

(1954) 01 MAD CK 0007

In the Madras High Court

Case No : Civil Revision Petition No's. 2594 and 2602 of 1952 and Tax Revision Case No. 21 of 1953

The State of Madras

APPELLANT

Vs

P.G. Govindaswamy and Co.

RESPONDENT

Date of Decision : 05-01-1954

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 8

Citation : AIR 1954 Mad 885 : (1955) ILR (Mad) 61 : (1954) 67 LW 484 : (1954) 67 LW 470 : (1954) 2 MLJ 138

Hon'ble Judges : Satyanarayana Rao, J; Rajagopalan, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; S. Srinivasan, V. Thyagarajan, B. Santhalingam and C.S. Govindaswami, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan , J.—The same question of law arises in these applications and they have been heard together. These cases deal with sellers in

flowers, fruits and vegetables in the Madras markets. It was not disputed that they were commission agents within the meaning of Section 8,

Madras General Sales-tax Act. The practice of the trade has been outlined in the orders of the Tribunal, and that again admits of no doubt. These

commission agents receive supplies from known principals, and, on their behalf, sell the fruits, vegetables and flowers received by them in lots as

consigned by each principal. The business is usually conducted between 4 A. M. and 7 A. M. in comparative darkness with the aid of kerosene

lamps in small stalls.

2. The very nature of the articles dealt with by these people necessitates speedy disposal of all the goods within the short period of three hours,

because people who purchase from these agents have to take these articles for vending to distant parts of the city. It should be obvious that unless

these goods are distributed in the main market before 6 or 7 A. M. the retail sellers would not be able to satisfy the demands of the consumers

who normally need these articles for their consumption as early as possible in the course of the day. It was also admitted that all the details

necessary to find out the actual quantities of goods received & sold by these commission agents could be found in the pattials submitted by them in

due course to the disclosed principals. It was also common ground that there was no concealment of the turnover or the sales that made up the

turnover by these commission agents, and, on the basis of the pattials furnished by these commission agents, the turnover of each of the principals

whose name was disclosed in the pattials could easily be found.

While accepting that turnover as disclosed by the pattials maintained by these commission agents, the department held that, as there had been a

violation" of the conditions of the licence issued u/s 8 of the Act, these commission agents were not entitled to the exemption, and that they were

also liable for tax on the turnover of the sales conducted on behalf of the principals." On appeal, the Appellate Tribunal held that the conditions of

Section 8 and the conditions of the licence granted thereunder had not been, in substance, violated and that these dealers were entitled to the

exemption granted by Section 8, i.e., that commission agents as dealers were not liable for the tax on the turnover because their principals were

liable for this tax on the turnover based on the same sales. It is against these orders of the Tribunal that these petitions have been preferred by the

Government.

3. Before the Tribunal, the department contended that two of the conditions of the licence had been violated viz., (1) a stock book had not been

maintained by the Commission agents and (2) cash bills for the sales effected by the commission agents had not been issued. We have examined

the provisions of the licence issued to one of the dealers as typical of the licences issued to such commission agents. There was no requirement in

the conditions of the licence, as they stood in 1947-48 or as they were modified subsequently insisting upon the maintenance of a stock book as

such. All that condition 7(b)(i) required was that the dealer or commission agent

should specify in his accounts the date on which he received the goods from the principal for sale for agreed commission or brokerage and the quantity so received and produce evidence of the date, the quantity and the order in writing from the principal authorising him to sell the goods or the agreed commission or brokerage.

This could not be exalted into a fetish that unless a stock book as such was maintained the requirements of the licence were not satisfied. All the details referred to in Clause 7(b)(i) of licence could be gathered from the pattials and it must be remembered that the details furnished by these commission agents in the pattials to their principals were accepted by the principals; and the correctness of those details was never in dispute, it was never disputed even by the department. It is not, therefore, necessary to take any serious notice of the contention urged before the Tribunal, that failure to maintain a stock book--and that failure was admitted by the commission agents--in any way contravened the conditions of the licence issued to these commission agents.

4. Condition No. 8, however, was admittedly not adhered to by the commission agents. Clause 8 ran:

The licensee shall obtain bills for purchases or issue serially numbered bills for sales and keep and produce them or copies thereof, as the case may be, such bills shall specify also the names and addresses of the persons from whom the purchases were made or to whom the sales were made.

No cash bills of sales were issued or maintained. The names of the buyers of the products from these commission agents could not be verified. But

then, it was not necessary at all to know the names of the purchasers of these goods in determining the assessment to tax liability under the Act.

Under the Act, either the principal or the commission agent would have to pay the tax on the turnover, and it was admitted that the turnover of the

principal could be gathered from the accounts maintained by the commission agents. Nor was it in dispute that the liability of the principal was

enforced in these cases, wherever he was liable to pay the sales-tax on the turnover of the sales effected on his behalf by the commission agent. All

the same the position was that cash bills were not issued to the purchasers.

