
(1964) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Tax Revision Case No"s. 9 to 17 of 1963

The State of Andhra Pradesh

APPELLANT

Vs

T.R. Somaraju and Others

RESPONDENT

Date of Decision : 30-06-1964

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 2(n), 5(3)(a)

Citation : (1965) 16 STC 177

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : D.V. Sastry, for Third Government Pleader, for the Appellant; T. Anantha Babu and K. Chalapathi Rao, for the Respondent

Final Decision : Allowed

Judgement

P. Chandra Reddy, C.J.—These revision cases raise a common question relating to the proper interpretation of Section 2(n) of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the Act).

2. The facts which are not in dispute and set out in the order of the Sales Tax Appellate Tribunal may be shortly narrated.

3. The respondents carry on business as commission agents at Anakapalli. Some of the agriculturists in the district who manufacture jaggery from sugar-cane grown by them, take their produce to the respondents and entrust it to them for sale on commission. The respondents sort out the jaggery into different qualities and it is piled into heaps according to the quality. Thereafter the heaps of jaggery are auctioned in the presence of their principals or someone on their behalf. The commission agents prepare the bills indicating the quality of the jaggery, the price and the total consideration and issue them to their principals. Out of this sale price, deductions are made towards commission varying from Rs. 3-12 nP. per cent. to Rs. 6-25 nP. per cent., gumasta rusum at Re. 0-2-0 per Rs. 100 and kolagaram at Rs. 3 or Rs. 3-50 nP. per cent. for 100 maunds of jaggery.

The pattis furnished to the principals make no reference either to the kolagaram at Rs. 1-8-0 per 100 maunds, dharmam at the rate of Re. 0-1-0 per 15 maunds, valtar at Re. 0-8-0 per cent., sales tax and cess of Re. 0-1-0 per every 15 maunds in case the purchaser is not a member of the Anakapalli Merchants' Association collected by the commission agents. The bills issued to the purchasers are said to recite that the sales tax to be collected from them will be made over to the Government. It appears from the order of the Assistant Commissioner that in most of the cases, the commission agents in fact did pay the sales tax to the Government and afterwards claimed refund on the ground that they were not liable to pay the sales tax on the jaggery sold by them, the responsibility in that behalf being that of the principals who must be deemed to have sold it to the respondents. This plea did not find favour with the department, but it prevailed with the Sales Tax Appellate Tribunal, with the result that the department has filed these revision cases.

4. Before we consider the crucial provision in Section 2(n), we have to mention that u/s 5(3)(a) of the Act, tax is leviable at a single point and at the stage of the first sale, on the goods set out in Schedule II and jaggery is included in that Schedule. Sometime in 1960 this article was deleted from Schedule II and it found a place in Schedule III. But we are not concerned with that amendment as the transactions in question occurred prior to it. Thus, an article like jaggery is eligible to tax only once, when it is first sold in the State. So, if sales had already taken place before the transactions in question were effected, the respondents cannot be called upon to pay tax on the present sales.

5. It is contended for the respondents that having regard to the terms of Explanation III to Section 2(11), a sale must be deemed to have taken place even at the time when the principals delivered, their goods to the respondents, their agents, for sale. Since the answer to this question turns upon the meaning to be given to the relevant words in Section 2(11) and the concerned explanation, we have to read them here.

2. (n) "Sale" with all its grammatical variations and cognate expressions means every transfer of the property, in goods by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration and includes a transfer of property in goods involved in the execution of a works contract or in the supply or distribution of goods by a society (including a co-operative society), club, firm or association to its members, but does not include a mortgage, hypothecation or pledge of, or a charge on, goods.

6. As Explanations I and II do not bear upon the present enquiry, we can conveniently omit them. Explanation III recites:

Notwithstanding anything contained in this Act or in the Indian Sale of Goods Act, 1930 (Central Act III of 1930), two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place--

(1) When the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or

(2) When the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid--

(i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate; or

(ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate; or

(iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal; or

(iv) to have acted for a fictitious or non-existent principal;.

