

(1938) 09 MAD CK 0031
In the Madras High Court

G.V.C. Babu Naidu

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 21-09-1938

Acts Referred:

Citation : AIR 1939 Mad 177 : (1938) 2 MLJ 1035

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The question in this case is whether the plaintiff who owns an arrack distillery at Bellary can be said to have transacted business at Adoni, where he keeps a depot for distribution of his liquor, and incurred liability to pay profession-tax to the Adoni Municipality. The facts are well settled. The plaintiff is a licensed distiller. By the terms of his licence he manufactures liquor for distribution at certain specified depots at a price fixed by the Excise Department on a calculation of costs of production plus a reasonable profit. The depot at Adoni exists only to supply arrack for cash to licensed vendors. The depot-keeper has no authority to supply on credit. He issues liquor in return for cash which he has to deposit in the treasury subject to certain authorised deductions for standing expenses. He keeps no account except a stock book and the general control of the business apart from the daily sales is entirely exercised in Bellary. It is also established that in fact the Adoni sales have not been taken into account in assessing profession-tax at Bellary. Now on these facts, can it be said that the plaintiff transacts business through his agent at Adoni or should it be held that the transaction of the business is at Bellary and that the agent at Adoni is nothing more than a mere distributor and store-keeper.

2. Section 93 of the Madras District Municipalities Act does not itself define the term "transacts business". But Section 94-A says that:

If a company or person employs a servant or agent to represent it or him for the purpose of transacting business in a Municipality, such company or person shall be deemed to transact business within the Municipality.

3. And Rule 17 of Schedule IV to the Act says that:

The company or person shall be deemed to have transacted business and the person shall be deemed to have exercised a profession, art or calling or held an appointment in the Municipality if such company or person has an office or place of employment within such municipality.

4. Now the term "place of employment" in this rule undoubtedly refers back to the person who exercised the profession, art or calling, etc., and with reference to the company the criterion is whether it has an office. This criterion is not very helpful, for the dictionary definition of an office is "a place where business is transacted" so that we are referred back to the question whether business is in fact transacted in the place where the agent works.

5. Now there is a long line of cases on the question whether a firm can be said to transact business in the place where it has a mere agent for canvassing business. The leading case of *Grainger & Son v. Gough* (1896) A.C. 325 decided that a French firm, selling wine through commission agents in London, but keeping in the hands of the head office in France the power to accept or decline orders, could not be held to be transacting business in London. This case and other similar cases have been followed by our High Court. In *The Municipal Council of Cocanada v. The "Clan" Line Steamers Ltd.* (1918) 36 M.L.J. 226 : ILR 1918 Mad. 455 it was held that the shipping company which had an agent in Madras and a sub-agent at Cocanada, the latter being empowered merely to carry out ministerial duties in connection with the shipping of cargo and the contracts being made in Madras, was not liable to be taxed at Cocanada as a firm transacting business there. Similarly in *Hajee Shaik Meera Rowther v. The President of the Corporation of Madras* I.L.R.(1909) Mad. 82 where a firm in Tinnevely kept a buying agent in Madras who had no office but on instructions from Tinnevely purchased piece-goods in Madras for despatch to the shop in Tinnevely where they were sold, it was held that the Tinnevely merchant did not exercise a trade in Madras. There is a decision of *Pandalai, J., in Eastern Distilleries and Sugar Factories Ltd. Vs. The Municipal Council*, which has actually considered the position of the distillery depot though not with reference to the liability to profession-tax but with reference to a somewhat analogous liability to company tax. Under the rule relating to company tax, the question was whether the company had a head office or branch office in Negapatam, where the depot was situated. The depot in question not only carried out arrack sales similar to those with which we have to deal here, but also sold sugar under orders from the head office. It was held that there was no office within the meaning of the rule, the basis of the decision being that the control was exercised from headquarters and the local agent was a mere distributing agency. I find it very difficult to differentiate that case from the present case.

6. The lower Courts have been influenced by the fact that there has been a change in the rules under the new Act whereby instead of the criterion being the existence of the principal office within the Municipality, there has been

substituted the criterion of the existence of an office there. But when once it is understood that an office is merely a place where business is transacted, we are thrown back on the decisions as to what is meant by the transaction of the business and the general rule must be taken to be that the business is transacted at the place where the contracts are made and where control is exercised, not at the place where the contracts are merely executed. It is true that the depot-keeper at Adoni has authority to deliver goods in return for cash and I suppose that on the narrowest view it might be said that every time he delivers liquor in return for cash there is an executed contract of sale. But his control over the trade is in fact purely mechanical. The price is fixed elsewhere; the vendee must be one of certain licensed persons; the money is paid straight into an account in the treasury and all those accounts from which profits can be ascertained and with the help of which control can be exercised are maintained in Bellary.

7. It is pointed out for the appellant that the assessment of the business on its separate income at each of its depots will entail the maintenance of separate accounts for these depots showing the profit which each makes and will involve the owner of the business in the trouble of taking separate proceedings and making separate returns in each municipality in which he distributes his wares. These are practical considerations which cannot, of course, avail to alter the law, but they may be looked into for the purpose of deciding where in fact this business is transacted and for the purpose of applying the law as laid down in the decided cases. I would observe that the appellant is not anxious to avoid his proper liability to pay profession-tax; but he is anxious to avoid the trouble incidental to the apportionment of his liability between a number of different municipalities in each of which he has sales.

8. On a consideration of all the facts and of the authorities which have been placed before me, I am of opinion that the appellant must be deemed to transact his business at Bellary and not at Adoni and that the depot at Adoni is not strictly speaking an office but a mere warehouse for distributing goods. In this view I must hold that the appellant is not taxable to profession-tax in respect of the profits of his Adoni depot and I must allow the appeal and grant the plaintiff the declaration which he seeks. I do not think that any injunction is necessary, since the municipality will certainly honour this Court's declaration. The defendant will pay the plaintiff's costs throughout.

9. Leave granted.