

(1963) 12 AP CK 0003

In the Andhra Pradesh High Court

Case No : S.R. No's. 19315, 19567 and 19632 of 1963

In Re: Kalluri Bheemalingam and Others

Date of Decision : 12-12-1963

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 23

Citation : (1967) 19 STC 116

Hon'ble Judges : P. Satyanarayana Raju, O.C.J.; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : T. Anantha Babu, in S.R. No. 19632 of 1963 and for V. Venkatanarayana Gupta and P. Kameswara Rao, in S.R. No. 19315 of 1963 and S.R. No. 19567 of 1963, for the Appellant; Third Government Pleader, for the Respondent

Judgement

P. Satyanarayana Raju, Offg. C.J.

1. In these matters appeals are sought to be filed by the assesseees, who have been assessed to sales tax, u/s 23 of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") against the orders of the Board of Revenue, whereby the revisions filed by them u/s 20(1) of the Act have been rejected as not maintainable. The office has raised an objection to their maintainability based on the terms of Section 23 of the Act.

2. It is contended by the learned counsel for the assesseees that the orders of the Board of Revenue rejecting the revision petitions filed by the assesseees fall within the ambit of Section 23 of the Act and appeals against such orders would lie to the High Court.

3. The argument of the learned counsel may be summarised thus :- The revision to the Board of Revenue may be irregular or incompetent but still as the Board of Revenue exercises quasi-judicial functions its orders must ex facie indicate that the Board has applied its mind to the various aspects of the case. In exercising its revisional jurisdiction the Board must consider the questions raised before it and also give reasons for its decision.

4. It is contended by the learned Government Pleader, to whom we have given notice, that an appeal lies to this Court u/s 23(1) only where the Board of Revenue has acted suo motu u/s 20(1) and not in cases where its revisional jurisdiction was invoked by an application preferred to it by a party. He has pointed out that from the order of the Deputy Commissioner of Commercial Taxes the assessee could appeal to the Sales Tax Appellate Tribunal and then apply to this Court in revision.

5. For a proper appreciation of these contentions it is necessary to consider the scheme of the Act. The Madras General Sales Tax Act was in operation in the territories which were comprised in the composite State of Madras. Under the provisions of the Andhra State Act, 1953, certain territories comprised in the former composite Madras State were carved into a separate State. The Madras Act continued to govern those territories even after the formation of the Andhra State till the Andhra Pradesh General Sales Tax Act came into force. u/s 12(3) of the Madras Act, the Board of Revenue was empowered to call for and examine the record of any order passed or proceeding recorded under the provisions of that Act by any officer subordinate to it, suo motu or in respect of certain orders, on application. That provision, therefore, divided the manner in which the revisional proceeding could come up before the Board of Revenue into two distinct heads. Sub-clause (i) enabled the Board by itself, without reference to a party to take cognizance of orders passed by subordinate authorities and to exercise revisional jurisdiction over them. Sub-clause (ii) contained another mode in which this revisional jurisdiction could be brought into operation, and that was by an application by a party. u/s 12-C(1) the right of appeal to the High Court was restricted specifically to orders of the Board of Revenue passed suo motu.

6. The Andhra Act has made a departure from the Madras Act by omitting Clause (ii) of Section 12(3), with the result that the power of the Board of Revenue to entertain revision petitions at the instance of the aggrieved parties is omitted. Section 20(1), under which the assessee invoked the revisional jurisdiction of the Board of Revenue, reads as follows :

The Board of Revenue may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including Sub-section (2) of this section, for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such proceeding and may pass such order in reference thereto as it thinks fit.

7. Section 23(1) reads as follows :

Any dealer objecting to an order relating to assessment passed by the Board of Revenue suo motu under Sub-section (1) of Section 20, may appeal to the High Court within sixty days from the date on which the order was communicated to him :

Provided that the High Court may admit an appeal preferred after the period of sixty days aforesaid if it is satisfied that the dealer had sufficient cause for not preferring the appeal within that period.

8. As the provision now stands, the revisional jurisdiction vested in the Board of Revenue can be exercised suo motu only and not on application by a party, and the right of appeal vested in the High Court is confined only to the orders of the Board passed suo motu.

9. Now, Section 19 of the Act provides a right of appeal to any dealer objecting to an order passed or proceeding recorded by any authority under the provisions of the Act to such authority as may be prescribed, within thirty days from the date on which the order or proceeding was served on him. Rule 33 of the Andhra Pradesh General Sales Tax Rules, 1957, prescribes the authorities to which appeals may be preferred. Section 21 provides that any dealer objecting to an order passed or proceeding recorded by any prescribed authority on appeal u/s 19, or by a Deputy Commissioner suo motu under Sub-section (2) of Section 20, may appeal to the Appellate Tribunal within sixty days from the date on which the order or proceeding was served on him. Section 22 provides that the dealer or the authority prescribed in this behalf, may prefer a revision to the High Court against an order of the Appellate, Tribunal on the ground that it has either decided erroneously, or failed to decide, any question of law.

