(1994) 07 AP CK 0034

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 58 and 129 of 1986

Govardhan Trading Company APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 12-07-1994

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 14(2), 14(4)

Citation : (1995) 96 STC 1

Hon'ble Judges : S.S. Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—These T.R.Cs. are filed by the assessee against the common order of the Sales Tax Appellate Tribunal in T.A. Nos. 1045 and 1046 of 1979 dated July 11, 1985. The dispute relates to assessment year 1976-77. T.R.C. No. 58 of 1986 relates to assessment and T.R.C. No. 129 of 1986 relates to penalty.

2. The assessing authority made assessment on January 9, 1978. Later the assessment was reopened u/s 14(4) of the Andhra Pradesh General Sales Tax Act, 1957, on the ground that the turnover of Rs. 69,551.80, representing the purchase value of groundnut oil in respect of which the assessee had issued "C" forms, was not accounted for in the account books of the assessee. On examination of the facts on record, the Tribunal came to the conclusion that there was suppression of turnover of Rs. 76,506.43 and in that view of the matter dismissed the appeal.

3. We are not pursuaded to reach the conclusion that the order of the Tribunal suffers from any illegality to call for interference in the revision. Finding no merit in the T.R.C., we dismiss T.R.C. No. 58 of 1986.

4. Now coming to T.R.C. No. 129 of 1986, in view of suppression of turnover

which has been upheld in the abovesaid T.R.C., the only question which remains to be considered is whether the penalty proceedings were justified. The proceedings have been initiated u/s 14(2) of the Act. It was urged before the Tribunal that there was no wilful suppression of the turnover. The Tribunal however found against the assessee and recorded the finding that the suppression was wilful. But that does not put an end to the controversy raised in the T.R.C. What is urged before us is that five times the penalty is the maximum that could be levied and there are no circumstances which would justify levying the maximum penalty in this case. A perusal of the order of the Tribunal shows that the penalty levied is five times the tax due on the suppressed turnover. The approach which should be adopted in levying the penalty should also be just and reasonable. It is only when there are aggravating circumstances with regard to the suppression of turnover, the authorities under the Act would be justified in levying the maximum penalty. Whether such circumstances exist is a question of fact and has to be decided on the facts and circumstances of each case. In the instant case no aggravating circumstances have been pointed out by the Tribunal to confirm the penalty levied at five times the tax due on the suppressed turnover. Indeed the Tribunal did not address itself to this question. Having regard to the facts and circumstances of the case and in the absence of any aggravating circumstances, in our view, passing the usual order in such cases, namely, levying penalty equivalent to twice the tax due on the suppressed turnover, would meet the ends of justice. Accordingly we reduce the penalty to twice the tax due on the suppressed turnover. T.R.C. No. 129 of 1986 is allowed in part. No Costs.

5. Ordered accordingly.