(1994) 12 AP CK 0039

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 260, 263 and 264 of 1990 and W.P. No''s. 16685, 16686 and 16687 of 1994

Mc. Dowel and Company Ltd. APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:
Andhra Pradesh General Sales Tax (Second Amendment) Act, 1976 — Section 3
Andhra Pradesh General Sales Tax Act, 1957 — Section 22, 24A
Andhra Pradesh Sales Tax Appellate Tribunal Regulations, 1957 — Regulation 2, 21

Citation : (1995) 2 ALT 189

Hon'ble Judges : Syed Shah Mohammed Quadri, J;Avinash Somakant Bhate, J

Bench : Division Bench

Advocate : T. Ananta Babu, Y. Vijoy Shankar and A. Veeraswamy, for the Appellant; Special Government Pleader, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—These three tax revision cases and the writ petitions relate to the same assessee and arose out of the same facts and as such, they a re heard together and are being disposed of by a common order.

2. Before we refer to the questions that arise for consideration in these cases, it would be apt to note the facts of the case which give rise to these cases.

3. The petitioner in the tax revision cases is the petitioner in the writ petitions also. He is an assessee under the Andhra Pradesh General Sales Tax Act, 1957 (for short the State Act) as well as the Central Sales Tax Act, 1956 (for short the Central Act). All these cases relate to the assessment years 1978-79,1979-8()and 1980-81. The question raised in these cases, deals with the eligibility of the sales tax under the Central Act. For the said years, the original orders of assessment were passed on 9-12-1982 and 20-12-1982. The total amount of the tax that was assessed to be paid under the said orders of the assessment is about Rs. 35,00,000/-.Against the said orders of assessment, the petitioner filed appeals before the Appellate Deputy Commissioner. On July 14,

1983, the Appellate Deputy Commissioner remanded the cases to the Assessing Authority with certain directions. After remand, the assessing authority passed fresh orders of assessment on March 28,1984 recording the same amount of tax payable by the petitioner as was found payable under the original orders of assessment. The petitioner again carried the matter in appeals before the Appellate Deputy Commissioner. Those appeals were dismissed on October 28,1985. Aggrieved by the said orders of dismissal of the appeals passed by the Appellate Deputy Commissioner, the petitioner filed three appeals before the Sales Tax Appellate Tribunal, Hyderabad. On 31-01-1990, the Sales Tax Appellate Tribunal allowed the appeals and remanded the cases to the assessing authority for fresh assessment in the light of tine directions given by it. Against this order of the Tribunal, the three revision cases are preferred by the Assessee-Petitioner.

4. As the petitioner did not seek stay of the operation of the order under revision, the assessing authority passed fresh orders of assessment pursuant to the order of the Sales Tax Appellate Tribunal on 18-8-1994, for the said three assessment years. It is the validity of the said orders of assessment that is assailed in the Writ Petitions.

5. Shri Anantababu, the learned Senior Counsel appearing for the petitioner, contends that the order of remand passed by the Tribunal, by specifying two grounds, makes out a new case which was neither the case of the Revenue nor the case of the Assessee and therefore, the said order of remand is wholly illegal. It is further contended that the fresh orders of assessment (impugned orders) were not passed within three years of receipt of the order of the Tribunal by the State Representative and therefore, the impugned order is barred by limitation and as such it is liable to be quashed. It is also contended that no reasonable opportunity was given to the petitioner to make the representation and for this reason also, the impugned orders are liable to be quashed.

6. The case of the State, as argued by the learned Government Pleader, is that the order of the Tribunal is a remand order against which no tax revision case is maintainable; that it is not a case of not providing reasonable opportunity but it is a case of not availing the opportunity provided to the petitioner. It is also submitted that the period of limitation prescribed u/s 24A of the State Act begins to run from the date of receipt of the copy of the order of the Tribunal by the Assessing Authority and not by the State Representative and from that date, the fresh orders of assessment, impugned order in the writ petitions, is well within the period of limitation prescribed under the said provision.

