2(1)(e)(iv) of the Act 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 petitioners 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. Sri Veerabhadrayya has placed reliance on some observations made by the learned Judges in the course of the judgment which are the following:

Section 11 provides for the assessment, levy and collection of tax from the agent of a resident principal. It begins with the words "the tax or penalty due under this Act..." which necessarily implies that unless the tax or penalty is due, the agent who has effected the transactions of sale or purchase on behalf of a principal who is a resident of the State will not be assessed, nor is the tax levied and collected from him. The agent is only liable in every case in which his principal would be otherwise liable to pay such tax or penalty in respect of that transaction. It will be observed that the correlation is between the agent and the principal, that is, that the transaction in respect of which the principal is held liable can be assessed, and the tax levied and collected in the hands of his agent.

The necessary condition of the tax liability is that the principal should be liable under the Act.

It is, therefore, evident that the underlying basis for attaching liability to an agent under the scheme of taxation, whether he is agent of a resident or non-resident principal, is that it is a convenient mode of collection of tax.

12. Sri Veerabhadrayya has also placed reliance on what was provided u/s 11 of the Act, namely, that where the agent has paid the tax or the penalty in respect of such transaction of sale or purchase effected by him and where the principal would be otherwise liable to pay the said tax or penalty, the agent may retain, out of the money payable to the principal, a sum equal to the amount of tax or penalty so paid by him and also that the assessing authority may also recover from the principal instead of from the agent only the tax or penalty assessed or levied on or due from the agent if the principal is liable to pay such tax or penalty. As between the agent and the principal the agent may be entitled to recover the tax or penalty paid by him on behalf of his principal and the assessing authority can also recover from the principal the tax or penalty assessed or levied on, or due from the agent. But as already mentioned, under the provisions of the Act the agent himself is a "dealer" whose responsibility is to pay the tax according to the charging section, namely, Section 5 of the Act and according to Section 11 of the Act though the liability of the principal to pay the tax or penalty is there, the primary responsibility to pay the tax or penalty is that of the agent. It may be true that for a convenient mode of collection of tax the agent was made responsible primarily for payment of the tax. It may also be that the liability of the agent to pay the tax only arises in cases where the principal would otherwise be liable to pay such tax or penalty in respect of such transaction. But when under the provisions of the Act, the agent was made a dealer and it is his primary responsibility for payment of tax and as a dealer the assessing authority assessed the tax against him, if any wrong assessment is made it is for the agent-dealer to question the correctness of that assessment and if necessary to canvass the correctness of the order of the assessing authority in appeal. We do not think that when the order passed by the assessing authority, against the agent-dealer assessing the disputed tax has become final, he not having preferred any appeal questioning its correctness, the principal is entitled to question the correctness of the collection of the tax from his agent in his assessment proceedings. Though in the return to be filed by the principal the transaction carried through the agent is also shown in his aggregate turnover at the same time for the purpose of assessment it will be shown as a deduction from the total turnover. Therefore it cannot be said that the principal would be assessed to tax with regard to the turnover for which the agent was assessed. Though the liability of the principal is also there, with regard to the tax to which the agent was assessed, it cannot at the same time be said that he was also assessed to tax for the same turnover for the purpose of claiming refund in his own assessment proceedings. Accordingly, we hold that the principal is not entitled to refund of any tax that might have been paid by his commission agents

more so when the assessments made against the commission agents have become final and the claim for refund by them is barred by time.

13. Under these circumstances we hold that the assessee in the present tax revision cases, who is a principal, cannot claim refund of the tax paid by his commission agents. Accordingly all the tax revision cases fail and they are dismissed with costs. Advocate's fee Rs. 50 in each.