7. Now, what is the connotation of the expression "goods are transferred"? Advantage is taken by the respondents of the fact that while the words used in the definition of sale are "transfer of the property in goods by one person to another", Explanation III employs the term "goods are transferred". On the basis of this difference in the language, an argument is built by the learned Counsel for the respondents that unlike the definition contained in Clause (n) of Section 2, Explanation III is satisfied when there is a transfer of possession in the goods to the agent. Indisputably, two of the chief postulates of sale are the transference of property in the goods and payment of the price. The respondents do not claim that these elements are present in the instant case. However, it is said that these two ingredients are not essential for the purposes of this explanation. We are not persuaded that the omission of the words "transfer of the property in goods" has the effect that is attributed to it. We feel that instead of the expression "every transfer of the property in goods", the Legislature has employed a compendious expression "goods are transferred". Incontestably the essence of a sale is the transference of the property in the goods. It is difficult to contemplate a sale of goods without the dominion vesting in the transferee.

8. If that were so, what then is the purpose of enacting this explanation, when by the definition of sale itself the purpose is served, asks Sri Anantha Babu. The answer to that perhaps is that this explanation was introduced with a view to prevent the misuse of the relationship of principal and agent for purposes of evading sales tax. The parties under the guise of commission agency may effect a sale and escape tax. Normally, there is only one sale or purchase when it is effected through a commission agent. But there may be cases in which the principal transfers the ownership of the goods to the agent under the cloak of an agency transaction. It is that type of transactions that are sought to be brought to tax under this explanation. No doubt, some of the clauses of the explanation are not happily worded. But there can be little doubt as to the purpose and

purport of this explanation.

9. The circumstances set out in Sub-clauses (i) to (iv) also establish the nature of the transactions envisaged in Clauses (1) and (2) of that explanation. If the content of the expression "goods are transferred" is the one given to it by the learned Counsel for the respondents, with reference to the first part of Clause (1), it must be the same in regard to the second part, viz., "from the selling agent to the purchaser". But it is conceded that so far as these transactions are concerned, it involves the actual ownership of the goods and not mere delivery to the purchaser. The same must be said of Clause (2). There is no reason why we should attribute two different meanings to the same expression occurring in the same clause in the absence of valid reasons therefore. We are not persuaded that the structure of the explanation lends any support to the theory propounded on behalf of the respondents.

10. That apart, the normal rule of construction is that an explanation does not enlarge the scope of the original section. We find no justification to depart from that normal rule. The principle of harmonious construction requires that we should not read an explanation in a way inconsistent with the content of the main section.

11. A Division Bench of this Court (in Writ Petition No. 1404 of 1963 dated 16th April, 1964) considering this very expression held that the words "goods are transferred" bear the same connotation as the clause "transfer of the property in goods" and that the word "transfer" is not intended to convey the idea of delivery only without transfer of ownership.

12. Another Division Bench of this Court in Venkatarami Naidu v. Suryanarayanaamma 1960 2 An W.R. 181 at page 187 observed:

So long as the main definition remains untouched, the explanation cannot be construed in such a way which would have the result of making the main section incongruous with the explanation. The purpose of the explanation is not to delimit the scope of the main provision.

13. Sri Anantha Babu urges that these two judgments require reconsideration as they are opposed to the trend of judgments of the Privy Council and of the Supreme Court. To substantiate this argument, he cites the observations of the Privy Council in Krishna Ayyangar v. Nallaperumal Pillai (1920) 43 Mad. 550. At page 564 their Lordships remarked:

The construction of the explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used.

14. This dictum does not bear out the proposition advanced by the learned Counsel for the respondents. Further, the inference we draw from the explanation is warranted by the language in which the explanation is couched.