7. We shall first consider the question of maintainability of the Tax Revision cases against the order of remand passed by the Tribunal.

8. Section 22 of the State Act, in so far as it is relevant for our purpose, reads as follows:-

"22. Revision by Special Appellate Tribunal:- (1) Within ninety days from the date on which an order under sub-section (4) of Section 21 was communicated to him the dealer or the authority prescribed in this behalf may prefer a petition to the Special Appellate Tribunal against the order on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law:

Provided that the Special Appellate Tribunal may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall where it is preferred by the dealer, be accompanied by a fee of rupees five hundred.

(3) If the Special Appellate Tribunal, perusing the petition considers that there is no sufficient ground for interfering, it may dismiss the petition summarily.:

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard in support thereof.

(4) to (8) xx xx xx

(N.D.: The words "Special Appellate Tribunal" were substituted for the words "High Court" by Act No. 26 of 1988)

It is now well settled that a revision is maintainable only when it raises a question of law. In Dadi Peda Nooka Raju and Sons Vs. State of Andhra Pradesh, the Appellate Tribunal as well as the Lower Authority found that further investigation was necessary to determine whether the petitioner was liable to be taxed on the transactions in question and for the said purpose, remanded the case. In the said circumstances, a Division Bench of this Court held that the Tribunal had neither decided the question of law erroneously nor had it failed to decide any question of law within the meaning of Section 22 of the State Act and therefore, no interference was called for in the revision.

9. In State of Andhra Pradesh v. Business Forms Limited (1994) 19 APSTJ 22 another Division Bench of this Court laid down that a tax revision case was not maintainable as the High Court could exercise the revisional jurisdiction u/s 22 of the State Act only if the Sales Tax Appellate Tribunal had either decided erroneously or failed to decide any question of law. Having regard to the facts of that case, it was held that the order of remand for ascertaining the factual position could not be said to be an erroneous decision on a question of law, and in that view of the matter, the Tax Revision Case was dismissed. To the same effect is the view expressed by another Division Bench of this Court, to which one of us (Syed Shah Mohammed Quadri, J.) was a member, in its judgment dated 9-11-1994 in T.R.C.No.200 of 1986.

10. For the purpose of deciding the question of maintainability of a revision filed u/s 22 of the State Act, as a general rule, it cannot be laid down that a revision against the order of remand is not maintainable. What has to be seen is whether the order of remand is made for ascertaining or verification of the factual

position, in which case, no question of law arises from the order of the Tribunal and therefore, no revision would be maintainable. If a question of law arises from the order of remand either because the Tribunal decided erroneously or failed to decide a question of law, then certainly, the revision would be maintainable u/s 22 of the State Act.

11. Now reverting to the facts of this case, we may have to examine the order of the Tribunal to decide the question of maintainability of the Revisions. In the order under Revision, the Tribunal found that the first order of remand made by the Appellate Deputy Commissioner on 4-10-1993, had become final and was binding; it further held that the second order of the assessment passed by the assessing authority went beyond the order of remand and that the order of the Appellate Deputy Commissioner passed in the appeal against the said order of assessment on October 28,1985, was illegal and directed remand of the case and framed two points for determination by the assessing authority. They read as follows:-

1. To decide whether as per terms of the contract with the Herbertsons Ltd., there is any provision for transfer of goods outside the State in the Contract and if there is no such contract existing, then on the statement made by the appellants both at the time of filing the appeal in the first instance before the Appellate Dy. Commissioner, and then in the appeal before this Tribunal, the inference is to be drawn that the delivery of goods to M/s Herbertsons Ltd., under the said contract is completed at Hyderabad, when Herbertsons Ltd., has placed an order with the appellant and goods were appropriated to the said contract by delivering the goods to the carrier and therefore to be taxes as an intra-State sale and the delivery at Madras to the purchaser from M/s. Herbertsons Ltd shall have to be treated as delivery by Herbertsons Ltd., to the purchasers at Madras, taxable in the hands of Herbertsons Ltd., as an inter-State sale, as it is clear that the appellants have no responsibility once the goods are delivered to the carriers and even insurance is to be covered by M/s Herbertsons Ltd.

