Jonnala Narasimharao & Co. & Ors. Etc. ... vs State Of Andhra Pradesh & Ors on 5 April, 1971

Equivalent citations: 1971 AIR 1507, 1971 SCR 367, AIR 1971 SUPREME COURT 1507, 1971 TAX. L. R. 939

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, S.M. Sikri, G.K. Mitter, K.S. Hegde, A.N. Grover

PETITIONER:
JONNALA NARASIMHARAO & CO. & ORS. ETC. ETC.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT05/04/1971

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
SIKRI, S.M. (CJ)
MITTER, G.K.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 1507 1971 SCR 367

ACT:
Andhra Pradesh General Sales Tax Act, 1957 as amended by Act 9 of 1970-Past assessments under invalid law validated-Agents selling jaggery on behalf of principals made liable under s. 11 as amended to pay the tax collected by them-Agents had no locus standi to challenge levy on the basis of discrimination between principals inter se-Validity of s. 9 of Amending Act-Classification between dealers who had collected tax and those who had not collected is reasonable.

HEADNOTE:
The appellants carried on the business of Commission Agents in Jaggery in Andhra Pradesh. They arranged for the sale of

jaggery charging a small commission for their service and rendering an account to their Principals in respect of those sales. Every buyer was fully apprised of the fact that he was purchasing jaggery of specified agriculturist Principals and not that of the appellants. Till about 1963 under s. II of the Andhra Pradesh General Sales Tax Act, 1957, commission agents were required to obtain and were being issued licences and if they conformed to the conditions of those licences, they were not subjected to tax. In 1963 the principal Act was amended by Andhra Pradesh General Sales Tax Amendment Act 16of 1963. By the new s. I I introduced by the Amending Act the Agentsof resident Principals were made liable for assessment and collection of tax though- the liability of the Agent was made co-extensive with that of the principal. The High Court held that in assessing the Agent the turnover of those Principals whose turnover was below the taxable limit of Rs. 10,000 could not be taken into account. As a consequence of this decision the Andhra Pradesh General Sales Tax Amendment Act 5 of 1968 was enacted and a new s. I 1 substituted for the existing section. This s. II was given retrospective effect from 1st August 1963. The object of this amendment was to enable the taxing authorities to assess levy and collect tax or penalty under the Sales Tax Act from the Agent irrespective of the fact that the Principal was not liable to tax. This new section was also struck down by the High Court, on the ground that it was violative of Art. 14 of the Constitution. In view of this judgment which restored the legal position to that prevailing before the Amendment, large sums of money which bad been collected as tax from the Agents became refundable. To meet this situation the Andhra Pradesh Legislature enacted the Andhra Pradesh General gales Tax Amendment Act 9 of 1970, Section 8 of which validated the assessments already made. Under s. 9 Agents who had not collected the tax from their Principals were exempted from tax. Under s. I I Agents who had collected the tax were made liable to pay the same. In writ petitions under Art. 226 filed by Agents it was contended that s. II as amended and s. 9 of the Amending Act were violative of Art. 14. The High Court held that s. 1 1 was valid but s. 9 violated Art. 14. In appeal filed against the High Court's judgment by certificate,

HELD:(i) The appeals filed by the agents were not maintainable. What was sought to be recovered from the appellants was in respect of a tax collected on past dealings and not with respect to the future transactions. The tax had already been collected, no doubt at first illegally, but

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due to the Amendment Act, that collection had become legal and as dealers, the appellants were liable to pay that amount to the State. As there was nothing to show that what was sought to be recovered from the dealer was more than

what he had collected he had not suffered any loss nor any disadvantage which would entitle him to seek a remedy under Art. 226 of the Constitution [373B-C]
(ii) Section 9 had been wrongly struck down by the High Court as invalid. This section was enacted by the legislature with the object of removing shortcomings in the principal Act which were found wanting by judicial interpretation. The interregnum between the declaration by the High Court of certain provisions of the Act as being unconstitutional and the attempt of the legislature to remedy the defects and to give retrospective effect thereto created two distinct categories between the same class of dealers namely those who had collected the tax whether they were assessed or not and those who had not collected the tax. This classification was certainly reasonable and was related to the object which the Amendment Act sought to achieve. The dealers who had not collected the tax could not have collected it as the law stood and therefore the legislature thought it just or proper to collect the tax from those who were not liable. . Even this exemption was given to those who could establish that they had not in fact collected it, the burden of which was upon those who claimed the exemption. [374D-E],

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2116, 2217, 2218, 2126 to 2128 of 1970 , 33, 144 ,157, 159 to 163 and 164 to 166 of 1971.

