
(1977) 11 AP CK 0002

In the Andhra Pradesh High Court

Case No : T.R.C. No's. 35 to 38 of 1977

RAMU and CO.

APPELLANT

Vs

STATE OF ANDHRA PRADESH.

RESPONDENT

Date of Decision : 08-11-1977

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 16(3), 34

Citation : (1978) 1 APLJ 400 : (1978) 7 CTR 122

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

Bench : Division Bench

Judgement

S. Obul Reddi, C.J. - These 14 revisions are directed against a common order made by the Sales Tax Appellate Tribunal in Tribunal Appeals Nos. 271, 281, 282, 283, 284, 320, 321, 322, 323, 324, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 387, 388, 419, and 451 of 1976, dt. 3rd June, 1977. Two questions have been raised by Mr. P. Venkatarama Reddy, learned counsel for the petitioners; (1) that in case of provisional assessments made beyond the year, interest demanded in respect of such provisionally assessed tax is without the authority of law, and (2) that even in respect of provisional assessments made within the year, interest cannot be calculated and collected in respect of such assessments after the close of the assessment year.

2. To determine the questions raised by the learned counsel for the petitioners, a few facts may be stated. The petitioner are all dealers in jaggery at Anakapalli. They submitted returns for the preceding months in Form No. A-2 as required under rule 17 of the A.P. General Sales Tax Rules. Along with the returns, they also filed proofs of payment of full amount of the tax due on or before the 25th day of every month showing the total and net turnovers for the preceding months. As the petitioners failed to comply with the provisions of rule 17, the Commercial Tax Officer, Anakapalli, passed provisional assessment orders and issued demand notices in Form B-2 directing them to pay the tax assessed, within 30 days from the date of service of notice. In March, 1976, the

Commercial Tax Officer demanded, by his notices served upon them interest at the rates provided in S. 16(3) of the Andhra Pradesh General Sales Tax Act on the tax assessed. It is demand of interest that has been the subject matter of the appeals before the Tribunal and revisions here.

3. To determine the questions, it would be necessary to notice Ss. 15 and 16, and rule 17 to the extent relevant S. 15 reads :

"15 Provisional Assessment of tax :

(1) The tax payable under this Act for each year may be provisionally assessed in advance during the year in monthly or other prescribed instalments on the basis of estimated or actual turnover of the dealer, and for that purpose a dealer may be required to submit a return of periodical returns of estimated or actual turnover in such manner as may be prescribed.

(2) If the assessing authority has reason to believe that the provisional assessment for any period was made on too low a turnover or at too low a rate or on too high a turnover or at too high a rate, he may enhance or reduce, as the case may be such provisional assessment.

Provided that before making an enhancement of the provisional assessment as aforesaid the assessing authority shall except where such enhancement is based on the turnover finally determined for the preceding year, issue a notice thereof to the dealer and make such enquiry as he considers necessary.

(3) The tax provisionally assessed may be levied and collected in advance, during the year in monthly or other prescribed instalments.

Sec. 16(3) reads :

"If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified therefore in the notice of assessment or in the order permitting payment in instalments, the dealer shall pay in addition to the amount of such tax or instalment, interest at the rate of -

(a) half a per cent of such amount, for each months or part for the first three months after the date specified for its payment :-

(b) one per cent of such amount, for each months or part thereof subsequent to the first three months aforesaid".

Rule 17 reads :

"17(1) Every dealer whose total turnover in a year exceeds Rs. 50,000/- shall submit so as to reach the assessing authority on or before the 25th day of every month a return in Form A-2 showing the total and net turnover for the preceding month. Along with the return he shall submit a receipt form a Government treasury or a crossed demand draft in favour of the assessing authority for the full amount of tax or taxes payable for the months to which the return relates "under Ss. 5, 5-A, 6-A of 11" or notified under sub-S. (1) S.9;

Provided that in a case where a dealer intends to pay the tax through a crossed cheque, the cheque should be sent so as to reach the assessing authority on or before the 15th day of the month succeeding the month to which the tax relates.

(2) The returns so filed shall, subject to the provisions of sub-rule (4) be provisionally accepted.

