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**(1955) 07 AP CK 0002**

**Andhra Pradesh High Court**

**Case No:** Tax Revision Case No. 2 of 1954

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|---|---|---|
| Deputy Commissioner of Commercial Taxes | | APPELLANT |
| | Vs | |
| K. Bhaktha-vatsalarn, Naidu | | RESPONDENT |

**Date of Decision:** July 12, 1955

**Acts Referred:**
General Sales Tax Rules â€" Rule 19

**Citation:** (1955) 07 AP CK 0002

**Hon'ble Judges:** Subba Rao, C.J; Satyanarayanaraju, J

**Bench:** Division Bench

**Advocate:** Govt. Pleader, for the Appellant; K Subrahmanyam Reddy and I. Panduransa Rao, of Messrs. Ram, Rao and Reddy, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Satyanarayanaraju, J.
This is a revision petition filed by the Slate of Andhra against the decision of the Sales Tax Appellate Tribunal in

T.A. No. 56-A of 1953.

2. The Respondent is the son of one K. Jana kiram Naidu, who was a railway contractor doing business under the name and style of K. Janakiram

Naidu and Sons at Kodur. The father having died, the five sons of the said Janakiram Naidu, of whom the 3rd is the Respondent herein, executed

a deed of partnership on 7-7-1943, in and by which they had mutually agreed to become partners sub Ject to terms contained in the deed.

The deed provides "inter alia" that the part nership shall be in force for a period of five years from 20-5-43 and on the expiry of the period, for

such further "time as the partners may mutually agree. The partnership was dissolved on 17-12-1051 by a memorandum of agreement entered into

at Madras between the Respondent and his. brothers.

It recites tihat the brothers have been carrying on partnership because under the name and style of Messrs. Janakiram & Sons, that disputes have

arisen between them regarding the sharing of the assets and liabilities of the above said partnership and that they agree that as from that date they

should become divided in status from each other and that the partnership shall also stand dissolved as from that date.

It was further agreed that certain sums" payable to the aforesaid partnership by the Southern Railway, Madras, in respect of two bills drawn in

respect of contract works carried out by Kothandaram Naidu and Bhaktavatsedam Naidu (Respondent) on behalf of the partnership should be

drawn by "" rather Mut"hyala Narayana Rao Naidu.

3. In the year of assessment 1949-50 a contract with the Railway in the name of partnership for the construction of running . , at Kondapuram. The

D. C. T.O, assessed the Respondent on a sum of Rs. 54,745/- allowing a diction of 30 per cent, on his contract work as of cribbed. The

Respondent preferred an appeal to C.T.O., contending "inter alia" that the has janakirain Naidu and Sons alone should have assessed as the

business was that of the parted and not his individual business".

The C.T.O. however, dismissed his a are On a furliher appeal before the Sales Tax Appellant Tribunal, it was held by the majority of the bers that

the business .was conducted as a pared ship business and that therefore the assed ought to have been properly made only Messrs. Janakiram

Naidu and Sons.

4. The learned Government Pleader has us through the relevant documents. we are lied that there was a subsisting partnership the year of

assessment (1949-50) and under dissolution on 17-12-1951. The contract with Railway was entered in the name of the parte ship and not in the

individual name of the Respondent. The contract was entered into on 2-1-11during the subsistence of the partnership the nershipwa 17-12-1951.

It is not suggested that this deed of dissolve is a collusive transaction. So far as the Rather concerned, the contract was with the par What has been

urged by the learned Cow Pleader is that the deed of partnership Provide a five year term and that there is no document drawing a renewal of the

term. The parted deed itself provides that the partnership shall be force for a period of five years and on the of the period, for such further period

as the ners may mutually agree.

There is nothing in law to prevent the by mutual agreement from continuing. v. ship, after the expiry of the term. The deed of solution dated 17-12-

1956 if solve provides as live and complete answer to this Contention recitals in the deed of dissolution are mious and clear. They show that the

brethart been, carrying on the partnership business hive disputes had arisen between them reganders sharing of the assets and liabilities. it further

vides for dissolution as from that date. the tension of the State, therefore fails.

5. The learned Government Pleader that assuming that the partnership was in the firm is a ""dealer"" and that the liabiler partners is both joint and

several, and that the Department is entitled to proceed for station of the tax from the Respondent At the outset, it may be observed that is an

essential distinction between an and the mode of realisation.

The ""dealer"" in Section 2(b) which is relied counsel for the State, itself provides means.

any person who carries on the buying or selling goods.

Explanation: A co-operative society a firm or any association which "sells geards members is a dealer within the meaning clause.

6. The Explanation to Section 2(b) cannot be distributive. The disjunctive comes after word "firm" and so read, a "firm" is a dasrduy it provides

that ""every dealer shall pay fear a tax on his total turnover for such combined reading of Section 2(b) with its Ex-ad Section 3 leaves a room for

doubt in our it is the firm that is treated as a dealer past he Assessed to tax.

Be learned Government Pleader then a Rule 19 General Sales Tax Rules which follows.

dealer or licensee enters into partnership talus business ho shall report the tact to authority within 30 davs his anteing partnership the ilea or

licensee, and severally be Respondent the payment of the tax livable under the costs.

A plain madding of this rule shows that it ed to apply to a case of subsequent part So Rule 19 does not) support the contention fearned

Government Pleader.

our attention has also been drawn to the - Cannon Dunkerley & Co. v. State of 1954 5 STC 216 (A), where it has that if the amendments relating

to taxing contracts introduced in 1947 by the Mad-lature are intended to catch in the net of aforesaid building contracts, to that extent laments are

''ultra vires'' the Madras Lcgis-the correctness of the assessment: has not before the Tribunal or in this Court, unnecessary, therefore, to decide the

cures-is case. In the result, the majority decision of the fax Tribunal is affirmed and this Revision dismissed with costs), Rs. 250-0-0.