Appeals from the judgments and orders dated the September 5, 1970 of the Andhra Pradesh High Court in Writ Petitions Nos. 2720 of 1970 etc. S. V. Gupte and G. Narayana Rao for the appellants (in 2116 of 1970). C.A. No. M. Natesan and G. Narayana Rao for the appellants (in C.A. No. 2217 of 1970).

G. Narayana Rao for the appellants (in C. As. Nos. 2218 of 1970, 144, 157, 159 to 163 and 164 to 166 of 1971). M. C. Setalvad and W. C. Chopra, for the appellants (in C.As. No. 2126, of 1970).

Polesseti Ramachandra Rao and W. C. Chopra for the appel- lants (in C.As. Nos. 2127 and 2128 of 1970).

S. T. Desai and K. Rajendra Chowdhary, for the appellants, (in C.A. No. 33 of 1971).

P. Ram Reddy and P. Parameshwara Rao, for the respon- dents (in all the appeals).

The Judgment of the Court was delivered by p. Jaganmohan Reddy, J.--This batch of Appeals is by Cer- tificate against a common Judgment of the Andhra Pradesh High Court dismissing the Writ Petitions filed by several dealers in jaggery who challenged the vires and constitutionality of

Sections 2, 5, 8 and 9 of the Andhra Pradesh, General Sales Tax Amendment Act 9 of 1970 (hereinafter called the "Amendment Act"). The Appellants are Commission Agents carrying on trade in jaggery. Agriculturists who prepare jaggery out of surplus sugarcane which they are unable to sell to the Sugar factories employ the Appellants as their Commission Agents to sell that jaggery.

We will take the facts in Civil Appeal No. 2116 of 1970 as typical of the common question arising in all these Appeals. The Appellants carry on business of Commission Agent in jaggery in Anakapalli, Visakhapatnam and at varies places in West Godavari. In the course of their business the Appellants arrange, for the sale of jaggery charging a small commission for their services and renders an account to the respective principals in respect of these sales. In the pattis issued to the Agriculture the name of the persons to whom jaggery is sold is specifically mentioned. The baskets of each principal are separately marked. The stock register also indicates the number of baskets of jaggery held in the name of the Commission Agents. Every buyer is fully ap- prised of the fact that he is purchasing the jaggery of specified agriculturist principals and not that of the Appellants. This procedure it is said has been in vogue for a long time.

Till about 1963 under Section 11 of Madras General Sales Tax Act as well as under the Andhra Pradesh General Sales Tax Act 1957 (hereinafter called the "Principal Act") Commission Agents were required to obtain and were being issued licences and if they conformed to the conditions of those licences they were not subjected to tax. In 1963 the Principal Act was amended by Andhra Pradesh General Sales Tax Amendment Act 16 of 1963 which substituted a new Section II for that which was in force fill then. The new Section II changed the preexisting structure of assessment in that, the Agents of Resident Principals were made liable for assessment and collection of Tax through the liability of the Agent was made co-extensive with that of the Principal. The Sales Tax authorities however were making assessments of the turn-over of the Agents in respect of the purchase and sales of jaggery of several principals notwithstanding the fact that the turnover upto Rs. 10000/- of each was not exigible to tax. These assessments were challenged in a batch of writ petitions in Irri Raju & Ors. v. The Commercial Tax Officer, Tedeplalligudem & Anr.(1) in which the, High Court of Andhra Pradesh hold that the (1) Sales Tax Cases-Vol. XX (1967) p. 501.

24-1 SC India/71 provisions of the principal Act indicated that the Agent is a dealer in respect of each of the principals, that he is deemed to be as many dealers as there are principals and therefore the total turn-over of the Agent in respect of the several principals could not be computed for assessing him when in fact the turnover of each of the principals was below the limit i.e. Rs. 10.000/-. As a consequence of this. decision, the Andhra Pradesh General Sales Tax Amendment Act 5 of 1968 was enacted and a new Section 1 1 was substituted for the then existing Section. This Section II was given retrospective effect from the 1st August 1963. The object of this Amendment was to enable the 'Taxing authorities to assess, levy and collect tax or penalty under the Sales Tax Act from the Agent irrespective of the fact that such principal is not liable to pay the tax or penalty in respect of that transaction on account of the turn-over of the principal being less than the minimum turnover specified in sub-section of section 5. The proviso to the new Section II however authorised the Tax or penalty assessed or levied on or due from the Agent to, be, recovered by the Assessing authorities from the Principals instead of from the Agents, only if the principal is liable to pay tax or penalty. This new Section was also challenged on various grounds in a batch of writ petitions in Sri

Konathala Venkata Ramana & Budha Apparao v. State of Andhra Pradesh & Anr.(1). The High Court held that even after the amendment the liability of the Agent continues to be based on the principal of representation and whether he is a dealer in respect of an the principals or only one principal, his liability is co-extensive with that of the principal. It also held that while there is no conflict between Section 5 and Section II of the Act, Section II which authorises the imposition of a tax independently of the liability of the principal or which takes away or limits the rights of the Agent to reimburse himself or withhold moneys due to the principal only where the principal is liable is discriminatory and is hit by Article 14.

