

State of Madras Represented by the Deputy Commr. of Commercial Taxes, Kakinada Division, Kakinada and ors. Vs. Pothuri Srinivasulu Shreshty Son, Merchants and Commission Agents, Ongole Guntur Dist. and ors.

State of Madras Represented by the Deputy Commr. of Commercial Taxes, Kakinada Division, Kakinada and ors. Vs. Pothuri Srinivasulu Shreshty Son, Merchants and Commission Agents, Ongole Guntur Dist. and ors.

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Court : Chennai

Decided On : Jan-05-1954

Reported in : (1954)IIMLJ134

Judge : Satyanarayana Rao and ;Rajagopalan, JJ.

Acts : Madras General Sales Tax Act, 1939 - Sections 3

Appeal No. : T.C.R. Nos. 4, 103, 134, 195, 196, 345, 350 and 352 of 1953

Appellant : State of Madras Represented by the Deputy Commr. of Commercial Taxes, Kakinada Division, Kakinada an

Respondent : Pothuri Srinivasulu Shreshty Son, Merchants and Commission Agents, Ongole Guntur Dist. and ors.

Advocate for Def. : M. Rajeswara Rao, ;M.S.R. Sastry, ;T.S. Narasa Rao, ;M. Balachandrulu, ;V. Sethuraman, ;M.A. Narasayya and ;T.P. Gopalakrishna, Advs.

Advocate for Pet/Ap. : Adv. General and ;Govt. Pleader

Judgement :

Satyanabayana Rao J.

1. These cases are connected, and they raise a common question of law, namely, whether the principal is also liable to pay sales tax in respect of the turnover of his goods which were sold by an unlicensed commission agent, and in whose hands the turnover was taxed by the department.

2. The facts in Tax Case No. 4 of 1953 may be taken to illustrate the facts out of which the question arises.

The assessee in the case is one P. Srinivasulu Chetty and Sons, Ongole. He is a dealer in oil, coriander, pulses and other goods. He had a commission agent at Salem, through whom certain goods of his were sold. The turnover of such goods amounted to Rs. 35,881-2-3, and in respect of that, sales tax of Rs. 4455-3-3- was paid by the commission agent.

In respect of the same turnover, the department levied sales tax from the assessee, that is, the principal. The assessee contended that, as there was only one sale in respect of which the commission agent, who was treated as a 'dealer', had paid sales tax, the levy of a tax a second time on the same turnover under Section 3 of Madras Sales Tax Act was not justified in law.

The contention, however, did not find favour with the department, but on appeal it was accepted by the Tribunal. The Government have filed these applications to revise the orders of the Tribunal.

3. One would have thought that the matter does not admit of serious argument that, when there is only one sale, on the turnover in respect of which tax was levied, no further tax could be levied in respect of that sale and the turnover. But the matter was argued with some insistence by the learned Advocate General of the Andhra State and also by the Government Pleader of Madras State.

4. Before we deal with the arguments addressed before us. It is necessary to consider the question on a plain reading of the provisions of the Act.

The charging section, Section 3 of the Madras General Sales Tax Act, 1939, states: '(3) Subject to the provisions of this Act, --(a) every dealer shall pay for each year a tax 'on his total' turnover for such year;.....'

'Dealer' is defined under Section 2(b) of the Act as meaning:

'any person who carried on the business of buying or selling goods.'

'Turnover' is defined in Clause (i):

' 'Turnover' means the aggregate amount for which the goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.'

A Full Bench of this Court decided in --'Radhakrishna v. Province of Madras', AIR 1953 Mad 718 (A) that a commission agent is a dealer in respect of sale of goods belonging to his principal, for, he has authority to pass the property in the goods which he had derived from the principal either expressly or by implication, having regard to accepted mercantile usage. It therefore follows that the department, when it levied the tax on the commission agent at Salem, treated him as a dealer and treated the sale as having the effect of transferring the property in the goods to the buyer though the goods belonged to the principal and treated the turnover as the agent's turnover and levied the tax under Section 3 of the Act.

5. It is not disputed before us that the tax was rightly levied on the commission agent in view of the decision of the Full Bench above referred to. It is obvious, therefore, that unless there is a different sale so as to bring into existence a turnover of the assessee--the principal--, it is not possible under the provisions of the Act to levy sales tax on what was treated as the turnover of the commission agent. When once the turnover was treated as the turnover of the commission agent, and tax was levied on that footing, it is difficult to hold that the same sale had the effect of constituting the turnover in respect of such sale not only of the commission agent--dealer--but also of the principal, for there was only one sale which resulted in the turnover which attracted the charging section, Section 3(a) (which?) refers to 'his turnover', i.e., the turnover of the 'dealer'. The turnover was previously treated as the turnover of the commission agent and cannot again be treated as the turnover of the principal.

6. The contention, however, strenuously urged before us was that by reason of Section 8 of the Act and the decision of the Full Bench already referred to, the sale by the commission agent must be treated as having a two-fold operation; sale by him, that is, by the commission agent, by which property in the goods was transferred to the buyer, and sale by the principal, by which title to the goods was passed to the buyer, and, therefore, there were really two sales, in one case sale or the title to the goods, in the other case, transfer of the property in the goods, and, therefore, even though consideration for both is the same, in law they must be treated as different sales and tax should be levied under Section 3 of the Act in respect of each such sale.

