
(1960) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Petition No. 5496 of 1960 in T.R.C. No. 39 of 1957

Immediseti Ram Krishnaiah and Sons

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-08-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152

Citation : (1961) 12 STC 212

Hon'ble Judges : Kumarayya, J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : T. Anantha Babu, for the Appellant; The Second Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jaganmohan Reddy, J.—In this C.M.P. the assessee has requested for the correction of an error apparent on the face of the record under Rule 18 of the rules made under the Madras General Sales Tax Act, 1939 (hereinafter called the rules) and for directing the Sales Tax Authorities to revise the assessment on that basis.

2. The Deputy Commercial Tax Officer, Anakapalli, by his order dated 31st March, 1952, had given certain reliefs to the assessee in the following turnovers claimed by him.

1. Transfer and adjustment entries Rs. 2,357 1 5
2. Sales effected outside the State Rs. 1,20,920 2 0
3. Expenses incurred for loading and unloading etc. Rs. 13,575 1 9
4. On a turnover of Rs. 4,22,037-4-11 turnover of Rs. 1,41,269-8-6 was disallowed and the rest allowed. Rs. 2,80,767 12 5
3. The total reliefs thus allowed amounted to Rs. 4,17,620-1-7 but at the end of

the order, the Commercial Tax Officer only allowed Rs. 2,83,124-13-0 and has failed to give the assessee relief to the extent of Rs. 1,34,495-4-7. This mistake was not discovered till quite late. It may be stated that against the assessment the assessee had appealed and the appellate order dismissing the appeal was dated 15th March, 1955. Against that he appealed to the Tribunal which disposed of it on 23rd October, 1956, and it is only after the disposal by the Tribunal that the assessee applied to the Commercial Tax Officer on 11th December, 1956, for correction. That was dismissed on the ground that it was barred by limitation as not having been filed within 3 years from the date of the assessment order under Rule 18 of the rules. The assessee then applied to the Deputy Commissioner on 2nd March, 1957 ; that application was rejected on 27th June, 1958. He then appealed to the Tribunal on 9th September, 1958, and the Tribunal rejected that appeal on 17th February, 1959. The assessee then applied to the Tribunal under Rule 18 on 16th March, 1959, which was rejected on 28th August, 1959. Thereafter he has filed this application on 1st March, 1960, under Rule 18 of the rules. We may state that none of the orders rejecting the applications and appeals for correction have been filed before us, nor has any revision been filed against the order of the Tribunal.

4. The contention of the learned Advocate for the assessee is that under Rule 18, any one of the authorities specified therein can correct an error apparent on the face of the record, committed by the authority, irrespective of the fact whether the authority to whom the assessee applied has made the mistake or not. The determination of this contention would depend on the terms of Rule 18, which is as under:-

18. (1) An assessing, appellate or revising authority may, at any time within three years from the date of any order passed by him, rectify any mistake apparent from the record :

Provided that no such rectification which has the effect of enhancing the assessment shall be made unless the assessing, appellate or revising authority has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing the assessment the assessing authority shall make any refund which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice in Form B appended to the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, and thereupon the provisions of the Act, the said rules and these rules, shall apply as if such notice had been served in the first instance.

(4) Notwithstanding anything contained in Sub-rule (1), rectification of any mistake apparent from the record relating to the year ending 31st March, 1946, shall not be made after the 31st March, 1947, under the said sub-rule.

5. It may be noticed that Sub-rule (1) of Rule 18 specifies, firstly, that it is the assessing, appellate or revising authority who may correct an error, and, secondly, that the rectification of any mistake apparent from the record can be made at any time within three years from the date of the order passed by him. Prima facie it would appear that the rectification of the mistake can only be made by the authority from whose order the mistake is apparent and that the rectification should be within three years from the date of passing the order. Learned advocate for the assessee submits that the phrase "at any time within three years from the date of any order passed by him" does not refer to the order containing the mistake which is sought to be rectified, but an order passed by any of the authorities. In other words, though the mistake may be made by the assessing authority, the three years' period of limitation is to be computed from the date of the final order, either in appeal or revision, as the case may be. If this contention is accepted, it would be tantamount to saying that the assessee has the right to apply within three years to any of the authorities specified therein. If that be so, he can, after the order of the appellate Court or the Tribunal or the High Court, as the case may be, apply to the Commercial Tax Officer for the rectification of the mistake made by the appellate or revising authority, so long as his application is within three years from the date of the final order. Such a construction would lead to absurdity and would deprive the words "by him" of the meaning in the context in which they are used. Where the rule prescribes a locus a qua to be "from the date of any order passed by him", it must necessarily refer to the date of the order of the person by whom the mistake is committed. That, in our view, would be the natural meaning to be given to the requirement of the rule.

6. Learned Government Advocate, Shri Ramachandra Rao, states that the rule when it refers to the authorities, is specific in enumerating them to be the assessing, appellate or revising authority. None of these authorities would comprehend the High Court, as a revision to the High Court forms the subject-matter of a specific provision, viz., Section 12-B of the Madras General Sales Tax Act, 1939. Section 11 provides for appeals from orders passed by the Commercial Tax Officer under the provisions of the Act to an authority as may be prescribed, within 30 days from the date on which the order or proceeding was served on the dealer. In Sub-section (3) of Section 11, such an authority is referred to as the appellate authority. Similarly, Section 12 refers to authorities competent to pass orders in revision, which are the Board of Revenue and other authorities specified therein. Section 12-A deals with appeals to the Appellate Tribunal and Section 12-B to revisions by High Court from orders passed by the Tribunal u/s 12-A, and Section 12-C provides for an appeal to the High Court from the orders passed u/s 12 in revision. He, therefore, contends that under none of these provisions can the High Court be considered to be a revising authority in the sense in which the term is used in Rule 18. It is always open to the High Court to rectify any mistake apparent on the record u/s 152, Civil Procedure Code, in so far as its orders are concerned. In our view, the rule

clearly contemplates the correction of mistakes by the authority which made the mistake or by an appellate or revising authority where the mistake is brought to the Jnotice in appeal or revision. If within three years from the date of the order passed by the authority committing the mistake no application is presented to correct the mistake, no application would lie to correct the mistake by any other authority even though that application may be within three years from the date of the final order of that authority. Since no revision has been filed from an order rejecting the correction of the mistake, this application is incompetent and is accordingly dismissed.