In view of this Judgment, which in fact restored the legal position to that prevailing prior to the Amendment, large sums of money in which assessments had been made and tax collected became refundable To meet this situation the Legislature enacted the Andhra Pradesh General Sales Tax Amendment Act 9 of 1970. The effect of the. Amendments made by Sec. 2. 5, 8 and 9 of the Amendment Act is that a proviso was added to Section 5(1), a new Section II was substituted for the old Section II with retrospective effect from 1-8-63. The, amended Section 11 it may be noticed (1) Sales Tax Cases-Vol. 24 (1969) P. 367.

was identical with Section 1 1 as it stood on 1-8-1963. The first schedule to the principal Act was also amended by adding jaggery as item 77 which was made taxable at the point of first sale at 5 paise in the Rupee. It was further provided that as soon as this entry came into force on the date fixed by a Notification the proviso to Section 5 (A) added by Section 2 of the Amending Act would cease to have effect. Section 8 of the Amending Act purported to validate the assessments already made while Section 9 granted exemption from liability to pay tax in certain cases. We have already noticed that jaggery was being taxed at the point of the first purchase of its sale between 1-2-60 and 31-7-63 but by reason of the Amendment introduced by Act 16 of' 1963 a multiple point tax on safe subject to an exemption of a turn-over of Rs. 10000/- became leviable at 2 paise pet Rupee from 1-8-63 which rate was enhanced to 3 paise from 1-4-1966 by Amendment Act 7 of 1966. A single point taxation was however levied on items in Schedule 1 and 2 of the Act which became chargeable as such under Section 5(2). We are not concerned with schedule 3 which deals with declared goods but schedule 4 specified the goods which are exempt in terms of Section 8. All other sales which do not fall within the schedules are as earlier stated exigible to multiple point tax under Section 5(1) of the Act subject to the minimum of Rs. 10,000/-.

The Appellants had before the High Court of Andhra Pradesh raised several contentions but the principal attack was confined to 3 aspects of the Amendment Act. Firstly that Section II read with the new proviso to Section 5 (1) makes an invidious distinction between dealers in jaggery on the one hand and dealers in other commodities on the other by perpetuating an unreasonable classification which is based on no intelligible differentia nor can any reasonable nexus be discerned with the object that the Amendment seeks to achieve. Secondly that Section 9 has to be read as part of Section 2 of the Amendment Act by which a new proviso is added to Section 5(1) of the Principal Act and is a part of Section 11 substituted by the Amendment Act. If so read the new proviso to Section 5(1) and the new Section II would be violative of Art. 14 inasmuch as the dealers in jaggery similarly situated have been invidiously discriminated by levying tax from those, dealers who have collected the tax and the dealers who have not collected the tax. Thirdly that the basis of the

amendment is an imposition of a tax not on the transaction of sale or purchase of jaggery but on the, collection or non-collection of the tax by the dealers, as such it is also bit by Article 14 of the Constitution. The High Court rejected all these contentions except the one relating, to the validity of Section, 9. the State of Andhra Pradesh as well as the Appellants in Civil Appeal No. 33 of 1971 had contended that that provision which granted an, exemption from. payment of tax to, dealers who bad not, in fact collected the tax from their principal was, valid and did, not suffer from the vice of discrimination under Art. 14 because not only was the classification reasonable but that it was based on an intelligible differentia having a nexus with- the object of the impugned Act.

We shall however deal with last mentioned aspect presently but before we do so on the threshold of the argument of them Appellants there is a valid objection to the maintainability of the Writ Petitions filed by the dealers who as Agents of the Principals had collected tax from the purchasers which as a consequence of the two decisions, of the High Court referred to earlier was illegal. After the, amendment Act the levy and collection by the dealers became prima facie legal. In so, far as jaggery is concerned there was also no question of any, exemption of the minimum turnover of the principal of Rs. 10,000, so That the hardship which a Corn-- mission Agent dealer had to undergo in trying to determine whether the, turn-over of each of his principals was below Rs. 10,000 before he could collect Sales Tax was no longer there. After the Amendment by removing the exemption of Rs 10,000 on sale of jaggery which was given retrospective

-effect, the dealer agents could not now complain, which complaint had been held by the High Court to be justified, that while the principals were exempted from tax upto Rs. 10,000 the tax is being levied on the agents turn-over irrespective of that exemption. In any case whatever objections the principals may have to the constitutional validity of the provisions introduced by the amending Act under Article 14 the Agent dealers certainly have no locus standi to complain about discrimination between Principals inter-se. That apart the dealers are not expected to and in fact do not pay any money of their own towards the tax which is levied. The tax so levied and paid to the assessing authorities by the dealer agent is, under the provisions of the Act, not returnable nor can the principal under the provisions of the Act make any claim against such dealer Agents.