This, in our opinion is not the correct view to take, having regard to the interpretation placed by the Full

Bench on Section 8 of the Act. and having regard to the scheme underlying the provisions of the Act. But for Section 8, it is true, as held by the Full Bench, an unlicensed commission agent, as in the present case, would be liable to pay sales tax on his turnover, even though he sold the goods belonging to his principal under the authority vested in him either expressly or impliedly to convey the property in the goods to the buyer. That is the view taken by the Full Bench. The Full Bench, however, drew a distinction between -the passing of the title & the passing of the property in the goods. The effect of the sale by the commission agent is not only to transfer the property in the goods to the purchaser but to prevent the principal from ever claiming title to the goods after the sale by the commission agent which had the effect of transferring the property in the goods to the buyer.

As the principal held out the commission agent as a person authorised to convey the property in the goods to the buyer, he would be estopped thereafter from disputing the title to the goods of the buyer, as he had all along acted on the footing that the commission agent was authorised to convey the property in the goods to the buyer. There is no transfer, therefore, of any title when the commission agent sold the goods to the buyer.

Really when one turns to the dictionary meaning of the two words 'property' and 'title' one finds no distinction between the two. In the Oxford dictionary, the following, among other meanings, are given to the word 'property':

'Condition of being owned by, or belonging to some person or persons.

The right which one owns, possession or possessions collectively, wealth or goods.'

The legal meaning of the word 'Title' is given in the same dictionary as:

'Legal right to possession of the property, especially real property; evidence of such right: a claim: that which justifies or substantiates a claim: a ground of right, hence an alleged or recognised right.'

In short, the word 'title' means, right to ownership of property, and property really includes and means the totality or the bundle of rights which constitute the ownership. Therefore, there is really no distinction between the passing of title and the passing of the property in the goods. When the property in the goods had passed, the title in the goods also passes.

In whichever view the matter is looked at, it makes no difference, and it is impossible to spell out from the transaction effected by the commission agent a two-fold sale, sale of the title by the principal and a sale of the property or the goods by the commission agent. The consideration for the sale is only one, that is, the price paid by the purchaser to the commission agent, and there is no further price paid for the conveyance of the title, even if the conveyance of the title were independent of the passing of the price, and, therefore, the same price cannot be treated as the turnover also of the principal.

The argument, therefore, that having regard to the language of Section 8 and the interpretation placed upon it by the Full Bench in the case referred to, a sale of the goods by the commission agent operates as a sale of the same goods twice over, cannot be accepted.

7. The other argument was that, in any event, the transaction must be treated as in the first instance a sale by the principal to the commission agent, and thereafter by the commission agent to the buyer.

The fallacy in this argument is, when once it is assumed, and rightly assumed, that the relationship between the principal and the commission agent was that of principal and agent, it is difficult to convert that relationship into that of a vendor and purchaser and treat the commission agent as the principal. That was not the footing on which the assessment was made on the commission agent, when the department levied the tax on the turnover pertaining to the goods of the principal.

As pointed out by Vivian Bose J. (as he then was), whose observations are quoted in the Pull Bench case, -- ' : AIR1952Mad718 (A),

'Commission agents are of course agents up to a point and to that extent they stand in a position of active confidence towards their principals, but beyond that they are not agents in the real sense of the term and the relationship between the parties from then on is one of debtor and creditor.'....'The test to my mind is that: does the commission agent when he sells have authority to sell in his own name? Has he authority in his own right to pass a valid title? If he has then he is acting as a principal 'vis a vis' the purchasers and not merely as an agent and therefore from that point on he is a debtor of his erstwhile principal and not merely an agent.'

The dual relationship of debtor and creditor arises from the fact, that according to the relationship between the commission agent and the principal, the commission agent was to sell the goods in his own right and be responsible for the principal as debtor for the sale proceeds less the agency charges (vide the observations of the same learned Judge quoted at p. 723 of the decision). That relationship was at no time altered into that of vendor and purchaser.

The relationship of agent continues up to the point of sale, and thereafter when the sale proceeds are received by the commission agent, it becomes a relationship of debtor and creditor and never that of vendor and purchaser. It is therefore impossible to spell out from a relationship of commission agent and principal any relationship of vendor and purchaser at any point of time during the period when the agency continued.

It cannot be said therefore that the price which the commission agent realised by the sale of the goods and which he was bound to pay to the principal was price for which the goods were sold by the principal to the commission agent so as to make it a turnover of the principal within the meaning of the definition in the Sales-tax Act. The argument, therefore, that there is a change in the relationship of principal and commission agent at any time and constituted the transaction as one of purchase and sale between them is without any force and is not supported by any authority.

8. We are, therefore, clearly of the opinion that the view taken by the Tribunal, that there was only one sale & in respect of that one sales-tax could not be levied twice over by the department, once in the hands of the commission agent treating him as a dealer and a second time against the principal treating the same turnover as turnover of the principal, is perfectly justified, having regard to the provisions of the Act and the scheme underlying it.

9. For the foregoing reasons, T. R. Cases Nos. 4, 103, 134, 195, and 19S of 1953 are dismissed with costs, Rs. 250 in each. The other petitions, T. R. Cases Nos. 345, 350 and 352 of 1953 which are posted for admission are dismissed in view of our judgment.

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