15. We will now turn to *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, which is cited by the learned Counsel for the respondents. The passage on which strong reliance is placed by Sri Anantha Babu occurs at page 258 and is as follows:---

It may be that the description of a provision cannot be decisive of its true meaning or interpretation which must depend on the words used therein, but, when two interpretations are sought to be put upon a provision, that which fits the description which the Legislature has chosen to apply to it is, according to sound canons of construction, to be adopted provided, of course, it is consistent with the language employed, in preference to the one which attributes to the provision a different effect from what it should have according to its description by the Legislature.

16. If we apply the test enunciated by his Lordship in this passage, we have to treat it as an explanation and not as an exception or a proviso as suggested by the counsel for the respondents, since that fits the description which the Legislature has chosen to adopt. There are no compelling reasons for us to adopt a construction which ascribes to the provision a different effect even assuming it is susceptible of two interpretations.

17. Another rule of construction which has to be borne in mind is that, if a provision is capable of two constructions, that which is in consonance with its constitutionality should be adopted in preference to that which results in its being struck down as ultra vires or unconstitutional. We are stating this rule for the reason that if we construe the crucial words in Explanation III in the way suggested by Sri Anantha Babu, we have to declare it as invalid for the reason that the power conferred by Entry 48 in List II of the Government of India Act (Entry 54 in List II of the Constitution) can be exercised only when there is a sale by which there is a transfer of ownership of property. The competence of a State Legislature does not extend to transactions which do not constitute sales as understood either in the Indian Sale of Goods Act or under the General Sales Tax Acts. We feel, therefore, that the content of the expression "sale" is not enlarged by Explanation III, as that explanation does not take in transactions which do not amount to sales as contemplated in the main definition.

18. Further to bring it within the ambit of a sale, this transfer should satisfy one of the requisites enumerated in Sub-clauses (i) to (iv). The learned Counsel for the respondents maintains that the ingredient that is attracted to these cases, viz., not accounting to his principal for the entire collections or deductions made by him in the sale or purchase, is present in these cases, in that, the commission agents who collected the dharmam, kolagaram, valtar, sales tax etc., have not made them over to the principals and not even disclosed these collections in the pattis which they gave to their principals.

19. We do not think that Sub-clause (iii) is attracted to these cases. It is to be borne in mind that none of these heads forms part of the price. It is not

pretended that these collections have been made by the commission agents on behalf of the principals. At the outset it must be mentioned that it was stated by the learned Counsel for the respondents that the dharmam collected is utilised for charitable purposes and similarly, the cesses paid by the purchasers, who are not members of the Anakapalli Merchants' Association, are passed on to that association. Surely, the sales tax which is collected by the dealers, who are commission agents in this case, for purposes of making it over to the Government, cannot be claimed by the principals. As already observed, it is apparent from the order of the Assistant Commissioner that in the sale bill issued to the purchaser, it is specifically stated that the tax is to be paid by them to the Government. There can be little doubt that taking advantage of the trade practice which seems to have been prevailing for a long time, the commission agents have been making these collections in their own right and not on behalf of the principals. It is true that these collections were made on the occasion of sale; but it cannot be posited that every collection by the commission agent, though unrelated to the price, belongs to the principals and should be accounted for by them. Indisputably, the agents have accounted to the principals for the price of the articles. If that were so, Sub-clause (iii) of the explanation does not come into operation. In these circumstances, the only conclusion that we could ultimately reach is that the first sale was effected by the respondents in these cases, there being no prior sale and have thus become liable to pay the sales tax which they have already collected from the purchasers, admittedly, for the purposes of paying it to the Government.

20. In these circumstances, we disagree with the view taken by the Sales Tax Appellate Tribunal and uphold the order of the assessing authority as affirmed by the Assistant Commissioner on appeal.

21. We find no justification to concede the request of the learned Counsel for the respondents that the matter should be remanded.

22. In the result, these Tax Revision Cases are allowed with costs. Advocate's fee Rs. 50 in each.