

(1994) 04 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4099 of 1994

Mysore Breweries Limited

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 04-04-1994

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 19, 20, 20(1)
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 44

Citation : (1994) 2 ALT 309 : (1994) 95 STC 364

Hon'ble Judges : S.S. Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Advocate : M.V.K. Moorthy, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner is the manufacturer of beer and a dealer within the meaning of the A.P. General Sales Tax Act, 1957 (for short "the Act"). An order of assessment was passed by the Commercial Tax Officer on April 20, 1993. He preferred an appeal against that order of assessment before the Appellate Deputy Commissioner, Guntur. By order dated May 6, 1993, the appeal of the petitioner was allowed by the appellate authority. Purporting to exercise his power u/s 20 read with rule 44-A of the Andhra Pradesh General Sales Tax Rules (for short "the Rules") the Commissioner of Commercial Taxes, the second respondent herein, issued show cause notice as to why the order of the Appellate Deputy Commissioner, Guntur, passed on May 6, 1993, should not be revised. This gave provocation to the petitioner for filing this writ petition prying this Court to issue appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the rule 44-A of the Rules to the extend of making Appellate Deputy Commissioner acting u/s 19 as subordinate to Joint Commissioner and Commissioner of Commercial Taxes for the purpose of exercising revisional power u/s 20 of the Act as illegal, arbitrary and unconstitutional.

2. Dr. Moorthy, the learned counsel for the petitioner, submits that the power u/s 20 read with rule 44-A cannot be so exercised so as to make the order of the judicial authority passed in appeal, ineffective. He further submits that rule 44-A is illegal. He elaborates his contention by submitting that in so far as the order of the appellate authority is concerned that cannot be stated on the anvil of "prejudicial to the interest of State revenue" so as to set aside that order. The learned Government Pleader for Commercial Taxes submits that the order passed by the appellate authority u/s 19 is an order passed by the statutory quasi-judicial authority and is not a judicial order; the power u/s 20 of the Act under which an authority named in the Rules is empowered, is a revisional jurisdiction so the contention is not correct.

3. In our view the submission made by Dr. Moorthy, the learned counsel for the petitioner, cannot be accepted. Against the order of assessment an appeal is provided u/s 19, to such authority as may be prescribed (here prescribed means prescribed under the the Rules). The Appellate Deputy Commissioner is prescribed as the appellate authority u/s 19. Section 20 which is relevant for our purpose reads as follows :

"20. Revision by Commissioner of Commercial Taxes and other prescribed authorities. - (1) The Commissioner of Commercial Taxes 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 and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as it thinks fit."

4. Rule 44-A of the Rules is in the following terms :

"44A. For the purpose of the exercise of the powers of the nature referred to in sub-section (1) of section 20 the authorities specified in column (1) of the Table below shall be deemed to be subordinate to the authority specified in the corresponding entry in column (2) thereof.

TABLE -----	(1) (2)
-----	1. Joint Commissioners, Deputy Commissioner of Commissioners (including Commercial Taxes. Appellate Deputy Commissioners), Assistant Commissioners, Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers. 2. Deputy Commissioners including Joint Commissioner Appellate Deputy Commissioners, (Commercial Taxes). Assistant Commissioners, Legal. Commercial Tax Officers, Deputy Commercial Tax Officers and Assistant Commercial Tax Officers. 3. Assistant Commissioners, Commercial Deputy Commissioner Tax Officers, Deputy Commercial Tax (Commercial Taxes) Officers and Assistant Commercial of the division Tax

Officers. concerned. 4. Deputy Commercial Tax Officers Commercial Tax and Assistant Commercial Tax Officers of the Officers. area concerned".

5. From a perusal of the Table extracted above it is evident that so far as Appellate Deputy Commissioner is concerned, the revisional authority u/s 20(1) against his order, would be Commissioner of Commercial Taxes. Notice issued u/s 20(1) is issued by the second respondent, therefore, it is in accordance with the rules. This does not, however, resolve the dispute. The contention of Dr. Moorthy is that the effect of the judicial order was taken away by the revisional authority u/s 20(1) read with rule 44-A as any order prejudicial to the interest of State revenue will have to be set at naught by the revisional authority. We are afraid we can not agree with the contention put forth by the learned counsel. From a reading of section 20(1), it is clear that the authorities have to be, prima facie, satisfied that the order which was proposed to be revised is "prejudicial to the interest of the revenue". That is a satisfaction to be reached at the threshold, viz., at the time of invoking the jurisdiction u/s 20(1). After the revisional jurisdiction is invoked, the revisional authority has to make further enquiry or cause such an enquiry to be made subject to the provisions of the Act and initiate proceedings to revise, modify or set aside such order or proceedings and decide the case in accordance with law. Such enquiry will be after notice and after giving opportunity of being heard to the affected party. The matter will have to be decided on merits of each case. It would be erroneous to assume that without reference to the merits of the case, all orders passed on appeal in favour of the assessee will have to be reversed by exercising revisional jurisdiction u/s 20 of the Act irrespective of the merits of the case. Neither is such a power conferred by section 20 on the revisional authority nor can such a power be inferred from the said provision. The scheme of the Act provides appeal against the order of assessment and a revision against the order of the appellate authority, under specified circumstance, which is neither illegal nor unconstitutional.

6. Dr. Moorthy, relied upon two judgments in V. K. Uchal v. Commissioner of Commercial Taxes, Mysore [1967] 20 STC 67 (Mys) and S.S. Muddanna Vs. State of Karnataka, . In our view those judgments are not relevant to the issue in the writ petition.

7. For the above reasons we do not find any merit in the writ petition which is accordingly dismissed. No costs.

8. Writ petition dismissed.