(1982) 11 AP CK 0027

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 43 of 1978

K. Kalappa APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 17-11-1982

Acts Referred:

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

Citation : (1983) 54 STC 180

Hon'ble Judges : G. Ramanujulu Naidu, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : N.K. Acharya, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Ramanujulu Naidu, J.—For the assessment year 1971-72 the petitioner assessee was assessed on a turnover of Rs. 8,00,317.35 at 5 per cent by the Commercial Tax Officer, V Circle, Hyderabad, by his order, dated 28th October, 1972. The said turnover relates to sales of stainless steel wheel discs and wheel caps effected by the assessee.

2. The Deputy Commissioner, Hyderabad Division I, Hyderabad, in exercise of the powers vested in him u/s 20(2) and section 14(4-C) of the A.P. General Sales Tax Act revised the assessment made by the Commercial Tax Officer and assessed the said turnover to tax at 10 per cent holding that the articles sold by the petitioner were accessories to motor vehicles falling under item 1 of the First Schedule to the Act by his order dated 20th October, 1976. The said order having been confirmed by the Sales Tax Appellate Tribunal the petitioner preferred the above revision.

3. That the articles sold by the petitioner were accessories to motor vehicles falling under item 1 of the First Schedule to the A.P. General Sales Tax Act as held by the Deputy Commissioner is not assailed before us. Sri N. K. Acharya, however, submits that the order passed by the Deputy Commissioner revising the assessment after expiry of a period of 4 years from 31st March, 1972, was

barred by time, and that the conclusion reached by the Tribunal that the case of the petitioner would fall u/s 14, sub-section (4-A)(a), is wrong.

4. It may be noted that u/s 14(4) of the Act, where the whole or any part of the turnover of 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 is entitled to revise the assessment. Sub-section (4-A) of section 14 of the Act, as it then stood, reads as follows :

"An assessment or levy under sub-section (4) shall be made :

(a) within a period of six years from the expiry of the year to which the tax, licence fee or registration fee relates, if the event that has occasioned such assessment or levy has occurred on account of the failure of the dealer to disclose the turnover or any of the particulars correctly; and

(b) within a period of four years from the expiry of the year aforesaid, if such event has occurred due to any other cause."

5. It is observed by the Sales Tax Appellate Tribunal that in the return form A-1, the articles sold by the petitioner-assessee were described as stainless steel articles and that there was a failure on the part of the assessee to disclose the particulars of the turnover correctly. It is not denied and in fact the Sales Tax Appellate Tribunal has also noted in its order that during the pendency of the proceedings of assessment the articles sold by the assessee were described as stainless steel wheel discs and wheel caps. In the order of assessment also the description of the articles sold by the assessee was noted as such. It therefore follows that there was no failure on the part of the dealer to disclose the particulars of the turnover in dispute before the assessing authority. It is not required of an assessee that the particulars of turnover should be stated correctly even in the return itself. So long as the particulars of the turnover are stated correctly before completion of assessment, the assessee cannot be visited with the penalty as envisaged under sub-section (4-A) of section 14 of the Act. As already stated and as observed by the sales Tax Appellate Tribunal the assessee did furnish correct particulars of the turnover before the assessing authority during the pendency of the proceedings of assessment. If so, the Deputy Commissioner could revise the assessment only within a period of four years from 31st March, 1972 as prescribed under sub-section 4-A(b) of section 14 of the Act. The order of the Deputy Commissioner revising the assessment having been passed on 20th October, 1976, four years after 31st March, 1972, the said order, we must hold, is barred by time. We accordingly set aside the order of the Sales Tax Appellate Tribunal as also the order of the Deputy Commissioner revising the assessment made by the Commercial Tax Officer and restore the order passed by the Commercial Tax Officer. The tax revision case is accordingly allowed. There shall be no order as to costs. Advocate''s fee Rs. 250.