(1971) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2829 of 1970

Parasuram Bickchand APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 12-10-1971

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(2), 14(4), 14(8)

Citation : (1973) 30 STC 363

Hon'ble Judges : Vaidya, J;Sriramulu, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, for the Appellant; Fifth Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Vaidya, J.—The assessment u/s 14(4) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act"), in respect of the petitioner-firm for the assessment year 1962-63, was completed by the Commercial Tax Officer, Cuddapah, on 16th March, 1969. After completing the aforesaid assessment, he issued a notice u/s 14(8) of the Act, for levy of penalty, on 17th September, 1969. The petitioner-assessee objected before the Commercial Tax Officer that the notice in question having been issued six years after the close of the assessment year, for which the assessment has been made, was invalid. The Commercial Tax Officer rejected this contention of the petitioner, and levied penalty.

2. It is contended by the learned counsel for the petitioner that when a levy is made under Sub-section (4) of Section 14 of the Act within a period of six years from the expiry of the year to which the tax relates, if the event that has occasioned such assessment or levy has accrued on account of the failure of the dealer to disclose the turnover or any of the particulars correctly, the proceedings for levy of penalty also should be initiated within the said period, and as the proceedings in the instant case have not been initiated within a period of six

years, which expired on 31st March, 1969, the notice is invalid. In support of this contention, reliance is placed on a Division Bench decision of this court in The State of Andhra Pradesh Vs. Rikabchand Siremal and Co. and Others, In that case, the question for consideration before the learned Judges was, whether the penalty proceedings u/s 14(2) of the Andhra Pradesh General Sales Tax Act should commence within a period of four years, prescribed for making the best judgment assessment u/s 14(1) of the Act. The learned Judges answered that question in the affirmative; they did not consider whether the penalty should be levied simultaneously with the making of the best judgment assessment. The principle that is applicable for levy of penalty under Sub-section (2) of Section 14 also applies to the levy of penalty u/s 14(4) of the Act. In view of the decision referred to above, we hold that the proceedings for levy of penalty u/s 14(4) of the Act also have to be initiated within, a period of six years prescribed for making the best judgment assessment u/s 14(4). As admittedly, the notice has been issued after the period of six years had elapsed, it is held that the notice is invalid. In the result, the writ petition is allowed with costs and the notice in question is quashed. Advocate''s fee Rs. 100.

