(1988) 03 AP CK 0031

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 3 of 1985

Nagabandi Mallaiah APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 30-03-1988

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

Citation : (1988) 70 STC 160

Hon'ble Judges : Y.V. Anjaneyulu, J;G. Ramanujulu Naidu, J

Bench : Division Bench

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

Judgement

Ramanujulu Naidu, J.—The petitioner was assessed to sales tax on a turnover of Rs. 1,41,575 by the Commercial Tax Officer, Warangal, by this order dated 16th February, 1968. The order of assessment was to the best of judgment of the assessing authority after rejecting the turnover declared by the petitioner. Later, the successor of the assessing authority served a notice on 5th August, 1970 on the petitioner calling upon him to show cause as to why penalty should not be levied on him u/s 14(2) of the Andhra Pradesh General Sales Tax Act, 1957 ("the Act", for short) on the ground that the entire taxable turnover was not disclosed by the assessee in his returns. The petitioner submitted his reply on 12th August, 1970. The reply did not find acceptance with him. He, therefore, levied penalty in a sum of Rs. 5,232.15 by his proceedings dated 31st March, 1971. The petitioner unsuccessfully challenged the same before the Assistant Commissioner of Commercial Taxes, Hyderabad, and also before the Sales Tax Appellate Tribunal, A.P., Hyderabad.

2. The only question urged before us is that any penalty u/s 14(2) of the Act can only be levied by the assessing authority while making the assessment to the best of his judgment and not thereafter. The language employed in section 14(2) of the Act admits of no doubt and empowers the assessing authority to levy

penalty while making the assessment to the best of his judgment. The expression, "while making the assessment", leaves no doubt in our mind that the very same authority, who makes an order of assessment to the best of his judgment, should derive satisfaction that the assessee did not disclose the entire taxable turnover and that penalty should be levied, simultaneously. As in the instant case the order of assessment was completed on 16th February, 1968 by the Commercial Tax Officer, Warangal, the order passed by the Additional Commercial Tax Officer, Warangal, levying penalty on 31st March, 1971 pertaining to the same assessment year is bad and without jurisdiction. The conclusion of the Tribunal is manifestly erroneous. We, therefore, quash the order of the Tribunal as also the orders of the Additional Commercial Tax Officer, Warangal and the Assistant Commissioner of Commercial Taxes, A.P. Hyderabad. The T.R.C. is accordingly allowed. No costs. Advocate''s fee Rs. 250.

3. Petition allowed.

