State of Mysore Vs. A.C. Hanumanthappa

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Court : Karnataka

Decided On : Aug-28-1954

Reported in : [1955]6STC34(Kar)

Judge : Balakrishnaiya and ;Venkataramaiya, JJ.

Acts : Mysore Sales Tax Act, 1948 - Sections 2, 3, 9, 16 and 16(1)

Appeal No. : Civil Petition No. 142 of 1953

Appellant : State of Mysore

Respondent : A.C. Hanumanthappa

Advocate for Def. : K.R. Gopivallabha Iyengar, Adv.

Advocate for Pet/Ap. : Assistant Adv.-General

Judgement :
ORDER

1. This petition has been registered on a reference made under section 16(1) of the Mysore Sales Tax Act of 1948 by the revising authority, the Commissioner of Sales Tax is Mysore.

2. The facts of the case as disclosed in the statement of case are as under : The respondent Hanumanthappa is a merchant in Chickkaballapur, dealing on his own account as well as on commission basis inside the State and also consigning

goods outside the State. He claimed exemption in respect of goods sold by him or on his behalf on commission basis both by agents within and outside the State. The Sales Tax Officer granted exemption on all sales outside the State, but disallowed the claim on sales which took place within the State, holding that the respondent being the principal was liable to pay tax irrespective of the fact whether or not his agent had taken out a licence under section 9 of the Mysore Sales Tax Act.

3. The Deputy Commissioner rejected the appeal on the ground that the commission agent selling goods on behalf of the principal has not obtained licence under section 9 of the Act and that in the absence of licence under section 9 of the Act by the commission agent, both the principal and the commission agent become liable to pay tax. The respondent raised the same points in a revision petition filed before the Commissioner of Sales Tax and the said revision petition was also dismissed; he then filed a petition under section 16 of the Mysore Sales Tax Act to refer the points of law raised by him for decision to the High Court.

4. The following two questions are suggested by the respondent and referred to by the revising authority :- (a) Whether the principals can be assessed on sales effected by commission agents who have obtained licence under section 9 of the Mysore Sales Tax Act even though the principals have not collected sales tax and have not included the said commission sales in their turnover or whether the commission agents themselves are liable to pay sales tax on such turnover, and (b) in cases where the sales are effected by commission agents who have not taken licenses under section 9 of the Mysore Sales Tax Act, whether both the principals and the agents are liable to pay sales tax on the turnover.

5. Mr. Gopivallabha Iyengar on behalf of the respondent contended that under section 9 of the Act, it is only the licensed agents who sell on behalf of known principals that are exempt from sales tax provided such sales are included in the turnover of the principles or of the dealers from whom purchases were made and that inferential he argued that an unlicensed agent selling goods on behalf of an unknown principal shall make himself liable to pay sales tax which excludes the responsibility of the principal and that in consequence, sales tax must be levied

and recovered from an unlicensed agent and the department should not, on any account, look to the principal for payment of the tax. We are unable to agree fully with the contentions advanced. Section 3 obliges every dealer to pay tax on his total turnover for the year and the dealer is defined under section 2(d) as meaning any person who carries on the business of buying or selling goods. Therefore a person whether he himself sells direct or through an an employee or through a commission agent or through other means comes under the definition of a dealer irrespective of the nature of the machinery he employs to sell the goods. (Vide In re K. T. Pappanna Rowther : AIR1954 Mad96). An agent may be a principal in respect of any transaction done on his own account; there is nothing in law to prevent the same person from acting as an agent on behalf of others; if he deals in the capacity of an owner he must pay tax either as buyer or as seller but if the goods sold by him belong to others on whose behalf he acts as a mere agent or as a broker, then the licence he has taken will protect him provided he proves that he has sold the goods on behalf of a known principal, who is specified as such in his accounts, though it is not necessary that he should disclose the principal to the persons who deal with him. Besides, another important condition to entitle him to exemption is that the transaction should have been included in the turnover of the principal on whose behalf he deals, under the provision to section 9. In the case of an unlicensed agent no such exemption is available as he is deemed to be a dealer, like any others; the tax collected by him on the sale of goods must be paid over to Government. In any case either the principal or the agent, not licensed has to pay the tax, but tax need not be paid by both on the same transaction.

6. In case the unlicensed agent himself pays the tax, the principal is exempted, but in that case the principal is bound to prove that the agent has in fact paid the tax, otherwise the responsibility of the principal will not cease. The burden is always on the dealer, on whom the liability of payment of tax primarily rests, to prove that a particular transaction is exempt by reason of payment through an agent or otherwise. The inclusion in the turnover of sales through a licensed agent will relieve the agent from liability, but the principal cannot escape taxation by reason of omission of such sales in his annual turnover.

7. From the foregoing discussion the answer to the first point in the statement of case is that the principals are liable for taxation for sales through licensed agents, even though the principals have not collected sales tax and have not included the said commission sales in their turnover. The sales effected by agents who have not been licensed under section 9 can claim no exemption from tax. They are taxable as any other dealer and the principal who sells his goods to an agent will also be liable. Though the liability of both the principal and the unlicensed dealer is joint and several, the tax on the same transaction cannot be collected twice or from both the principal and the agent. The reference is thus answered. The respondent will pay the costs of the State of Mysore. Advocate's fee Rs. 100.

8. Reference answered accordingly.