

(2001) 02 AP CK 0005

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 38 of 1993

Coramandal Wine Corporation

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 14(4), 14(8), 14B

Citation : (2006) 143 STC 130

Hon'ble Judges : S. Ananda Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : M.V.K. Murthy, for the Appellant; The Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—This tax revision case is at the instance of the assessee-dealer aggrieved by the order of the Sales Tax Appellate Tribunal, dated April 28, 1993 in T.A. No. 154 of 1993 whereunder the appeal filed by the dealer against the order of penalty levied by the Deputy Commissioner (CT), Vijayawada, was confirmed.

2. The petitioner is a dealer in liquor and beer during the assessment year 1981-82. The Commercial Tax Officer-VI, Vijayawada, framed the assessment on a net turnover of Rs. 4,61,640. However, subsequently the Deputy Commissioner (CT), Vijayawada, on the scrutiny of assessment records had noticed that the assessee suppressed the sale of beer to a tune of Rs. 1,75,860. Therefore, investigation was taken up and collected the particulars of sales and purchases. As per the information obtained, it was found that the net purchases of beer was of the value of Rs. 4,62,125, but the relative sales were shown as Rs. 4,61,640 and sales tax was paid only on that amount. It was also found that the dealer made purchases of beer from M/s. SICA Breweries Limited, Pondichery, and they were sold to M/s. Bhanu Enterprises, Vijayawada. It was also found that the dealer again purchased the said beer from M/s. Bhanu Enterprises almost at the

same price and sold at a higher price. Similar sales and purchases were also effected by M/s. Bhanu Enterprises, Vijayawada, which show that the transactions were effected only by book entries, showing the purchase and sale. According to the Deputy Commissioner, this is a device adopted by the dealers to evade payment of tax on the first sales turnover. Hence, ignoring the said transaction of sale in favour of M/s. Bhanu Enterprises, the differential turnover of Rs. 1,75,860 was subjected to tax. Consequently, the Deputy Commissioner had also initiated proceedings u/s 14(8) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to "the Act") and levied penalty of Rs. 60,936 as it is a case of wilful suppression of sales turnover, which was three times the tax that was due as a result of the reassessment. This order was questioned by the assessee before the Appellate Tribunal on various grounds and the Tribunal considering the contentions elaborately dismissed the appeal confirming the penalty levied by the Deputy Commissioner (CT), Vijayawada.

3. The learned Counsel for the petitioner contended that though the Deputy Commissioner issued notice of reassessment purported to be u/s 14(4) of the Act, it was in fact only u/s 14-B of the Act and as the said provision was inserted by Act 18 of 1985 with effect from July 1, 1985 the said provision of Section 14-B has no application to the facts of the case. The learned Counsel also relied upon a circular issued by the Government in G.O.Ms. No. 938 dated September 18, 1989 in support of his contention that the State Government has clarified that the reassessments cannot be effected u/s 14-B in respect of the completed assessment prior to July 1, 1985. Therefore, the action of the Deputy Commissioner, which was confirmed by the Sales Tax Appellate Tribunal is liable to be set aside. The learned Counsel also contended that as the sales effected in favour of M/s. Bhanu Enterprises were not disputed, therefore, it is the case of department that the sales as effected were at a price much lower than the prevailing market price. Therefore, the said amount brought to tax could be done only under the provisions of Section 14-B, which was intended to cover such cases and as the said provision was not on the statute book as on the relevant date, the reassessment effected by the Deputy Commissioner is illegal and unsustainable. The learned Counsel also contended that the Sales Tax Appellate Tribunal was in error in referring to and relying upon the findings that were arrived at in the assessment proceedings while confirming the order of penalty. According to the learned Counsel as the assessment proceedings and penalty proceedings are different and independent of each other, the findings that were given in the assessment proceedings should not be relied upon and the penalty proceedings have to be considered on merits basing on the material that is available before the authorities. The learned Counsel also strongly relied upon the judgment of this Court in *Delux Wines v. State of Andhra Pradesh* [1990] 77 STC 373 and contended that under almost identical circumstances this Court held that the action purported to have been taken u/s 14(4) was only u/s 14-B and as the provisions of Section 14-B have no retrospective effect, the action of the authorities was set aside. Hence, even in the present facts of the case also the

impugned orders are liable to be set aside.

4. The learned Government Pleader, on the other hand, supported the orders of the Sales Tax Appellate Tribunal. It was contended that the Tribunal has thoroughly examined the facts of the case and confirmed the penalty levied by the Deputy Commissioner (CT), Vijayawada. It is stated that there are clear findings in the assessment proceedings that the petitioner-firm as well as M/s. Bhanu Enterprises are closely related as the managing partner was one and the same, which was carrying on the similar business. Though there may be some partners, who are not common, still the business is common carrying on in the same trade and carried on from the same premises and transactions were effected from one firm to the other and again a second transfer in respect of the very same goods, which shows that the action of the petitioner-dealer was only a colourable exercise to avoid the higher tax liability by showing a lesser turnover on the first sales. Therefore, it is a case where the principles laid down by the apex Court in the case of McDowell & Co. Limited v. Commercial Tax Officer [1985] 59 STC 277 are applicable. The learned Counsel also relied upon another judgment of this Court in Raj Trading Corporation Vs. State of Andhra Pradesh, , where subsequent to the judgment rendered by this Court in the case of Delux Wines [1990] 77 STC 373 , a similar issue was considered and held against the dealer therein. In view of the factual findings arrived at by the authorities, there is absolutely no merit in the case and it is a clear case of colourable transactions entered into between the petitioner and M/s. Bhanu Enterprises to avoid the tax liability.

5. Heard both sides and considered the material on record.

6. Prima facie we are unable to agree with the contentions of the learned Counsel for the petitioner. Though the original assessment was framed by the Commercial Tax Officer accepting the turnover declared by the petitioner, the Deputy Commissioner on the scrutiny of the assessment records found that the first sales of beer recorded by the dealers was found to be comparatively low in respect of the purchases. Therefore, the investigation was taken on and from the material obtained by the Deputy Commissioner, it was found that in order to avoid the tax liability book entries were made showing the sales and purchases from the petitioner by M/s. Bhanu Enterprises and also from M/s. Bhanu Enterprises to the petitioner and vice versa. From the material on record, it is clear that the petitioner and M/s. Bhanu Enterprises had entered into colourable transactions to evade the payment of tax. Therefore, the principles laid down by the apex Court in the case of McDowell & Co. Ltd. [1985] 59 STC 277 were applied and the differential turnover was brought on taxable turnover by ignoring the colourable transactions. Consequently, the Deputy Commissioner initiated proceedings u/s 14(8) of the Act and levied penalty. The contention of the petitioner-dealer is that though notice was issued u/s 14(4), it could not have been issued under the said provision but it should have been only u/s 14-B of the Act. As the said provision was inserted from July 1, 1985, the said provision has

no application. Therefore, the penalty levied on the said reassessment order is liable to be set aside.

7. For convenience Sections 14(4) and 14-B are extracted here, which are as under :

14. Assessment of tax.--.....

(4) In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealers, and after making such enquiry as he may consider necessary, by order, setting out the ground therefor,--

(a) determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined ;

(b) assess the correct amount of tax payable on the turnover that has been under-assessed ;

(c) assess at the correct rate the turnover that has been assessed at a lower rate ;

(cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed ;

(d) levy the licence fee after determining to the best of his judgment the turnover on which such fee is payable.

(e) levy the registration fee that has escaped levy ;

(f) levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.

14-B. Assessment of sales shown in accounts at low price.--(1) If the assessing authority is satisfied that a dealer, with a view to evade the payment of tax, has shown in his account sales or purchases of any goods at a price which is less than fair market price of such goods, it may, at any time within a period of three years from the date on which any order of assessment was served on the dealer, assess or reassess the dealer to the best of judgment on the turnover of such sales or purchases after making such enquiry as may be necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

(2) The provisions of Section 14 including penalty shall apply to assessment and reassessment of escaped turnover under this section.

8. A perusal of the above provisions clearly shows that the authorities concerned are entitled to take appropriate action u/s 14(4) where the whole or any part of

the turnover of business of a dealer has escaped assessment to tax, or has been underassessed or assessed at a rate lower than the correct rate; whereas Section 14-B contemplates where the assessing officer is satisfied that a dealer, with a view to evade the payment of tax has shown in his account sales or purchases of any goods at a price which is less than fair market price of such goods. According to the counsel for the petitioner, it is the provisions of Section 14-B that had applied though it was not referred to. But according to the department it is only u/s 14(4). Here in the present case the facts reveal that a part of the turnover was evaded from liability to tax by showing fraudulent sales and purchases at a price lower than the cost price, though, in fact, the same commodity after repurchase was sold at a higher price. What the Deputy Commissioner has done in this case was only the sale effected to M/s. Bhanu Enterprises and repurchase made from the said firm was ignored, as it is only a book entry, for the purpose of tax evasion and the real sales that were effected after repurchase from the said firm was taken into account. It is not the case of the assessee even before the Deputy Commissioner that he had taken into account the market price and not the actual price at which the petitioner-assessee had sold the disputed goods. In fact, the very same contention was advanced by the assessee in the assessment proceedings when he filed an appeal before the Appellate Tribunal against the reassessment order. The said contention was rejected by the Tribunal and in fact, it was also confirmed by this Court while dismissing the tax revision case filed by the assessee-dealer. Though in fact, the assessment proceedings as well as the penalty proceedings are independent, the finding given with reference to the application of the provisions, there cannot be any two arguments and two findings. Therefore, it is not open to the assessee to contend that the said finding arrived at the earlier proceedings is not applicable to the present penalty proceedings.

9. Though the learned Counsel for the assessee relied upon a decision of this Court in the case of *Delux Wines* [1990] 77 STC 373 that was a case where notices were issued on the ground that the sales were effected at a lower rate than the market price. Therefore, the court held that the said notice though issued u/s 14(4), it should have been u/s 14-B of the Act and accordingly set aside the notice issued by the department. But that is not the position in the present case. Here admittedly the department ignored the sales effected by the petitioner-assessee in favour of M/s. Bhanu Enterprises in respect of the beer that was purchased by the petitioner from M/s. SICA Breweries Limited and only the sales that were effected after the alleged repurchase from M/s. Bhanu Enterprises were taken into account. There is a clear finding that the sales and the purchase by the petitioner of M/s. Bhanu Enterprises is only colourable transactions intended for the purpose of avoiding tax liability. In fact, the dealer did not file any objections when a show case notice was issued by the Deputy Commissioner, proposing to levy penalty u/s 14(8) of the Act. In fact, on an appeal filed by the petitioner-assessee, the Appellate Tribunal set aside the order on the ground that the petitioner-assessee was not given sufficient opportunity

to file objections. When the matter was remitted back to the Deputy Commissioner and when the Deputy Commissioner issued a show cause notice proposing to levy penalty, the assessee-dealer did not respond, which clearly goes to show that it has no explanation. In fact, in the assessment proceedings the Tribunal gave a categorical finding, which is as under :

The fact that both are managed by the same person, the fact that similar brands of commodity and similar quantities of commodity is said to have changed hands as per the alleged first sales for the same price, which is far below cost price clearly establishes that it is only an attempt to make it appear that there was real transactions between the two. From the circumstances stated supra, it is clear that they are only colourable, fictitious transactions, which were never intended to be acted upon except for evasion of tax.

The said finding, which was later confirmed by this Court in the tax revision case filed by the assessee in the assessment proceedings, would clearly goes to show that the sales and purchases are only colourable transactions, which had the effect of wilful suppression of the turnover by the assessee. When once there was a wilful suppression of the turnover from the tax liability, the petitioner-dealer is liable for penalty u/s 14(8) of the Act. Therefore the penalty levied is proper and just. Though penalty proceedings are independent and the authorities have to consider the material independently, in the present case the petitioner did not bring on record any material. No reply to the show cause notice was also filed. Therefore, it is not open to the petitioner to contend that penalty was levied or confirmed based on the findings made in the assessment proceedings. The material brought on record in reassessment proceedings clearly shows that there was wilful suppression of the sale turnover. Hence, the penalty levied is proper and just.

10. Under the above circumstance, the tax revision case filed by the petitioner-assessee is devoid of merit and the same is accordingly dismissed.