

S. Krishnamachari Vs. the State of Madras

S. Krishnamachari Vs. the State of Madras

SooperKanoon Citation : sooperkanoon.com/774969

Court : Chennai

Decided On : Jan-03-1964

Reported in : [1964]15STC445(Mad)

Judge : Ramachandra Iyer, C.J. and ;Srinivasan, J.

Appeal No. : Tax Case No. 241 of 1962 (Revision No. 93)

Appellant : S. Krishnamachari

Respondent : The State of Madras

Advocate for Def. : G. Ramanujam, Adv. for ; Government Pleader

Advocate for Pet/Ap. : K. Parasaran, Adv.

Judgement :

Ramachandra Iyer, C.J.

1. The sole point for consideration in this case is, whether the petitioner, who has been assessed to sales tax in respect of commission earned by him under a contract with the Railway Administration, during a period of two years from 1st August, 1958, to 31st July, 1960, is a 'dealer' within the meaning of the Madras General Sales Tax Act, 1959. The petitioner is the Manager of the Swadesamitran Book Stall at the railway station at Tiruchirapalli Junction. Under an agreement with the Railway Administration, he undertook to vend on the station platform and

along the train side, food packets, refreshments and beverages prepared by the Administration at the vegetarian refreshment room. He was allowed for the purpose, the use of the vessels, utensils, furniture, stores, etc., belonging to the Administration and was to be paid at the end of each day twelve naye Paise per rupee on the value of edibles or beverages etc., supplied to him. The petitioner should employ his own servants for the vending, but they should possess the specified attributes and submit themselves to periodical medical examination and character investigation by the Administration. If the latter were to consider any servant employed by the petitioner as in any way unfit or had misconducted himself, the petitioner was bound to dismiss him. The petitioner had no right to assign his rights or privileges under the agreement. Notwithstanding the agreement, it was open to the Administration to sell the food packets, refreshments and beverages in its refreshment room, stalls, and on the platforms and they could also serve in the train compartments. But there was no corresponding liberty to the petitioner; he was to sell the edibles and drinks, as prepared by the catering department of the Administration, at specified places and during the hours when the Refreshment Room was working, at prices fixed by it. He was to be supplied his daily requirements and he was bound to remit 'the entire sale proceeds of the articles supplied during the day intact to the vegetarian refreshment room manager.' There were stipulations as to the furnishing of security by the petitioner, for his and his servants' orderly conduct, for forfeiture of security and termination of the agreement. Clause 17 of the agreement stated that the petitioner was liable to pay, at the sole discretion of the Administration, a fine not exceeding Rs. 100 for complaints, which, in its opinion, had been substantiated against him, in the matter of the sale of the articles. Clause 21 required that the petitioner and his servants should carry out the instructions given by the authorised officials of the Administration in the day to day performance of the agreement.

2. These provisions indicate that there was a great degree of control and direction by the Administration in respect of the manner in which the food packets etc. were to be sold by the petitioner to the railway passengers.

3. Though the agreement is not clear about it, the Tribunal below has held that unsold refreshments could not be returned by the petitioner vendor to the Administration; but, on the contrary, he would be liable to the latter for their price. Clause 18 (ii), however, speaks only of the vendor remitting the entire sale proceeds of the articles supplied; it has no reference to the petitioner being liable for the price himself. That, however, is not of much importance, as both the parties appear to have contemplated that the vendor would identify only for such quantity of the food articles as would be necessary, it being not open to him to sell them to outsiders. The agreement provided that neither the vendor nor his servants could claim compensation or damages for injury sustained during the course of the performance of their duties.

4. The departmental officers held that the agreement envisaged a sale by the Administration of the food packets etc., to the petitioner and a second sale by him to the passengers of the railway. The Tribunal sustained that view ; it also held that the petitioner would be liable to be assessed on the turnover even as an agent.

5. We are, however, unable to accept the conclusion. There is very little material in the case to show that there was a sale of the foodstuffs to the petitioner; the agreement was for a specific purpose, namely, that of vending on the platform the articles prepared by the refreshment room. A sale implies that the vendor will be an independent contractor, that is, one who is not subject to the control of the vendee after the purchase has been made. It is true that the agreement may stipulate certain conditions ; but the petitioner should have complete discretion in things not specified in the agreement. Here, we find that the petitioner was bound to obey such instructions as the Railway Officials might give in the day to day performance of the agreement. Secondly, there is a power in the Railway Administration to punish the petitioner for misconduct by imposing a fine up to a limit of Rs. 100. That is quite inconsistent with the relationship of a vendor and vendee.

6. The Appellate Tribunal found in favour of such relationship on a curious line of reasoning and by adopting an unsatisfactory procedure. It has stated:

The suggestion that it was the railway who sold the refreshments through him (petitioner) as its servant is puerile. We have asked the State Representative to verify as to what obtained in practice. He has done so. It is seen from the letter addressed to the appellant that items of refreshments or beverages given to the appellant vendor by the refreshment room manager for sale would not be taken back if left unsold. The vendor should pay the value of the refreshments and beverages taken over by him less the commission by cash in advance to the Manager, Vegetarian Refreshment Room. The sale from the railway department to the vendor is stated to be outright sale for listed price less commission.

7. The terms of the contract between the parties have been reduced to writing and they alone must, ordinarily, be considered to ascertain the nature of the transaction evidenced by it. The Tribunal had no reason to go behind the terms and ascertain what was obtaining in practice, pven more objectionable is the Tribunal's direction to the State Representative to verify what had been presumably done under the agreement. How that can be evidence, we fail to see. The procedure adopted by the Tribunal can hardly be termed a judicial one.

8. The Tribunal has referred to the clause in the agreement regarding the non-liability of the Administration for injuries to the vendor or his employees, as showing that there was no relationship of master and servant. That is no doubt so. But, if, on a consideration of the other parts of the agreement, such a relationship is established as we hold that it is, this clause can only be regarded as invalid, so far as the liability under the Workmen's Compensation Act is concerned. From what we have said above, it is clear that the petitioner was merely to carry out mechanically the orders of the Administration, whether it be under the agreement or otherwise. The fact that his remuneration is called a 'commission' cannot mean that he is an agent. No discretion in the matter of execution of his duties is vested in him. The existence of a right to give direction in the performance of the duties and of a power to take disciplinary action would, in our opinion, decisively show that the petitioner was nothing more than a servant. He will not, therefore, be a 'dealer'. The sale of food packets etc., to the passengers must, in the circumstances of the case, be regarded as one directly made by the Railway Administration through its servant, the petitioner, and that the latter will not be

liable to be assessed to sales tax on the turnover.

9. The order of assessment will be set aside with costs. (Counsel's fee Rs. 100).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com