(3) Where any dealer fails to submit a return in respect of any month before the date prescribed in that behalf or produces the accounts registers and other documents, after inspection or submits a return subsequent to the date of inspection, or if the return submitted appears to be incorrect or incomplete, the assessing authority shall after following the procedure prescribed in rule 12 determine the turnover to the best of his judgment and provisionally assess the tax or taxes payable for the month and shall serve upon the dealer a notice in Form B-2 and the dealer shall pay the sum demanded within the time and in the manner specified in the notice."

As may be seen from Rule 17, the petitioners, as their turnover in a year exceeded Rs. 50,000/- filed monthly returns in Form A-2 showing the total and net turnover for the preceding months. They had also submitted along with the returns receipts from the Government treasury in proof of the full payment of tax payable for the month to which the returns related. Sub-rule (5) of Rule 17 enables the assessing authority after the close of the year for which the monthly return has been filed, to finally assess in a single order on the basis of the returns, the tax or taxes payable by them. Sub-rule (5) deals with final assessment to be made by the assessing authority on the basis of the returns filed by the assessee in Form A-2.

4. S. 15 falls for interpretation. According to Mr. Venkatarama Reddi, the language employed by the Legislature in S. 15 is such that it leaves no option to the assessing authority but to make provisional assessment after the close of the year. According to him, the words "during the year" occurring in sub-S. (1) of S. 15 make it abundantly clear that the provisional assessment should be made by the assessing authority within that year and that it is not open to him to make assessment on the basis of the estimated turnover after the expiry of the year. According to him, after the close of the year, the assessing authority is only competent to make the final assessment and not the provisional assessment on the monthly returns submitted by the dealer in Form A-2.

5. We are unable to agree with the interpretation sought to be placed by the learned counsel for the petitioner that "year", as defined in S. 2(u) means the twelve months ending on the 31st day of March. Under the Rule 17(1) a dealer has to file the monthly return in form A-2 showing the total and net turnover of the preceding month before the 25th day of every month; for instance, the monthly return in Form A-2 for the month of March showing the total and net turnover could only be filed before the 25th day of April. If we are to agree with Mr. Venkatarama Reddi that the provisional assessment on the monthly return for

the month of March should be made before the end of March, it would be impossible to make provisional assessment of the tax on the monthly turnover on the basis of the estimated or actual turnover of the dealer as submitted by him in Form A-2. The words "during the year" on which emphasis has been laid by the learned counsel for the petitioners, are not to be understood as "within the year". These words refer to the provisional assessment to be made for that year on the basis of the estimated or actual turnover of the dealer shown in Form A-2. It is to enable the dealer to pay the tax in monthly or other prescribed instalments that this provision has been introduced by the legislature. Sub-S. (2) of S. 15 also gives a clue as to the meaning to be given to the words "during the year" occurring in sub-Ss. (1) and (3) of S. 15. Sub-S. (2) empowers the assessing authority to enhance or reduce the provisional assessment. If we are to agree with Mr. Venkatarama Reddi that the assessing authority will have no jurisdiction after the close of the year to make a provisional assessment on the basis of the turnover shown in the monthly returns, then the assessing authority will have no jurisdiction to enhance or reduce, as the case may be, the provisional assessment. It is significant that the Legislature has advisedly chosen the words, "may be provisionally assessed in advance" in sub-S. (1) of S.15 on the basis of the estimated or actual turnover of the dealer leaving the option to the assessing authority. There is nothing in the language of S.15 which prohibits the assessing authority from making a provisional assessment on the monthly returns beyond the 31st day of March of the year. The fact that it authority to make final assessment on the basis of the returns submitted in Form A-2 does not in anyway preclude him from making provisional assessment even after the expiry of the 31st day of March. Sub-S. (3) of S. 15 only says that the tax could be provisionally assessed and collected in advance during the year in monthly or other prescribed instalments. If the Legislature intended to injunct the assessing authority to complete the provisional assessment within the year, they could have used the words "within the year" instead of the words "during the year". The words "during the year" have only reference to the instalments payable on the basis of the monthly estimated or actual turnover. It is left to the discretion of the assessing authority, for the word "may" employed in sub-S.(1) of S. 15, does not make it mandatory on the part of the assessing authority to make the provisional assessments within the year.

