

(1956) 08 AP CK 0006

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 31 of 1955

State of Andhra

APPELLANT

Vs

M.C. Sannappa

RESPONDENT

Date of Decision : 31-08-1956

Acts Referred:

Citation : AIR 1957 AP 691 : (1956) ALT 920 : (1956) 7 STC 757

Hon'ble Judges : K. Subba Rao, C.J.; Bhimasankaram, J

Bench : Division Bench

Advocate : M. Seshachalapathi, for the Appellant;

Final Decision : Allowed

Judgement

Subba Rao, C.J.—This is a revision filed by the State of Andhra against the order of the Andhra Sales Tax Appellate Tribunal, Guntur.

2. The facts are simple. The respondent was a licensed dealer carrying on business in raw hides and skins at Konakondla in Andhra State. He was assessed to sales tax for the year 1951-52 on a turnover of Rs. 11, 527-8-5 being the purchase value of the raw hides and skins sold by him through his commission agents at Bangalore. Out of the total turnover, turnover to the extent of Rs. 9, 499-15-8 represented his transactions of outright sales to persons in Bangalore whereas the balance related to the raw hides and skins sent by him to his commission agents at Bangalore who sold them in Mysore State on his account. He was assessed under the provisions of the Turnover and Assessment Rule 16(2) (ii) being the last purchaser in the series of sales of the goods effected in Andhra State. The Tribunal held that the transactions in respect of Rs. 9, 499-15-8 would attract the provisions of rule 16(2)(ii) of the Turnover and Assessment Rules, but the balance of the total turnover would not be governed by the said provision as there were no sales in respect thereof for export outside the State. As the turnover of the former transactions was less than Rs. 10, 000 the Tribunal held that the turnover was exempt u/s 3(3) of the Madras General Sales Tax Act. The

State of Andhra questions the correctness of the finding of the Tribunal.

3. The question falls to be considered on a construction of rule 16(2) of the Turnover and Assessment Rules. The said rule reads :-

"Rule 16. (2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the State or are sold for export outside the State." A Full Bench of the Madras High Court in *State of Madras v. Chambers, Ltd.* (1955 2 M.L.J. 63; 6 S.T.C. 157 73) construed the said provision and laid down its scope.

Rajamannar, C.J., observed at page 72 :-

"The correct position appears to me to be this : u/s 5(vi) of the Act, the sales of hides and skins, whether tanned or untanned, are liable to tax only at such single point in the series of sales by successive dealers as may be prescribed. Rule 16 of the Turnover and Assessment Rules prescribes the point. Evidently, for reasons of practical convenience, the rule-making authority desired to fix the single point when the series of sales had come to a termination. There were two ways in which such series of sales of untanned hides and skins could come to an end. One was by the untanned hides and skins going into a tannery, that is to say, when they will cease to be untanned hides and skins any longer. The other way was when the untanned hides and skins were exported outside the State. Thereafter, there could be no further transaction of sale in the series. In rule 16(2)(i) a provision is made for the sale of untanned hides and skins to a tanner, and in rule 16(2)(ii), for such hides and skins which are exported. Then, the rule proceeds to fix the liability to tax. In the case of untanned hides or skins sold to a tannery, the tax is to be levied from the tanner on the amount for which the hides and skins were bought by him. In the case of hides and skins exported, the tax is levied from the dealer who was the last dealer who bought them in the State on the amount for which they were bought by him. If such last dealer was exempt from taxation u/s 3(3) of the Act, the dealer before him, who was not so exempt, was liable on the amount for which they were bought by him. The tax is not levied from the last purchaser because the goods were subsequently exported, any more than the tax is levied from the tanner because he bought the hides and skins for tanning. For the purpose of fixing the single point in the series of sales, the two events, namely, the sale to a tanner and export outside the State, were taken as the termini of the series of sales." This summarises in our view, correctly and neatly, the scope of rule 16(2)(ii) of the rules.