10. From a scrutiny of these provisions it is manifest that while Sections 19 and 21 give a right of appeal to the assessee, the department is not given any corresponding right of appeal. From the scheme of the Act it is plain that Section 20 empowers the Board of Revenue, with a view to safeguard the interests of the revenue, to entertain a revision suo motu. It is, therefore, that Section 23 provides that any dealer objecting to an order relating to assessment passed by the Board of Revenue suo motu may appeal to the High Court.

11. Now, having regard to the specific language employed in Section 23, it is clear that an appeal lies to this Court only in those cases where the matter has been taken up by the Board suo motu and that cases where the assessee has invoked the Board's revisional jurisdiction are not within the class of orders against which appeals lie under that section.

12. Shri T. Anantha Babu, learned counsel for the appellants has, however, urged before us that we should adopt a liberal construction of a provision which enables an appeal to be filed and read Section 23 as including every case where the revisional jurisdiction of the Board has been exercised u/s 20(1). It is further contended by the learned counsel that it is against an order of revision passed by the Board that an appeal is provided for u/s 23 and that the order would be the same and would be arrived at by the same process of reasoning, however the proceedings be initiated.

13. The learned counsel for the appellants has relied upon the decision of the Supreme Court in *Mela Ram & Sons v. Commissioner of Income Tax, Punjab* 1956

S.C.J. 374. Section 30 of the Income Tax Act confers a right of appeal on the assessee. Section 31 provides for the hearing and disposal of the appeal. Section 33 confers a right of further appeal against orders passed u/s 31. The question which arose for decision was whether an order dismissing an appeal as barred by limitation would be an order passed u/s 31. Their Lordships held that "the order of the Appellate Assistant Commissioner refusing to condone the delay and refusing to admit, or rejecting after hearing, an appeal as time-barred, is an order passed in the appeal and must be regarded as an order passed u/s 31 and that an appeal is no less an appeal because it is irregular or incompetent." We are unable to accept the learned counsel's contention that the principle of this decision is applicable to the instant cases. The question here is not whether the rejection of an appeal would amount to an order which is made appealable but whether a right of appeal is given by the statute. It is well-settled that there is no inherent right of appeal; if such a right is not given by the statute, no appeal would lie.

14. The learned counsel has then relied upon the decision of the High Court of Madras in *The Commissioner of Income Tax Vs. Shahzadi Begum alias Luthfunnisa Begum and Others*, There also the question was whether the order of the Appellate Assistant Commissioner rejecting an appeal as time-barred was an order passed u/s 31 of the Income Tax Act. The learned Judges of the Division Bench, Satyanarayana Rao and Rajagopalan, JJ., held that the word "appeal" occurring in Section 31 should not be limited to an appeal which complied with all the requirements of the law and was ripe for consideration on the merits of the order appealed against. The principle of this decision also is not applicable here.

15. The decision of the Orissa High Court in *Commissioner of Sales Tax v. Ramakaran Agarwalla* [1962] 13 S.T.C. 407 Ori has laid down a similar principle that the summary rejection of an appeal would amount to a disposal of the appeal within the meaning of Section 23(2) of the Orissa Sales Tax Act and therefore a second appeal would lie to the Tribunal.

16. The next of the cases relied upon by the learned counsel is *Burmah Shell Co. Ltd. v. Board of Revenue* [1963] 14 S.T.C. 13. There it was held that in disposing of a revision the Board of Revenue exercised quasi-judicial functions and that the order should indicate that the Board had applied its mind to the various aspects of the problem arising for decision. The principle of this decision has no bearing on the present question.

17. As already pointed out, from a consideration of the scheme of the Act and the specific language employed in Section 23, it is manifest that an appeal lies to the High Court u/s 23 only in a case, where the matter has been taken up by the Board suo motu. This was, in fact, the view taken by a Division Bench of the Madras High Court, consisting of Rajagopalan and Rajagopala Ayyarigar, JJ., in *K.V. Kandaswami Gounder and Brothers Vs. The State of Madras*, on a consideration of the provisions of Section 12(3) of the Madras Act, which are in pari materia with the provisions of Section 23 of the Andhra Act. We are in

respectful agreement with the view taken in this decision.

18. We hold that these appeals are not maintainable and they are accordingly rejected. The papers will be returned to the Advocate.