6. Learned counsel invited our attention to a decision of the Madras High Court in Mahendra Kumar Eshwar Lal and Company vs. Deputy Commercial Tax Officer. That was a case where the Sales Tax Officer had the return before him for the purpose of making the final assessment. That was not a case where the assessing authority was making a provisional assessment on the basis of the monthly return filed by the assessee. The learned judge held that if the return filed by the assessee was not acceptable to the assessing Officer, the Assessing Officer could not invoke the jurisdiction to provisionally assess and threaten to levy penalty for having wilfully submitted an untrue return. Penalties are not proposed to be levied on the basis of monthly returns filed. It is only on the basis

of the final assessment that penalty proceedings are initiated. It is in that context that the learned Judge observed :

"He cannot assess provisionally once the year is over and once when the return in the prescribed form is before him for purpose of proceeding though the assessment."

Therefore, the facts of that case are different. Learned counsel next relied upon the decision in *Aboobacker vs. Sales Tax Officer*. There, the learned Judges having regard to the language of S. 18 of the Kerala Act, observed :

"To insist on not only the assessment, but even the levy and the collection of the provisional assessment having to be completed during the year appears to be a practical impossibility, and would reduce the section to a mockery, especially when we bear in mind the fact that against an order of provisional assessment, a right of appeal is provided under S. 34 of the Act, of second appeal under S. 39, and perhaps even a revision under S. 41."

7. The learned Judges held that assessments could be made within the year but collections could be even thereafter. It should be borne in mind that while construing the scope of S. 15, we have also to bear in mind the provisions of Rule 17. We do not know whether there is any corresponding rule 17 in the Kerala Act. We are not prepared to hold that, having regard to the language of S. 15, it is mandatory on the part of the assessing authority to make the provisional assessment within the year.

8. It is true that a taxing provision has to be construed strictly and if there is any ambiguity, the benefit of that ambiguity must go to the assessee. But this is not to say that a taxing provision should not receive a reasonable construction (see : *Commissioner of Wealth Tax vs. Kirpa Shankar*). We are of the opinion that, when S. 15 read with rule 17, it is far more reasonable to construe that the words "during the year" in the context in which they occur, are not to be understood as meaning "within the year".

9. In view of the construction placed by us, distinction can be drawn between provisional assessments made within the year and provisional assessments made beyond the year for the purpose of collecting interest in accordance with the terms of S. 16(3).

10. The learned counsel next contended that the petitioners are not liable to pay interest during the period when the petitioners have filed writ petitions in the High Court in respect of the same assessment proceeding and obtained stay orders. The Supreme Court had occasion to consider the very same question in *Haji Lal Mohd. Biri Works vs. The State of U.P.* Constructing the relevant provision relating to payment of interest in the U.P. Act, the learned Judges held that the liability to pay interest under S. 8 (1-A) is automatic and arises by operation of law, nor is it necessary for the Sales Tax Officer to specify the amount of interest in the recovery certificate. Mr. Venkatarama Reddi however,

sought to show that there is difference in the language employed in S. 8(1-A) there and S. 16(3) of the A.P. General Sales Tax Act, S. 16(3) says that the dealer shall pay in addition to the amount of tax or instalment, interest at the rate of (a) half a percent of such amount, for each month or part thereof for the first three months after the date specified for its payment, and (b) one per cent of such amount, for each month or part thereof subsequent to the first three months aforesaid S. 8(1-A) of the U.P. Act provides.

"(1-A) If the tax payable under sub-S. (1) remains unpaid for six months after the expiry of the time specified in the notice of assessment and demand ... then, without prejudice to any other liability or penalty which the defaulter may, in consequence of such non-payment, incur under this Act, simple interest at the rate of Eighteen percent per annum shall run on the amount then remaining due from the date of expiry of the specified in the said notice."

According to the learned counsel, the words "shall run" used in S. 8(1-A) of the U.P. