
(1977) 11 AP CK 0008

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No"s. 20 and 21 of 1977

N. Nagendra Rao and Company

APPELLANT

Vs

State of A. P.

RESPONDENT

Date of Decision : 01-11-1977

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 21(9), 22(4)

Citation : (1978) 42 STC 194

Hon'ble Judges : S. Obul Reddi, C.J.;Chennakesav Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

S. Obul Reddi, C.J.—In these two revision cases, we are not concerned with their merits as it is Mr. S. Dasaratharama Reddi's contention that the present Bench of the Tribunal cannot sit in judgment over an order made by an earlier Bench.

2. To appreciate the question raised by the learned counsel for the petitioner, a few relevant facts may be stated. The petitioner preferred two appeals, Tribunal Appeals Nos. 593 and 594 of 1971 before the Sales Tax Appellate Tribunal. A Bench of the Tribunal consisting of the Accounts Member and Departmental Member did not go into the merits of the appeals on the ground that they were satisfied that the Assistant Commissioner was not justified in disposing of the appeals in the manner he did. After quoting the relevant portion of the order of the Assistant Commissioner, the Tribunal observed :

As an appellate authority he ought to have found a way of enforcing his superior authority and insisted upon the subordinate officer carrying out his instructions, by submitting the report called for by him. It is unfortunate that, instead of exercising the powers vested in him under law, he had to dispose of the appeal in that manner, which is really prejudicial to the appellants.

3. In that view, after referring to the observations of the Supreme Court in The

Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, the Tribunal remitted back the matter to the Assistant Commissioner for disposal afresh in accordance with the directions given by it. On remand, it is evident from the order of the Assistant Commissioner that there is no reference at all to the report which the Appellate Tribunal directed him to obtain from the Commercial Tax Officer. There is also nothing to indicate from the order of the Assistant Commissioner that he had the report with him and he considered that report and made the order dismissing the two appeals preferred against assessment and penalty. In fact, the present Bench of the Tribunal which heard the two appeals, Appeals Nos. 684 and 743 of 1974, after the remand observed that "after the remand of the matter by the Sales Tax Appellate Tribunal, the Assistant Commissioner passed a laconic order without making any reference to the order of remand made by the Tribunal". The Tribunal also observed in the course of the impugned order: "No useful purpose is going to be served to call for the so-called report, in the sense, that no new and fresh material will be available as all the required material in abundance is available in the orders of both the assessing authority dated 31st August, 1965 and the first appellate authority dated 16th January, 1970. There is no necessity to call for any such report as we have before us ample evidence, clear material and the wellconsidered reports of the assessing authority dated 31st August, 1965 and the Assistant Commissioner dated 16th January, 1970, for effective disposal of the appeal.

4. When once a competent appellate forum remands a case back to its lower authority with certain directions, those directions have to be complied with. It may be in the view of the present Bench of the Tribunal, the report called for by the previous Bench of the Tribunal was not really necessary. But, it is not the individual opinion of the successor-Tribunal that matters. At the time of hearing of the appeals, what the Tribunal should have addressed itself was whether the directions given earlier in regard to the same appeals by the Tribunal, though the members constituting the Tribunal at that time were different, were complied with by the Assistant Commissioner. Indisputably, the directions given by the Tribunal were not complied with by the Assistant Commissioner. Change of personnel of the Tribunal cannot affect the decisions remanded by the Tribunal. Because of change of persons, the Tribunal cannot ignore what it itself directed on the ground that such a direction was not necessary. The question is not whether any useful purpose is going to be served but whether the direction given by the Tribunal has been obeyed or not. The Tribunal should have asked the Assistant Commissioner to forward the report if he had received one such from the Commercial Tax Officer or asked the Commercial Tax Officer to submit the report to it so that the two appeals could have been disposed of taking into consideration the report directed to be submitted. Section 21(9) of the Andhra Pradesh General Sales Tax Act lays down that "every order passed by the Appellate Tribunal under Sub-section (4) shall, subject to the provisions of Section 22, be final". The order of remand with certain directions given by the earlier Tribunal was final so far as the Tribunal was concerned. The Tribunal,

therefore, was in error in observing that no useful purpose would be served by calling for the report which the earlier Bench of the Tribunal felt was necessary and disposing of the matter on the ground that there is ample material on record. We, therefore, set aside the order of the Tribunal and direct the Tribunal to rehear the appeals on receipt of the report either from the Assistant Commissioner or from the Commercial Tax Officer which was called for by the earlier Bench of the Tribunal. If the report is already on record, the question of calling for a report does not arise. A copy of the report may also be furnished to the assessee so that he may have an opportunity to put forth his defence. Subject to the directions given above, the impugned order of the Tribunal is set aside, but with no order as to costs. Advocate's fee Rs. 200 in each.