

**(1961) 06 AP CK 0002**  
**In the Andhra Pradesh High Court**  
**Case No : T.R.C. No. 65 of 1960**

Pallapothu Sarveswara Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

**Date of Decision :** 16-06-1961

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4)

**Citation :** (1961) ALT 911 : (1962) 13 STC 122

**Hon'ble Judges :** P. Chandra Reddy, C.J.;Jaganmohan Reddy, J

**Bench :** Division Bench

**Advocate :** B. Bheemaraju, for the Appellant; The Third Government Pleader, for the Respondent

**Final Decision :** Allowed

## **Judgement**

Chandra Reddy, C.J.—This revision case raises an interesting question of law bearing on Section 14(4) of the Andhra Pradesh General Sales Tax Act, 1957.

2. The petitioner is a dealer in paddy and rice. The final assessment was made for the year 1956-57 by the Deputy Commercial Tax Officer, Bandar. The assessee presented an appeal against this assessment to the Deputy Commissioner of Commercial Taxes, Guntur. Pending the appeal the Special Staff (Evasions) made a surprise inspection of the business premises of the petitioner and seized some incriminating accounts which disclosed suppression of a turnover of Rs. 69,070-5-0 of which a sum of Rs. 35,958-3-0 was liable to tax at Rs. 1-9-0 per cent, and the remaining turnover at Rs. 3-2-0 per cent. Consequently, the appellate authority assessed the appellant on an additional turnover of Rs. 69,070-5-0 as revealed by his order dated 5th June, 1958, in Appeal No. 596 of 1957-58. The petitioner did not carry this matter in appeal and the additional assessment had become final.

3. Subsequently, a notice was issued on 19th February, 1959, by the Deputy Commercial Tax Officer, Bandar, calling upon the petitioner to show cause why he

should not be subjected to a penalty of Rs. 2,395. In reply, the petitioner admitted the suppression but added that it was due to some inadvertent mistake. Disbelieving this plea, the Deputy Commercial Tax Officer levied the penalty, which is now the subject-matter of this revision. The petitioner carried appeals unsuccessfully to the Deputy Commissioner of Commercial Taxes and the Sales Tax Appellate Tribunal.

4. In this revision case, the main argument pressed upon us by Dr. Bheemaraju, learned counsel for the petitioner, is that as the Deputy Commissioner of Commercial Taxes had no jurisdiction to make an additional assessment in the course of the enquiry into an appeal preferred by the assessee, any penalty based upon the additional assessment is invalid and cannot be enforced. We do not think that it is necessary for us to go into this question, as the revision can be disposed of on a shorter ground. That ground is apparent on a perusal of the relevant provision of the Andhra Pradesh General Sales Tax Act, 1957, namely, Section 14(4). That section reads as follows :-

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 underassessed 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 ;

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5. This section empowers the assessing authority to assess the escaped turnover in the contingencies contemplated by that section.

6. The question for consideration is whether the authority other than that which has made the additional assessment can impose a penalty as envisaged by the sub-section referred to above. The answer, in our judgment, is in the negative. This is clear from the language of the latter half of the sub-section, namely,

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.

7. To our minds, the expression "such authority" has relation only to the authority which has made the additional assessment. This concept is brought out more forcefully in the clause "direct the dealer to pay in addition to the tax so

assessed, a penalty not exceeding etc." This indicates that the assessing authority could direct the penalty to be, paid besides making the additional assessment. It appears to us that the making of additional assessment and the levy of penalty are involved in the same proceeding. The reason why the same authority should do both is obvious. It is only the authority that makes the additional assessment that is in the best position to judge whether the case requires the levy of penalty. He should exercise his mind about it and come to a conclusion whether the imposition of penalty is called for in that case. We feel from the language of the section that the conclusion is inevitable, that only the assessing authority, who has assessed the escaped assessment, that is competent to levy the penalty. Since the penalty in the present case was levied by an authority other than the one who made the additional assessment, it could not be sustained. Therefore the order levying the penalty has to be set aside as being outside the competence of the Deputy Commercial Tax Officer.

8. In the result, the tax revision case is allowed. There will be no order as to costs.