

In Re: K.T. Cherian

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Court : Chennai

Decided On : Mar-12-1954

Reported in : AIR1954Mad959; (1954)IIMLJ228

Judge : Somasundaram, J.

Acts : Madras General Sales Tax Act, 1939 - Sections 2

Appeal No. : Criminal Revn. Case No. 334 of 1953 and Criminal Revn. Petn. No. 307 of 1953

Appellant : In Re: K.T. Cherian

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : R. Narasimhachari and ;S. Venkatachalam, Advs.

Disposition : Revision allowed

Judgement :

ORDER

Somasundaram, J.

1. The only point In this case is whether the petitioner was only a broker in the tea transactions in respect of which he received certain commission. The petitioner Is the proprietor of the Malabar Trading Corporation, Calicut. This corporation was

acting as selling agents in respect of rubber, tea and cashewnuts on behalf of Coffee Plantations Ltd., Tamaranneri Rubber Co., Ltd., Milambur and Amalgamated Malabar Estates, Tamaranneri. In the invoices made out for tea, the corporation was charging 2 1/2 per cent. commission from the estates for whom they sold tea. The petitioner was not keeping an account of the orders booked but kept only an account of the commission received.

The case of the prosecution is that he was not merely a broker but was really a dealer within the definition of that term in the Madras Sales-tax Act. The Commercial Tax Officer, in his order on the appeal petition dated 2-3-1945 which is, Ex. D. 1, in the case, finds that the firm has absolutely no interest in the tea sales as such as they are effected directly by the estate to Messrs. P. L. and Co. It is clear that what happened was that the petitioner was only bringing the purchaser and the seller together and the goods never passed into his possession. In such cases, as pointed out by the Pull Bench in -- 'Radhakrishna Rao v. Province Of Madras', : AIR1952 Mad718 (A), merchants do not fall within the definition of 'dealer' as they themselves neither sell nor buy the goods and simply bring the seller and the buyer together and receive a brokerage or commission, by way of remuneration for the trouble. In such cases, the merchants are not liable to pay sales-tax on the commission that is received.

This revision petition is not opposed by the Government. I therefore set aside the conviction and sentence and acquit the accused. The fine and the tax amount, if paid, will be refunded to him.

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