

(1959) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1312 of 1957 and 195, 196, 214 to 216, 223, 241, 242, 243, 247, 250, 252, 293 to 297, 310, 311, 312, 316, 324, 336, 340, 351, 356, 357, 385, 392 and 422 of 1958

Manepalli Venkatanarayana, Proprietor, Venkateswara
Electrical Rice Mill, Eluru

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 14-04-1959

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 19, 20, 20(2)
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 31(5)

Citation : AIR 1960 AP 171 : (1959) 10 STC 524

Hon'ble Judges : P. Chandra Reddy, C.J.; Srinivasachari, J

Bench : Division Bench

Advocate : M. Krishna Rao, G. Chandrasekhara Sastri, E. Venkatesam, B.V. Subrahmanyam, V.V. Krishnamurthy, K. Ranganathachari and G. Venkatarama Sastri, for the Appellant; P. Ramachandra Reddy, 3rd Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Chandra Reddy, C.J.—All these petitions raise a question relating to the validity of Rule 31 (5) of the Andhra Pradesh General Sales Tax Rules, 1957. They bear on the assessment year 1954-55. The petitioners are proprietors of various rice mills situated in different districts of Andhra Pradesh. They deal in paddy, convert paddy into rice in their mills and sell the resultant rice. For the year 1954-55, they submitted returns showing a particular turnover and they were assessed to tax on those turnovers.

On the basis of some experiments, carried on by the Department, the concerned Deputy Commissioners of Commercial Taxes issued notices to these petitioners in or about December 1957 calling upon them to show cause why they should not be assessed on the escaped turnover under Rule 31 (1) read with Rule 31 (5) of the Andhra Pradesh General Sales Tax Rules. After filing objections before the

Deputy Commissioner of Commercial Taxes raising contentions questioning the jurisdiction of that officer to pursue the course adopted by him, they have filed these petitions for directions to prohibit the authorities from holding the proposed enquiry in pursuance of the notices in question.

2. In support of these petitions, it is urged by the Counsel for the petitioners that what the Deputy Commissioner purports to do is to assess the escaped turnover which he is not competent to do as he is not an "assessing authority" and secondly since the Madras General Sales Tax Act under which the assessment for the relevant accounting year was made had been repealed, it was not competent for the Department to reopen it as the proviso to Section 41 of the Andhra Pradesh General Sales Tax Act (hereinafter referred to as the Act) does not save it.

3. As the main point debated centers round Rule 31, it is convenient to read it here. Rule 31, so far as it is material for the purpose of this enquiry, runs as follows:

"31(1): If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to tax or has been under assessed in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, subject to the provisions of Sub-rule 6, may at any time within four years next succeeding that to which the tax or licence fee relates, determine to the best of his judgment the correct turnover and assess the tax payable on such turn-over, levy the licence fee after issuing a notice to the dealer or licensee and after making such inquiry as he considers necessary.

xx xx xx (4) If for any reason any tax or licence fee has been assessed at too low a rate, in any year, the assessing authority or the licensing authority as the case may be, subject to the provisions of Sub-rule 7 may, at any time within four years next succeeding that to which the tax or licence fee or penalty relates, revise the assessment or the licence fee after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary.

(5) The powers conferred by sub-rules 1 and 4, on the assessing authority or licensing authority may also be exercised by the appellate authority referred to in Section 19 or as the case may be, by the revising authority referred to in Section 20; at any time within a period of four years, next succeeding that to which the tax or as the case may be, the licence fee relates provided that such authority shall give the dealer concerned a reasonable opportunity of being heard before passing orders under this sub-rule." It is seen that Sub-rules 1 and 4 of Rule 31 give powers to the assessing authority to assess the escaped turnover or to correct improper or illegal assessment orders which had levied less or more tax than justified. Sub-rule 5 confers the same powers on the appellate or revisional authority as the case may be. Thus, it is competent for the Tribunals mentioned in Sub-rule 5 to act in the same manner as an assessing authority in the matter

of either effecting a reassessment or correcting improper or illegal assessments etc. by reason of this sub-rule. But the constitutionality of this rule is questioned as being in contravention of the provisions of the Act.

4. In order to appreciate this contention, it is necessary to consult the relevant provisions of the Act. Section 2(b) of the Act defines an "assessing authority" as any person authorised by the State Government or by any other authority empowered by them in this behalf to make any assessment under this Act. So the Act itself does not prescribe the assessing authority but leaves it to the State Government to make the appointment.

