

**In Re: P. Ommar and Co.**

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**Court :** Chennai

**Decided On :** Jul-03-1957

**Reported in :** [1957]8STC729(Mad)

**Judge :** Somasundaram, J.

**Appeal No. :** Criminal Appeal No. 512 of 1956

**Appellant :** In Re: P. Ommar and Co.

**Advocate for Def. :** Public Prosecutor ;and Assistant Government Pleader

**Advocate for Pet/Ap. :** V. Thiagarajan ;and B. Santhalingam

**Judgement :**

**Somasundaram, J.**

1. The appellant has been convicted of an offence under Section 15 (a) of the Madras General Sales Tax Act and sentenced to pay a fine of Rs. 800, in default to undergo simple imprisonment for three weeks.

2. The facts are these : The appellant is the proprietor of Messrs. P. Ommar and Co., which was doing rice business in the city of Madras. The company did business independently and also as commission agents;it has a licence under Section 8 of the Act for the commission agency. In respect of its independent and retail sales, the return for the months of April, May and June, 1954, in A-3 form

was duly submitted; but with respect to the wholesale business no return was submitted for the above months. This was discovered by the Commercial Tax Authorities. The fact of the failure to submit the return is not disputed. The accused who examined himself as a witness admits that with respect to the wholesale sales he did not submit the return because he was under the impression that for the wholesale sales it will be enough if he submitted the return at the end of the year. There is thus no dispute about the fact that for the period in question, namely, April, May and June, 1954, no return has been submitted by the appellant in respect of the wholesale sales. The facts thus not being disputed and the plea being that he was under a bona fide impression that he can send the return at the end of the year, the only question that arises for consideration is whether the appellant can be said to have 'wilfully submitted an untrue return or failed to submit the return' as required by the provisions of the Act.

3. Mr. Thyagaraja Aiyar appearing for the appellant contends that the appellant was under the bona fide impression that the return for the wholesale sales could be sent at the end of the year and, therefore, failure to submit the necessary return cannot be said to be wilful.

4. The case turns upon the construction to be placed upon the expression 'wilful'. The expression 'wilful' has been the subject of many decisions both in England and India. The learned Government Pleader relied on the following decisions, namely, *In re Young and Hanston's Contract* (1885) 31 Ch. D. 168 at 174, *In re Helling and Merlon's Contract* 1893 3 Ch. 269, *Wheeler v. New Merton Board Mills, Ltd.* 1933 2 K.B. 669 and *Gould and Birbeck and Bacon v. Mount Oxide Mines Ltd. (in Liquidation)* (1916) 22 C.L.R. 490, at 528 and 529 and also on *Roland Burrows' Words and Phrases*, Volume 5 at pages 493, 496, 497 and 500, in support of the contention that the appellant's act was wilful. Two decisions of our court were also relied upon by the learned Government Pleader. They are reported in *Jayarama Chettiar v. Emperor* (1948) M.W.N 29, a decision of Govinda Menon, J., and *Govindarajulu v. State* (1951) M.W.N. 712, a decision of Subba Rao, J. I may at once state that the two decisions of this court refer to the decisions relied on by the Government Pleader and therefore it is unnecessary for me to refer to all the decisions in detail. As pointed out by Govinda Menon, J., at

page 32, 'The word 'wilfully' has been inserted in Section 15 to exclude cases of inadvertence or mistake but not cases where the omission was due to a wrong view of the law or ignorance of law.' Then after referring to Queen v. Senior 1899 1 Q.B. 283, the learned Judge states as follows : 'His Lordship took the view that if the act was done deliberately and intentionally and not by accident or inadvertence, even if the act was bona fide, it, amounted to a crime in the case of the prisoner who was a conscientious objector to the use of medicine or medical aid. The Lord Chief Justice observed that because the prisoner was proved to be an affectionate parent and was willing to do all the things for the benefit of the child except the one thing which was necessary in that case, viz., providing of medical aid for the child, he cannot be heard to say that there was no wilful neglect. I am emphasising this point to show that when the legislature used the word 'wilfully' in Section 15 it would not have intended that the person who submits an incorrect or untrue return should necessarily have the idea that he was committing an offence. An earlier case reported in Queen v. Robert Downes (1875) 1 Q.B. 25 also supports the same view. Mr. Jayarama Aiyar conceded that the omission to include the value of Rs. 15,322-1/8 tolas of silver in the 'A' return was not the result of any mistake, inadvertence or oversight....' In the result, the learned Judge confirmed the conviction, finding that it was a wilful submission of a false return. Subba Rao, J., dealing with the same provision has observed that the submission of a false return cannot be wilful submission unless the dealer has deliberately made the return with the knowledge that he was excluding a taxable item ; and that the word 'wilful' has been designedly used to express the mental element necessary to constitute the offence and excludes bona fides in respect of the return. Though the decision of Subba Rao, J., does not in terms agree with the view expressed by Govinda Menon, J., still as pointed out by Govinda Menon, J., what really the section contemplates is the exclusion of cases of inadvertence or mistake but not cases where the omission Was due to a wrong view of the law or ignorance of the law.

5. In the present case the appellant himself concedes that he had to submit a return but that, in his view, the submission of the return at the end of the year would be sufficient. This is due to a wrong view of the law on the part of the appellant. There is no doubt, therefore, that the appellant intentionally excluded

the wholesale sales in his return for the months of April, May and June. He is, therefore, guilty of wilfully submitting a false return. The appellant was rightly found to be guilty of the offence with which he has been charged but in the circumstances of this case, it seems to me that a sentence of a fine of Rs. 100 will meet the ends of justice.

6. The conviction is confirmed but the sentence is reduced to payment of a fine of Rs. 100, in default four weeks' rigorous imprisonment. The excess fine, if paid, will be refunded to the appellant.

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