(1983) 02 AP CK 0009

In the Andhra Pradesh High Court

Case No : T.R.C. No''s. 19 and 20 of 1980

N. Nagendra Rao and Co. APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 22-02-1983

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 14(2), 14(3), 14(4)

Citation : (1984) 55 STC 243

Hon'ble Judges : Punnayya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; The Government Pleader, for the Respondent

Judgement

Jeevan Reddy, J.

1.These two tax revision cases are preferred against the common order of the Sales Tax Appellate Tribunal. The assessment year concerned is 1962-63. The petitioner is a dealer in fertilisers and cement. On 19th July, 1963, his premises were inspected and certain incriminating material was seized. For the said assessment year, the total turnover was determined at Rs. 4,05,520 which included the turnover added on the basis of the seized material. Penalty was levied at one and half times the tax, which was the maximum permissible as the law then stood. The petitioner preferred two appeals which were allowed and the matter remanded for further enquiry. On this occasion, a partial relief was granted to the petitioner according to which the tax payable came to Rs. 2,913.00 and the penalty thereon, at one and half times, to, Rs. 4,386. The petitioner again appealed to the Assistant Commissioner who, by his order dated 16th January, 1970, partly allowed the appeals. He reduced the tax by Rs. 246 and the penalty was also correspondingly reduced. No appeal was preferred by the department; only the assessee filed appeals to the Tribunal.

2. It is unnecessary to mention the several facts and events that took place thereafter. Suffice it to say, that in the order under revision, the Tribunal

dismissed the appeals. Of the two T.R.Cs., one pertains to the assessment and the other to the levy of penalty.

3. Shri S. R. Ashok, the learned counsel for the petitioner, contended in T.R.C. No. 19 of 1980 that the Tribunal has ignored the partial relief which was granted by the first appellate authority by its order dated 16th January, 1970, and that, in any event, the relief so granted cannot be ignored or excluded from consideration. We find that this contention has to be given effect to. Accordingly, the tax payable gets reduced to Rs. 2,667.

4. In so far as the levy of penalty is concerned, the learned counsel for the petitioner submitted that the assessing authorities have levied the maximum penalty without recording a finding that the petitioner''s conduct or attitude before the authorities was contumacious and wilful. According to the law as it then stood, no distinction was made between a wilful suppression and a failure to disclose which is not wilful. Section 14(4) of the Andhra Pradesh General Sales Tax Act which is the provision providing for levy of penalty at the relevant time read as follows :

"14. (4) 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. Such authority may also direct the dealer to pay in addition to the tax so assessed, a penalty not exceeding one and half times the amount of that tax, if the turnover had escaped assessment or had been under-assessed or assessed at too low a rate by reason of its not being disclosed by the dealer :

Provided that before issuing any direction for the payment of any penalty under sub-section (2), sub-section (3) or sub-section (4), the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the information, and make such enquiry as he considers necessary."

5. It must however be remembered that in determining the quantum of penalty, the conduct and the attitude of the assessee are relevant. The levy of penalty and that too, at the maximum rate is not automatic nor a matter of course.

6. In view of the fact that there is no finding of wilfulness or contumaciousness on the part of the petitioner, we are of the opinion that the interests of justice would be served by reducing the penalty to half the amount of tax, viz., Rs. 1,333.

7. T.R.C. Nos. 19 and 20 of 1980 are partly allowed. No costs. Advocate''s fee Rs.

250 (Rupees two hundred and fifty only) in each.

