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In Re: R. Nanjiah

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Court : Karnataka

Decided On : Dec-02-1953

Reported in : AIR1954Kant170; AIR1954Mys170

Judge : Venkata Ramaiya and ;Balakrishnaiya, JJ.

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

Appeal No. : Civil Petn. No. 19 of 1953

Appellant : In Re: R. Nanjiah

Advocate for Pet/Ap. : Adv. General;S.K. Venkataranga Iyengar, Adv.

Judgement :

Venkata Kamaiya, J.

1. The two questions referred to this Court by the Commissioner of Sales Tax under Section 16, Mysore Sales Tax Act are:

'1. Whether on the facts of the case the assesses being a commission agent licensed by the Regulated Market is required to take out a license under Section 9 of the Mysore Sales Tax Act so that he may not be taxed as a dealer and whether in the absence of a license he is liable for taxation under Section 3 of the Mysore Sales Tax Act?

2. Whether Section 9 of the Mysore Bales Tax Act is a charging Section.....'.

2. The facts bearing on the first question as stated in the reference are: The ryots and sellers of goods bring them to Mysore City. The Octroi Mutsaddi or Octroi Qokad levies market cess and octroi if any. The assessee as holder of a license issued by the Regulated Market to act as commission agent waits at the Qokad takes the carte in which the goods are brought by the ryots to the Regulated market or deputes his authorised agents to do so. Alternatively the Octroi Mutsaddi notes the name of the commission agent as mentioned by the seller and sends the carts to the Regulated market. At the market the goods are sold in the presence of the Market Authorities by the Commission Agent. If the sellers agree to part with the goods for the highest bidder the goods will be delivered to him. Otherwise these will be resold on a subsequent day and till then remain with the market authorities, a fee being charged for storage.

The seller will be present at the sale whenever it be, signs the papers relating to it and receives the amount. There is no case in which the commission agent is authorised to either accept the bid or receive the amount on behalf of the seller. The commission agent gets a commission of three pies per rupee for the services rendered by him.

3. The mam condition of liability for payment of the tax is mentioned in Section 3 to be that the person concerned should be a dealer in goods. 'Dealer' is defined in Section 2 as any person who carries on the business of buying or selling goods; 'Sale' is defined as transfer of the property in goods by one person to another in the course of trade or business for cash or... ...Obviously the assessee is noi a buyer of goods. He can be charged, if at all, he can be deemed to carry the business of selling the goods and this depends on his effecting the transfer of the property in the goods by one person to another. The part played by him in the disposal of the goods is not that of a vendor and no one can either mistake him to be such as it is known that the price has to be accepted by another and the goods can be obtained with his consent. His role is only to introduce the seller to the places where the goods may be sold and to help him to get into contact with the buyer. He can neither determine the terms of the bargain nor hand over the goods.

Such a person can hardly be considered a dealer as defined in the Act.

4. Having regard to the nature of the work done by the assessee the absence of authority to fix the transaction and of power to hand over the goods, he cannot be called a commission agent and has to be termed only a broker. As pointed out in the Pull Bench decision of the Madras High Court -- 'Radhakrishna Rao v. Province of Madras', : AIR1952 Mad718 (FB) (A) in the case of a commission agent he has control over or possession of the goods with the authority from the owner of the goods to pass the property in and title to the goods to anybody to whom he may sell. At p. 722 reference is made to an earlier ease, -- 'Provincial Govt. of Madras v. Veerabhadrappa', : AIR1950 Mad521 (B) the facts of which are summarised to be that the sellers were bringing their goods to the plaintiffs shop, plaintiff sent for prospective purchasers who came in person or their representatives, the purchasers themselves inspected the goods and the prices were fixed after discussion between the sellers, buyers and commission agents, thereafter delivery was made to the buyers and plaintiffs were paid with consent of the sellers, commission and other sums such as rusum, Dharma etc.

As regards the view taken in that case It is observed

'there can be no doubt whatever that the merchants in those cases do not fall within the definition of 'dealer'. They themselves neither sold nor bought the goods. They simply brought the seller and buyer together and received a brokerage or commission by way of remuneration for their trouble'.

In another case of the Madras High Court cited by Sri S. K. Venkataranga Iyengar -- 'Public Prosecutor v. M. Thommaia Fernando', : AIR1954 Mad184 (C) it was held that persons who do nothing more than crying out the bids at the auction and who have no custody or possession over the property auctioned and have no authority to pass the property in the goods to the purchasers can only be brokers not falling within the definition of 'dealers' and as such not liable to sales tax, if these principles are applied to the facts in the present reference, the answer to the first question must be in favour of the asses-see. The learned Advocate General has not made out that a different view is possible or necessary to justify the assessment.

5. Section 9 provides for a person obtaining 3 license to exempt from taxation. It cannot imply that all those who do not have the license may be taxed as what is material is their being 'dealers' and not licensees.

6. The answer to both the questions raised is in the negative. The parties will bear their own costs.

7. Answer in the negative.

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