4. A Divisional Bench of this Court, of which one of us (Chief Justice) was a member, in *The Government of Andhra v. N. Nagendrappa* (1956 7 S.T.C. 568) construed the said provisions and expressed the view much to the same effect. The Divisional Bench stated :

"It is fairly clear that in the case of untanned hides and skins bought by a dealer within the State and exported by him outside the State, he is liable for payment of sales tax on the amount for which the goods were bought by him and his

liability to pay the tax is founded not on his being the seller for export but on being the last purchaser in the series of sales of the goods effected within the State. The export by the dealer merely marks the final stage of series of purchases by one licensed dealer from another and it is at that stage that the taxable event, namely, the last purchase, and the person who is liable to pay the tax, namely, the last purchaser, are both determined. In other words, the tax is really one on the transaction of purchase anterior to the sale for export or export sale. The turnover which is taxable under the Act may be the sale or purchase turnover and the State has the option to collect the tax from the dealer on his purchase turnover."

5. The tax therefore is on the transaction of the purchase though the taxable event is determined at the stage of the sale to the tanner or the sale for export. For, in either case the series of sales of untanned hides purchased terminate in the State at that stage, and therefore they cannot be caught in the net of taxation as transactions in untanned hides and skins. In the former case, they would lose their character in the process of tanning. In the latter case, they leave the State, and therefore beyond the reach of the State's taxing authority. If, with this background the provision of rule 16(2) is approached, there will not be any difficulty in appreciating its scope. It is contended by the learned counsel for the respondent that as the sale for export outside the State is a necessary condition for taxing the dealer at the purchase point, the respondent cannot be assessed as he did not sell the goods for export outside the State but only sent them to his commission agents in Mysore State to be sold on his account. This argument is plausible, but it ignores the principle underlying the rule. No doubt, if the words in the rule are clear and unambiguous, the assessee is entitled to have the exemption even though the object of the rule is frustrated.

6. What is the meaning to be given to the words "sold for export outside the State" ? A sale for export outside the State may be effected in diverse ways. A dealer in Andhra State may sell his goods to one in Mysore State and the sale is effected by export of the goods from Andhra State to Mysore State. The seller may deliver the goods in Andhra State to a common carrier who is an agent of the buyer and the goods may be transported to Mysore State. The seller may himself carry the goods to Mysore State and there sell them to persons in that State. A commission agent in Mysore State may book orders in advance and the dealer in Andhra may consign the goods to Mysore against those orders. The seller may send the goods to his commission agent in Bangalore who may thereafter sell them to persons in that place. Whatever may be the mode adopted, the sale is effected only by exporting the goods from Andhra State to Mysore State. If the object of the Legislature is to catch the transactions in the net of taxation before they leave the State, on principle there cannot be a distinction for the purpose of taxation in regard to goods transported by the adoption of diverse methods. The words "sale for export" therefore can be reasonably construed to mean "sale by export" or "export sale". In all the cases narrated above, the sale is effected only by the process of export. In every case,

there is a sale which occasions the export of the goods outside the State. It is true that it is only when the state of export is reached in the series of sales by successive dealers, the tax becomes exigible. But the rule does not say that the sale which occasions export should be effected within the State itself. Whether the sale is effected outside the State or inside the State, if it is a sale by export or an export sale that would furnish the stage for assessing the dealer at the purchase point. The sale for export is not a condition for imposing the tax on the purchase point, but one that furnishes the stage for imposing it. The words, therefore, should be reasonably construed without doing violence to the language, and, if so construed, they can only mean export sale or sale by export. The sale either before or after export, if it is consummated only by export, furnishes the stage for taxing the dealer at the purchase point in the series of sales liable for the tax. In *The Government of Andhra v. N. Nagendrappa* (1956 7 S.T.C. 568) a Divisional Bench of this Court held that though the sale was held through a commission agent outside the State, the turnover was liable to be taxed. No doubt, that case may be distinguished on the ground that the sales effected through the commission agents were sales for export to foreign buyers, whereas in the present case, the commission agents sold the goods only in the Mysore State. Even so, for the reasons given by us, we hold that as the sales through the commission agents were effected by export, the dealer would be liable to tax. If the turnover of the said transactions effected by the commission agents is added, the total turnover would be more than Rs. 10, 000 and therefore not exempted u/s 3(3) of the Act and is liable to tax. The order of the Tribunal is therefore set aside. The respondent will pay the costs of the petitioner. Advocate's fee Rs. 50.