2. The assessing authority shall decide the actual and real consideration between the appellant and M/s Herbertsons Ltd., taking into consideration the different values mentioned in the invoices raised by the appellants in favour of M/s Herbertsons Ltd., as well as the amounts stated by them in the way bills and also the excise duty paid by Herbertsons Ltd., and its includability in the taxable turnover of the appellant, who is the manufacturer of the liquor, after giving an opportunity to the appellants to explain the discrepancy in the turnovers to such a large extent between the two."

12. In so far as the first point is concerned, the contention of the learned Counsel for the petitioner is that as neither the Revenue nor the assessee contended that the transactions in question were intra-State sales, the direction given by the Tribunal to the assessing authority to determine whether the transactions were intra-State sales, was wholly illegal and went beyond the

scope of the appeal and thus the Tribunal erroneously decided a question of law. Without expressing any opinion on this aspect, it has to be observed that this contention is a question of law which arises out of the order of the Tribunal and, therefore, the Tax Revision Cases are maintainable.

13. Now, coming to the merits of the case, in so far as the first direction is concerned, the learned Government Pleader fairly conceded and in our view, rightly, that this direction cannot be supported. In the instant case, none of the parties disputed that the transactions in question are intra-State sales. Both the Revenue as well as the petitioner-assessee proceeded on the premise that the transactions in question are inter-State sales as the sales occasioned the movement of the goods from the State of Andhra Pradesh to the State of Bombay or Madras, as the case may be. As such, it was not open to the Tribunal to direct the assessing authority to consider whether the transactions amounted to intra- State sales. In view of the above position, the first direction given by the Sales; Tax Appellate Tribunal is set aside.

14. The next question that falls for consideration is whether the impugned order, i.e., the fresh order of assessment passed by the assessing authority on 18-8-1994, is barred by limitation.

15. It would be useful to refer here Section 24-A of the Andhra Pradesh General Sales Tax Act.

"Limitation in respect of certain assessments or re-assessments ordered: - Notwithstanding anything in Sections 14 and 20,wherean assessment, reassessment, rectification in or revision of an assessment is made in respect of an assessee of any person, in pursuance or in consequence of or to give effect to any finding or direction contained in an order u/s 19. Section 20, Section 21, Section 22 or Section 23 or in an order of any court. in a proceeding, otherwise than by way of appeal or revision under this Act, such assessment, re-assessment, rectification in or revision of an. assessment shall be made within three years from the date of receipt of such order by the assessing or revising authority, as the case may be".

16. A perusal of the provision extracted above shows that in the event of an assessment, re-assessment, rectification in or revision of an assessment in respect of an assessee or any person made in pursuance of or in consequence of a finding and direction contained in the order passed in an appeal or revision or in an order of Court or in any proceeding, otherwise than by way of an appeal or revision under that Act, the consequential order of assessment or re-assessmentor rectification in or revision of an assessmeat has to be made within three years from the date of receipt of such order by the assessing or revising authority, as the case may be. What is contended by the learned senior Counsel for the petitioner, Mr. T. Anantha Babu, is that receipt of order by the State Representative would amount to receipt of the order by the revising authority. In support of this contention he invited our attention to the definition of State

Representative'' in Regulation 2(xii)and Regulation 21 of the Andhra Pradesh Sales Tax Appellate Tribunal Regulations, 1957. Clause (xii) of Regulation 2 defines the expression ''State Representative'' which reads as under:

" ''State Representative'' means an officer appointed by the State Government to receive on their behalf notices issued by the Tribunal and generally to appeal, act and plead on their behalf in all proceedings before the Tribunal and includes an officer appointed to act on his behalf in his absence".

