

The Public Prosecutor Vs. R.T. Narasimha Reddy

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Court : Chennai

Decided On : Jul-30-1947

Reported in : (1947)2MLJ220

Appellant : The Public Prosecutor

Respondent : R.T. Narasimha Reddy

Judgement :

Chandrasekhara Aiyar, J.

1. This appeal has been preferred by the Public Prosecutor against an order acquitting the accused (respondent) of the charge for failure to pay the sales tax due from him within the time allowed, an offence punishable under Section 15 of the Madras General Sales Tax Act, 1939, read with Section 10.
2. The accused was assessed on a turnover of Rs. 1,25,000 during the year 1944-45 and the notice calling upon him to pay the tax was received by the accused on 5th January, 1946. He was given 21 days' time for payment. On failure to pay, this prosecution was initiated against him by the Assistant Commercial Tax Officer, Chittoor.
3. The plea of the accused was that he transacted the business in question only in the capacity of an agent and not as a 'dealer' and that therefore he was not liable to pay the tax. This plea was accepted by the Additional First Class Magistrate, who held that the accused only acted as broker or commission agent who brought the seller and the buyer together. The Government has preferred this appeal primarily to get a decision from this Court whether the view taken by the Additional First Class Magistrate is the right one.
4. There can be little doubt that when the Act defines 'dealer' in Sub-clause (b) of Section 2 as 'any person who carries on the business of buying or selling goods', it is referring to one who buys or sells goods on his own behalf. This is clear from explanation 2 to the sub-clause which expressly provides that 'the agent of a person resident outside the province who carries on the business of buying or selling goods in the province shall be deemed to be the dealer in respect of such business for the purposes of this Act.' This explanation implies that otherwise, such an agent would not be regarded as the 'dealer'. The tax is assessed on the turnover of a business and the word 'turnover' is defined in Sub-clause (1) of Section 2 with a long explanation. The word 'turnover' as defined is not appropriate to what is done by an agent in the way of bringing together a buyer and a seller for brokerage or a commission. So far as he is concerned, there is nothing like a 'turnover'. It is no doubt true that an agent can protect himself by getting a licence under Section 8, but to argue from this that if

a man obtains no such licence he must be regarded 'a dealer' and punishable for not complying with the demand for payment of the tax within the time required is to ignore what is really meant by 'dealer' in the Act. A person in the position of the accused undoubtedly runs the risk of being called upon to pay the tax and becoming liable for prosecution if he does not take the precaution of obtaining a licence under Section 8. But surely it is open to him to establish that he is merely an agent and not 'a dealer' within the meaning of the Act, with a turnover in the business of purchasing and selling goods. It has been found by the Magistrate in this case that the respondent is an agent and not a principal, and I agree with him that he is not liable. He was properly acquitted of the charge.

5. The appeal is dismissed.

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