In exercise of this power, the Andhra Pradesh Government issued a notification appointing Assistant Commercial Tax Officers, Deputy Commercial Tax Officers and Commercial Tax Officers to exercise the powers of an "assessing authority", the jurisdiction of each depending upon the quantum of turnover to be dealt with by them. It is seen that the Deputy Commissioner of Commercial Taxes is not one of those included in the hierarchy of officials who are to assess the tax. He is only constituted as an appellate or revisional authority as could be seen from Rule 33" of the Andhra Pradesh General Sales Tax Rules and from Section 20(2) of the Act.

5. We will now turn to Section 14(4) of the Act, which contains a provision parallel to that underlying Rules 31 (1) and 31 (4) extracted above. Sub-section (4) of Section 14, omitting the unnecessary portion, runs as follows:

"Where, for any reason, 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 too low a rate, or where the licence fee or registration fee has escaped levy or has been levied at too low a rate, the assessing authority may, at any time within a period of four years from the expiry of the year to which the tax or the licence fee or registration fee relates, assess the tax payable on the turnover which has escaped assessment or levy the correct amount of licence fee or registration fee, after issuing a notice to the dealer and after making such inquiry as he considers necessary."

6. It is plain that the statute gives in express terms the power of re-assessment only to the assessing authority and to no one else, whereas Rule 31(5) does not confine it to such an authority but extends it to appellate or revisional jurisdiction. The crucial question is whether Rule 31(5) is within the rule-making power of the Government. It is contended by the Counsel for the petitioners that the concerned rule is opposed to the terms of the Section and should, therefore, be struck down. This is countered by the learned Government Pleader by the argument that this rule is quite constitutional since the power to make the rule is derived from Section 39 of the Act and that, at any rate, such a power is tractable to Sections 19 and 20 of the Act.

7. Section 19 gives a right of appeal to aggrieved parties. That also de-limits the powers of an appellate authority, while Section 20 invests certain Tribunals with

revisional jurisdiction. To test the soundness of this contention, it is necessary to examine the terms of these two sections. Section 19, omitting the unnecessary portion, is in these words:

"(1) Any dealer objecting to an order passed or proceeding recorded by any authority under the provisions of this Act may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed :

(3) The appellate authority may, after giving the appellant an opportunity of being heard and subject to such rules of procedure as may be prescribed.

(a) confirm, reduce, enhance or annul the assessment or the penalty or both or

(b) set aside the assessment or penalty or both, and direct the assessing authority to pass a fresh order after such further inquiry as may be directed."

8. The argument advanced by the Government Pleader on the basis of Sub-section (3) is that (his subsection enables an appellate authority to reopen the assessment, such a power being implicit in the power to enhance the assessment. We are unable to subscribe to this proposition. The authority to enhance the assessment cannot comprehend an authority to effect a re-assessment. That only connotes that an appellate authority can increase the assessment by way of correcting the original order and cannot convey the idea of reopening the assessment. Sub-clause (a) only empowers the proper Tribunal to correct the order of the assessing authority i.e. he can revise the ultimate computation arrived at by the proper officer.

9. Since the Government Pleader next falls back upon Section 20 of the Act, it is useful to extract it here,

"(1) 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 proceedings and may pass such order in reference thereto as it thinks fit.

(2) powers of the nature referred to, in sub-section (1) may also be exercised by the Deputy Commissioner and the Commercial Tax Officer in the case of orders passed or proceedings recorded by authorities, officers or persons subordinate to them." This section confers revisional jurisdiction upon the Board of Revenue, Deputy Commissioners and Commercial Tax Officers in the case of orders passed or proceedings recorded by officers subordinate to them. It also prescribes the limits within which this jurisdiction could be exercised.

This power is not of such a wide amplitude so as to enable the revising authority to correct assessments based on information subsequently gathered. According to the learned Government Pleader, the revising authority need not confine itself

to the material already on record but could call for fresh evidence and determine the assessment on the strength of it. We find it difficult to assent to this proposition. In our opinion, the legality or the propriety of the order under revision could be judged with reference to the material on record i.e. the entire assessment file upon which the order questioned has been and could be based. But it does not authorise the authority concerned to go beyond the record. The power of revision has to be exercised within the limits specified in that section.