Shiri Gupte on behalf of the Appellants was unable to tell us that there were among the Appellants any principals who had a direct interest in challenging the validity of the provisions on the ground of discrimination. Shri Motilal Setalvad on behalf of the Appellants in Civil Appeals Nos. 2126 to 2128 of 1970 strenuously contended that the Appellants have an interest and can maintain the Writ Petitions because they were dealers within the meaning of Section 2(e) and are persons who are aggrieved because of the assessment made or likely to be made and tax recovered from them. He has further contended that this Court has in several cases hold that even a notice issued to any person under the provisions of an impugned Act which is likely to cause prejudice will entitle him to challenge the Constitutional Validity of the law under which the notice is given. If so, where an assessment has been made the assessee has a right to challenge the provisions of the Amendment Act under which the levy and Collection of tax have been given retrospective validity. Apart from the question that 'this argument does not take into account the distinction between an at tack under Art. 14 and an attack under Art. 19 it overlooks the fact that what is sought to be recovered from the Appellant is in respect of a tax collected on the past dealings and not with respect to the future

transactions. We had pointed' out that tax had already been collected no doubt at first illegally but due to the amendment Act that collection has become legal and has also dealer be is liable to pay that amount to the State la. respect of the Asses sments made. As there is nothing to show that what is sought to be recovered from the dealer is more than what he hits collected, he 'has not suffered any loss nor any disadvantage which would entitle him to seek a remedy under Art. 226 of the Constitution. Shri P. RamchandraTao in Civil Appeal No. 2127 of 1970 had nothing now to add to the arguments advanced by the learned Advocates for the Appellants. On this short ground alone we dismiss all the Appeals except Civil Appeal No. 33 of 1971 but in the circumstances without costs.

Appeal in Civil Appeal No. 33 of 1971:

> In this Appeal Shri S. T. Desai contends that the High Court had erroneously struck down Sec. 9 of the Amendment Act. Sec. of the Amendment Act is as follows:
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> "9(1) where any sale of jaggery has been effected during the period between the 1st August 1963 and the commencement of Section 5 of this Act in so far as it relates to item 77, and the dealer effecting such sale has not collected ally amount by way of tax under the principal Act ,on the ground that no such tax could have been levied or collected in respect of such sale, or any portion of the turnover relating to such sale, and where no such tax could also have been levied or collected if the amendments made in the principal Act by this Act had not been made, then, notwithstanding anything contained in Section 8 or the said amendments, the dealer shall not be liable to pay any tax under the principal Act, as amended by this Act, in respect of such sale or such part of the turnover relating to such sale.
>
> (2)For the purposes of sub-section (1), the burden of proving that no amount by way of tax was collected under the principal Act in respect of any sale referred to in sub-section (1) or in respect of any portion of the turnover relating to such sale, shall be on the dealer effecting such sale".

This Section is enacted by the legislature with the object of removing short-comings in the principal Act which were found wanting by judicial interpretation. The interregnum between the declaration by the High Court of certain provision of the Act as being unconstitutional and the attempt of the legislature to remedy the defects and to give retrospective effect thereto created two distinct categories between the same class of dealers namely those who had collected the tax whether they were assessed or not and those who had not collected the tax. This classification is certainly reasonable and is related to the object which the Amendment Act seeks to achieve. The dealers who had not collected the tax could not have collected it as the law stood and therefore the legislature did not think it just or proper to collect tax from those who were not liable. Even this exemption as can be seen is given to only those persons who can establish that they have not in fact collected it, the burden of which is upon those who claim the exemption. It is unnecessary to deal with hypothetical cases. The mere fact that in many cases it was not collected because the assessment could not be completed cannot be a valid ground nor can it even now be made in regard to those assessments which are now pending (a matter upon which we do not pronounce) cannot be valid grounds to

declare the classification as arbitrary or unreasonable, which reason seems to have weighed with the High Court. We think not only the classification reasonable but there is an intelligible differentia furnishing a nexus with the object the Amendment Act seeks to achieve. In this view we set aside the Judgment of the High Court declaring Section 9 as unconstitutional and allow the appeal, but in the circumstances without costs.

G. C. Appeal allowed.