A perusal of the above definition makes it clear ''State Representative'' is an officer appointed by the State Government to receive on their behalf notices issued by the Tribunal and generally to appeal, act and plead on behalf of the State in all proceedings before the Tribunal and includes an officer appointed to act on his behalf or on behalf of the State Representatives in his absence.

17. Regulation 21 deals with the communication of the order passed by the Tribunal and reads thus:

"Communication of the Order: The Tribunal shall communicate the order to the party, the State Representative, the authority against whose order the appeal was preferred, the concerned Deputy Commissioner and the Board of Revenue".

What all this Regulation says is that the Tribunal shall communicate the order to the party, the State Representative, the authority against whose order the appeal was preferred, the concerned Deputy Commissioner and the Board of Revenue.

18. Section 24-A of the Andhra Pradesh General Sales Tax Act was inserted by Section 3 of the A.P.G.S.T.(Second Amendment) Act, 1976 (Act 49 of 1976) with effect from 1-9-1976. As on that date the Sales Tax Appellate Tribunal Regulations of 1957 were in force and it cannot be said that the Legislature has no knowledge of the said regulation under which the Tribunal is bound to communicate the order to the State Representative. Had the Legislature so intended, it would have made receipt of the order of the State Representative as the date from which the limitation should commence. Instead it had chosen to prescribe that the limitation would began to run from the date of receipt of the order by the assessing or the revising authority. The intention of the Legislature in prescribing the period of limitation and prescribing the date from which the limitation should run as the date of receipt of the order by the assessing authority would negative the contention raised by the learned Counsel for the petitioner that the date of receipt of the order by the State Representative should be treated as the date from which the limitation has to be counted for the purpose of Section 24-A. Therefore, in our view, the limitation has to be counted from the date on which the order was received by the assessing authority. In the instant case the order was passed by the Tribunal on 31-1-1990. That order was served on the State Representative on June 26,1990. He in turn sent the order to the assessing authority who received the same on August 20,1991. There is no doubt that there is an abnormal delay in the State Representative communicating the order to the assessing authority. But having regard to the wording of Section

24-A, the date of receipt of a copy of the order by the assessing authority is the only relevant date for the purpose of counting the limitation. If the Limitation is counted from that date, admittedly the order passed by the assessing authority on 18-8-1994 is within limitation. Therefore, the impugned order cannot be said to be barred by limitation and for that reason, is not illegal and without jurisdiction.

19. Now we are left with the question whether the second direction given by the Tribunal is sustainable in law.

20. The Tribunal pointed out that there was difference in the amounts noted in the way bills as well as in the invoices and for that reason directed the assessing authority to decide as to what the actual and real consideration was between the appellant and the Bombay party and for that purpose it directed the assessing authority to take in to consideration the different values mentioned in the invoices raised by the petitioner in favour of the Bombay party as well as the amounts stated in the way bills and also to consider whether the excise duty paid by the Bombay party was includable in the taxable turnover of the petitioner who is manufacturer of liquor. For that purpose, it directed that opportunity be given to the petitioner to explain the discrepancy in the turnover. We do not find any illegality in the said direction of the Tribunal to warrant our interference in these revisions.

21. In the result, the order of the Tribunal in so far as it relates to the first direction, is set aside and consequently the impugned orders of fresh assessment passed by the Commercial Tax Officer are quashed. The Commercial Tax Officer-respondent No. 2 is directed to issue show-cause notice to the petitioner, giving a period of two weeks from the date of service of notice to file their explanation with regard to the discrepancies in the amount and also objections as to why the excise duty paid by Bombay party should not be included in the taxable turnover. If the explanation is filed within the said period of two weeks, we direct the C.T.O. to consider the same and pass appropriate orders of fresh assessment in accordance with the conclusions arrived thereon. Writ Petitions are accordingly allowed and Tax Revision cases are partly allowed. There shall be no Order as to costs.