10. Construing Rule 14(2) of the Madras General Sales Tax Act, which is similar to the present Rule 31(5), a Full Bench of the Madras High Court in *State of Madras v. Louis Dreyfus and Co. Ltd.* ILR (1956) Mad 1285: ((S) AIR 1956 Mad 659 remarked;

". .if from a perusal of the record or the assessment files, the revising authority can find that the turnover was before the assessing officer, it is competent for it to pronounce upon, the legality or propriety of the assessment order"

11. The principle enunciated in ILR (1956) Mad 1285: ((S) AIR 1956 Mad 659) was accepted as correct by a Full Bench of the Kerala High Court in *M. Appukutty Vs. The State*, .

12. The Full Bench held that the expression "record of any order passed" meant the records of assessment including the assessment order as well as other files of the assessing authority which form the basis of the assessment order. The learned Judges quashed the order of the Deputy Commissioner of Commercial Taxes which re-determined the net turnover founded on fresh evidence.

13. The decision in *Narayana v. State of Andhra* 1957 I An WR 203: (AIR 1957AP 383) is in consonance with this view. Section 64-A of the Motor Vehicles Act is in pan materia with the provision of law in question. The Only difference between the two provisions is that in the Motor Vehicles Act an order could be revised on the ground of illegality, irregularity or impropriety, whereas under the General Sales Tax Act, only the legality or the propriety of an order could be questioned.

It was laid down, by Chief Justice Subba Rao, who delivered the opinion of the Court, that the section either expressly or by necessary implication did not empower the Government to travel beyond the record. We express our respectful accord with the rule stated in this case. The language of the Section does not lend itself to the interpretation that is sought to be placed upon it by the learned Government Pleader. The section itself sets certain limitations within which that power should be exercised. The revising authority could correct an order of assessment only in the light of the material that was available to the assessing authority.

14. But Rule 31(5) vests much wider power on the appellate or revising authority i.e. all the powers which could be exercised originally by any of the officers envisaged in the notification referred to above. This is repugnant to Sections 19 and 20(2) of the Act since it enlarges the powers of the appellate or revising

authority. It was not therefore competent for the rule-making authority to make the offending rule.

15. The State of Madras v. Madura Knitting Co (1959) 10 S. T. C. 155 is not in any way opposed to this doctrine. The contention there was that the Deputy Commissioner under the Board of Revenue acting u/s 12(2) of the Madras General Sales Tax Act could only correct errors patent on the face of the record and could not probe further into the records, like calling for despatch register and other evidence.

This contention was rejected in the view that that section did not lay down any such limitation. The learned Judges, far from enunciating any proposition in conflict with the principle abovementioned fell in line with it, relying on ILR (1956) Mad 1285 : ((S) AIR 1956 Mad 659). For these reasons we feel that the rule is unconstitutional and must be struck down,

16. There remains the question whether the impugned Rule could be framed u/s 39 of the Act. The clause in that Section that is called in aid is Clause (1), which provides for the framing of rules regarding the duties and powers of officers appointed for the purpose of enforcing the provisions of the Act. This only helps the Government in making rules prescribing the duties and powers of officers for the purpose of enforcing the provisions of the Act and so could bear on the duties allotted to particular officers by the Act. As we have already pointed out, the Act does not assign the duty of making reassessment to the appellate or revising authority. That function is given only to the assessing authority indicated in the notification referred to supra. Therefore, that does not come to the rescue of the Government.

17. It may be mentioned here that Clause (1) of Section 19(2) of the Madras General Sales Tax Act, which conferred power upon the provincial Government to frame rules in respect of any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act" is omitted in the Andhra Pradesh General Sales Tax Act.

Our attention has not been drawn to any other clause in Section 39, which authorises Government to make a rule like the offending one. It follows that Rule 31(5) is ultra vires of the rule-making power of the Government and is, therefore, invalid. Consequently, any action taken in exercise of that rule cannot be sustained. In this view, it is unnecessary for us to go into that matter.

18. An additional point was raised by Mr. B. V. Subrahmanyam in Writ Petitions Nos. 293 to 297 of 1958. It is maintained by him that since the assessment was already revised by competent authority, the Revenue cannot again resort to reassessment by way of revising the order of assessment. This position is not contested by the learned Government Pleader. There is no power in the authorities concerned to exercise this revisional jurisdiction more than once. However this need not detain us any further as we have held that Rule 31(5) is

ultra vires of the rule-making powers of the Government.

19. In the result, the petitions are allowed. There will be no order as to costs.