5. With reference to the issue of the cash bills, the Appellate Tribunal found that

it was virtually impossible to insist upon adherence to that condition of the licence in the trade in which the commission agents were engaged and in the circumstances in which that trade had necessarily to be conducted from day to day. We have already referred to the fact that no stock book was maintained. But then, it was not obligatory to maintain one. It should also be remembered that it was found and admitted by the department that no stocks would be left with any commission agent even by the middle of the day, normally even after 7 A. M. The goods they dealt with being perishable articles had to be disposed of the same day, whatever be the price fetched for these articles. There was no question of accumulation of stocks or carrying over from one day to another. The Tribunal found that, in view of the circumstances under which the articles had to be sold--quick disposal of the articles being of the very essence of the trade--it was really impossible to issue cash bills to the various purchasers from these commission agents. That finding itself was based upon the evidence offered before the Tribunal by a departmental officer, who admitted that it was virtually impossible to insist upon the issue of cash bills during the limited period during which alone trade activities had to be carried on by these commission agents. The Tribunal found: The very nature of their business makes it impossible or so highly inconvenient as to consider it impossible enough to comply with the condition of the issue of sales bills. We are satisfied that the nature of the trade is such that it is not reasonably possible to make out sale bills in the rush hours of business to so many customers amidst a good deal of competition. Even if cash bills are insisted upon in this line of business, it would in effect drive the dealers to prepare faked up bills only to satisfy the technical condition of the licence. The learned Government Pleader urged that these findings did not really amount to a positive finding that the condition of the licence was impossible of performance in the case of these petitioners and traders engaged in similar business. We are unable to accept that contention. The finding of fact arrived at by the Tribunal, that, considering the circumstances under which fruits, vegetables and flowers had to be sold by these commission agents it was impossible to pause for the preparation and issue of the cash bills, is binding upon us, and it is on that basis that we have

to dispose of the question of law that arises.

6. The question of law is, whether, where a condition imposed by the licence is impossible of performance and through no fault of the assessee, it

can be held that the conditions of the licence have been violated and whether that deprives the dealer of the benefit of Section 8, Sales Tax Act,

i.e., the exemption granted to the commission agent as a dealer from the payment of the sales tax. It should be remembered that it is not a question

of a total exemption of liability of the sale or of the turnover to be taxed under the General Sales Tax Act. The real question is, who is the person to

be assessed?

Is it the principal whose name has been disclosed and whose turnover has been assessed on the basis of the accounts furnished by the commission

agent in conformity with the requirements of Section 8 and the conditions of the licence, or, is it the commission agent, who also is a dealer as

defined by the Act? Either the one or the other has to pay unless he can claim the exemption recognised and provided for by the statute. It is

against this background that we have got to consider whether the appellate Tribunal was right in holding that failure to issue cash bills, thereby

contravening Clause 8 of the conditions of licence, in no way affected the right of the commission agents to claim to the exemption secured to them

by Section 8 of the Act.

7. The learned Government Pleader urged that, since the commission agent was claiming the exemption, it was for the commission agent to satisfy

every requirement of Section 8 and the requirements of each of the conditions of the licence granted to the commission agent u/s 8 of the Act. The

last proviso to Section 8 specifically provides for the burden of proof in such cases. It may not really be necessary to discuss at length the various

arguments put forward by the learned Government Pleader regarding the canons of construction of fiscal statutes. The Tribunal held that there was

a substantial compliance with the conditions of the licence, and that failure to issue cash bills when it was really impossible in no way amounted to a

contravention of the conditions of the licence. On that short basis alone, the view of the Tribunal will have to be upheld.

7A. The learned advocate for the respondents pointed out that the real objects of Section 8 were to afford protection to commission agents who

acted bona fide and from whose accounts the principals could be traced without any difficulty, so that the turnover as such on the basis of sales

effected by the commission agents could be ascertained and the tax collected. That was in no way affected by the failure to issue cash bills and as

we have already pointed out, at no stage did the department question the correctness or the accuracy of the entries made in the bills, the entries on

the basis of which the turnover of each of the disclosed principals could be ascertained and taxed.

8. In view of the specific finding of the Appellate Tribunal, that condition No. 8 requiring the issue of cash bills is really condition impossible of

fulfilment in the case of each of these commission agents, the principle "lex non cogit ad impossibilia" really decides the issue. Since it was

impossible of fulfilment, failure to satisfy the requirements of Clause (8) did not disentitle the commission agents to the protection afforded by

Section 8 particularly in view of the fact, that there has been a substantial compliance with such of the conditions of the licence as could be fulfilled.

9. In view of this, it is not necessary to embark upon a discussion whether Clause (8) of the licence amounts to a mandatory direction or is merely

a directive in its scope. As has been rightly pointed, no universal test can be possible for finding out which is mandatory and which is directory.

But, should a decision on this point be necessary, we are inclined to agree with the tribunal, that condition 8, necessitating the issue of cash bills, is

only directory in its scope and not mandatory, and non-observance of such a directory clause in no way vitiates the exemption claimed by the

commission agents.

10. Each of these petitions is dismissed with costs--Rs. 250.