(1994) 04 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7374 of 1994

Kaki Butchi Raju Son — APPELLANT

Vs

The State of A.P. and Another — RESPONDENT

Date of Decision : 18-04-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 25, 30(1), 32, 32(1)

Citation : (1994) 2 ALT 353

Hon'ble Judges : M.N. Rao, J;B.K. Somasekhara, J

Bench : Division Bench

Advocate : M.V.K. Murthy, D.K.R. Murthy and K. Durgaprasad, for the Appellant;

Final Decision : Dismissed

Judgement

M.N. Rao, J.—The petitioner, a registered dealer under the Andhra Pradesh General Sales Tax Act, by this writ petition, is challenging the legality of the order passed by the Commercial Tax Officer, Peddapuram, the second respondent herein, on 31-12-1991 in O.K. No. 40/91-92 by which that authority has accepted the petitioner''s offer to compound the offence of tax evasion on payment of Rs. 2,822/- and assessed the tax payable by the assessee at Rs. 1,411/- on the suppressed turnover of Rs. 64,160/- detected during the course of inspection on 31-12-1991. The petitioner''s jewellery shop was inspected by the second respondent, the assessing authority, on 31-12-1991, and, during the inspection, he found the following irregularities:

(1) The chitta was written only up to 26-12-1991; "

(2) The ledger was not even commenced;

(3) The stock register was not maintained;

(4) Twenty-three account slips were recovered which disclosed a suppressed turnover of Rs. 48,550/- and the suppressed sales turnover ascertained from stock variation came to Rs. 15,160/-.

On the basis of the above material, the suppressed turnover was determined by the assessing authority as Rs. 64,160/- on which the tax liable to be paid came to Rs. 1,411/- u/s 25 of the Andhra Pradesh General Sales Tax Act, every dealer is enjoined to keep and maintain a true and correct account properly containing the particulars prescribed under the Rules. Non- maintenance of accounts amounts to wilful contravention of the provisions of the Act, an offence punishable under clause (c) of sub-section (1) of Section 30 of the Act. Section 32 of .the Act speaks of composition of offences. It reads:

"COMPOSITION OF OFFENCES: (1) The prescribed authority may accept, from any person who has committed or is reasonably suspected of having committed an offence under this Act, by way of composition of such offence-

(a) where the offence consists of the failure to pay or the evasion of any tax, recoverable under this Act, in addition to the tax so recoverable, a sum of money not exceeding three thousand rupees or double the amount of the tax recoverable, whichever is greater and

(b) in other cases a sum of money not exceeding three thousand rupees.

(2) Any order passed or proceedings recorded by the prescribed authority under sub-section (1) shall be final and no appeal or application for revision shall be there from."

Instead of prosecuting the petitioner, the assessing authority, according to his request for composition, passed the impugned order on 31-12-1991 accepting the amount of Rs. 2,822/- towards composition of the offence and making an assessment on the suppressed turnover.

2. The matter was carried in appeal to the appellate authority unsuccessfully by the petitioner and a second appeal preferred by him to the Sales Tax Appellate Tribunal was also dismissed on the ground that under sub-section (2) of Section 32 an order passed for composition of offence shall be final and no appeal or revision is allowed there from.

3. The present Writ Petition was, therefore, filed challenging the legality of the impugned order dated 31-12-1991. From a reading of the impugned order it is clear that the petitioner has not maintained accounts and from the materials seized during the inspection the conclusion drawn was that the suppressed mrnover was to the extent of Rs. 64,160/-. Failure to maintain correct accounts also is one form of evasion of tax liability under the Act; what would have been the tax payable could be ascertained only with reference to the accounts, correctly and properly maintained. When a dealer has not even maintained the ledger and the stock book and was found in possession of twenty-three account slips and the stock variation disclosed a large variation, no greater proof is required to conclude that the petitioner was indulging in acts of evasion of tax. Clause (a) of sub-section (1) of Section 32 is thus clearly attracted. The assessing authority, therefore, under Clause (a), rightly accepted the petitioner''s

request for composition and determined the tax liable to be paid on the suppressed turnover.

4. Having offered to compound the offence and when the offer was accepted, it is not open to the petitioner to challenge the order passed by the assessing authority. The plea in the affidavit filed in support of the writ petition that the petitioner was forced to admit the lapses alleged is clearly an after-thought. The writ petition, therefore, fails and, accordingly, it is dismissed at the admission stage.

