

(1956) 03 MAD CK 0061

In the Madras High Court

Case No : Second Appeal No. 921 of 1953

P. Vaidyanatha Iyer

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 27-03-1956

Acts Referred:

Citation : (1957) 8 STC 268

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : R. Gopalaswami Aiyangar, for the Appellant; The Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Krishnaswami Nayudu, J.—This appeal arises out of a suit by a merchant carrying on business in piece-goods and yarn at Erode for the recovery of a sum of Rs. 1,422.10 alleged to have been levied as sales tax, which levy is contended to be illegal and ultra vires of the powers of the State. In 1945, a scheme of distribution of cotton piece-goods was brought into effect to ensure a proper and steady supply of cloth to the different parts of the State. From Exhibits A-17 and A-15, which are the circulars issued by the Textile Commissioner and dated 12th May, 1945, and 16th May, 1945, the following appears to be the system that was introduced for the purpose. Mill-made cloth available for consumption in the State was placed under four categories : (1) cloth purchased by quota-holders from the mills situate outside the south deficit zone (presumably the south deficit zone included Madras State); (2) cloth purchased by quota-holders from mills situate within that zone; (3) market purchases from surplus areas, and (4) foreign cloth. We are now concerned only with the third category, namely, market purchases from surplus areas. The plaintiff's case is that he functioned as a retail consignee for the distribution of the market quota. In order to purchase and distribute the monthly market quota, three representative dealers—one at each centre, Bombay, Ahmedabad and Sholapur—were appointed to make

the purchase on behalf of the importing dealers. The cloth so purchased will be consigned to the railway stations in the province to which through booking is available. The representative dealers will consign full bales to the respective districts with reference to the quotas fixed for them. The excess quota is diverted for consumption to a deficit district. The quotas so diverted will be consigned by the representative dealers at the consignment centres direct to the retail dealers in the districts concerned. Every month, lists of importing dealers in their districts and those in other districts whose quotas have been diverted to their districts will be communicated to the Textile Control Officers by the representative dealer at Bombay. The Textile Control Officers should thereupon fix the retail dealers in their districts, to whom these bales have to be sold, and advise the importing dealers about the quantities and varieties to be sold to each of the retail dealers. The importing dealers will then invoice the retail dealers accordingly, and only full bales will be consigned by the representative dealers to the retail dealers in the districts. But if it becomes necessary to break open the bales for making an equitable distribution with reference to varieties, the representative dealer should be requested to consign the bales to a reliable retail dealer whose duty it will be to break open the bales and distribute the cloth with reference to the quotas allotted to the dealers concerned. No remuneration will be paid to those distributing retail dealers. The importing dealers concerned will, however, separately invoice all the retail dealers who are linked up with them and recover the amounts either direct, or, as the case may be, through the distributing retail dealers. The plaintiff comes under the category of reliable retail dealers and he is appointed as distributing retail dealer for breaking open the bales and making an equitable distribution in accordance with the quotas already fixed and to be diverted in respect of the consignments consigned by the importing dealers. For doing this work of distributing by breaking open the bales, the retail dealer was not given any remuneration; but he was allowed, as could be seen from Exhibits A-18 and A-19, only railway freight, cartage and interest at 6 per cent on the money advanced by him. So far as the nature of the dealings is concerned, the importing dealer invoices the retail dealers direct on the basis of the instructions issued by the Textile Control Officers to the three representative dealers at the centres.

2. The position of the plaintiff as a distributing retail dealer is to break open the bales to such persons as to whom invoices have been sent from the importing dealers and for this work he is not entitled to get any profit, but interest at 6 per cent on the money advanced by him and cartage, railway freight etc. The trial Court, in the circumstances, took the view that he does not come within the definition of a "dealer" and that he is only an accommodator who gets goods from the importing dealer for the retail dealer and immediately disposes of the same to the latter and that he has not been carrying on the business of buying and selling and that, therefore, he was only an intermediary who had no part in either purchasing the goods from the import dealers or selling the same to the retail dealers, his function only being one of distribution under an arrangement

come to in pursuance of the circular orders referred to. Emphasis was laid on the fact stated to have been admitted by him in his evidence as P.W. 1 that he delivers goods to retailers after receiving payments from them and that he takes delivery of the goods from the wholesalers only on payment, implying thereby that the plaintiff was purchasing goods from the import dealers and then effecting transactions of sale with the retailers. The buying and selling has been found to be between the import dealer and the retailer to whom alone only the invoices are sent; but the invoices pass through the plaintiff and if it becomes necessary to make payments and take delivery for the purpose of distributing the goods to the retailers after breaking open, such payments the plaintiff has necessarily to make; but it is not necessarily the price of the goods but the amount required for transmitting the goods to the retailer. It is not clear as to whether the payment is made from out of the moneys realised from the retailers in advance, which fact a re-examination might have disclosed. But even on the assumption that, if it becomes necessary, he makes the payments from his own funds, it does not mean that he paid the price and purchased the goods, considering the position in relation to these transactions. The plaintiff can act in two capacities only, either as a dealer or as an agent, and since he has not pleaded that he is an agent and also taking the substance of the transactions, it is urged by the learned Assistant Government Pleader that the plaintiff's part in the transactions would bring him within the category of "dealer" as defined in the Act. Once it is shown, as has been established by the evidence in this case, that he is not a purchaser of the goods or that he in turn sold them to retailers, the transactions being between direct importers and retailers, the position of the plaintiff is virtually of an agent. The fact that he does not call himself an agent is of no consequence since in the evidence it is found that he is only an accommodator or, as he said, a distributing retail consignee, and as such the circumstance that he does not describe himself as an agent does not change the real character of the transactions and his part in such transactions. The remuneration which he was paid is not a percentage of the price but the actual expenses incurred and interest on the amount and the fact that interest is provided for is a further circumstance in support of the view that whatever amounts were advanced were by way of loans or advances for the purpose of accommodating and facilitating to put through the transactions, which amounts were reimbursed by payments together with interest. Taking every circumstance into consideration and especially the terms of the circular orders under which the plaintiff has been acting, there is no question of treating him as a "dealer" within the meaning of the definition in the Act.

3. The result is, the appeal is allowed and the decree of the trial Court is restored with costs. No leave.