

Public Prosecutor Vs. Ebrahim SarfuddIn and Co. and anr.

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Court : Chennai

Decided On : Sep-07-1956

Reported in : 1957CriLJ257

Judge : Somasundaram, J.

Appellant : Public Prosecutor

Respondent : Ebrahim SarfuddIn and Co. and anr.

Judgement :

Somasundaram, J.

1. This is an appeal by the State against the acquittal of the respondents by the Fourth Presidency Magistrate for an offence under Section 15 (b) of the Madras General Sales-tax Act.

2. For 1953-54 the respondents submitted a return for Rs. 1,88,000, and odd, but the authorities after checking found that the turnover was Rs. 3,25,000, and odd. In this estimate of the gross turnover the authorities have included the sales-tax recovered by the respondents which apparently was omitted in the return submitted by the respondents. By a decision of this Court in Deputy Commr. of Commercial Taxes v. Krishnaswami Mudaliar and Sons, : AIR1954 Mad856 , it was held that the turnover of a dealer does not include the sales tax that are collected on the goods sold by dealer.

But the authorities on the basis that the sales tax is also included in the turnover have been collecting tax on the total turnover. By the decision of this Court a situation was created by which portion of the tax collected on the basis of the turnover included in the sales tax will have to be returned. The legislature therefore intervened and passed Act XVII of 1954 which came into force on the 14th of July 1954. By this Act they validated all the taxes collected upto date, that is the taxes on the turnover including the sales tax as well. Under Section 3 (2) of the Act, a provision is made as follows:

Nothing in Sub-section (1) shall be construed as authorising any officer in assessing any dealer in the exercise or purported exercise of jurisdiction or powers conferred by the principal Act to include in the turnover of the dealer amounts collected by him after 1st April 1954 by way of tax under the principal Act.

Under Sub-section (1) all assessments and collections made on the basis of the turnover including sales tax were validated. But under this clause there is a proviso that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act had not been passed. The respondents already paid the taxes on the basis of the return. In this case after the return which did not include the Sales tax, the authorities, that is, the sales tax officers issued notice in February 1955 calling upon the respondents to pay the balance of tax due to them on the basis that the turnover includes the sales tax as well. The respondents did not pay the balance of the tax. On this the prosecution is for failure to pay the tax and to recover the balance of the tax due.

3. The Fourth Presidency Magistrate who tried this case held that the proviso to Section 3 will apply and therefore, the respondent is not liable to pay. Against this order of acquittal this appeal has been preferred.

4. Two things are clear : (1) Before this Act came into force, the turnover would not include the sales tax as well. If the authorities included the sales tax in the turnover and demanded the tax due and if the assessee pays only the tax on the turnover without including the sales tax, then surely the authorities cannot prosecute him for failure to pay the excess tax as demanded by them. After this Act came into force the authorities cannot include in the turnover the sales tax as

well; and if they include it, it will be illegal and any demand based on such inclusions will also be illegal and failure to pay the excess tax will not be an offence.

In between these two circumstances, Act XVII of 1954 has intervened and has validated all the taxes collected before this Act came into force based on the inclusion of the Sales-tax as well; and the Question now is having regard to the fact that it has validated such collection of tax whether the sales tax authorities can now call upon them to pay the excess tax and for failure of which whether there can be a prosecution. Inasmuch as under clause (2) of Section 3 they cannot include the sales-tax in the turnover and as under Section 3 (1) all orders passed and all action taken by any officer in the exercise or purported exercise of jurisdiction or powers conferred by the principal Act were validated the authorities may be entitled to collect the taxes in respect of returns before the 1st of April 1954 including the sales-tax in the turnover.

But the proviso has been specially provided for not prosecuting those who were not liable if this Act were not passed. It seems to me that the only restriction that has been placed upon the authorities by the proviso is that they cannot prosecute a person if he has not paid tax as assessed by the authorities that is based on the turnover including the sales tax if they have already passed orders taxing him on that basis. But certainly they are entitled to collect it in other ways than by prosecution. The lower court was therefore justified in holding that the authorities cannot prosecute him for the offence.

5. The acquittal is justified and the appeal is dismissed.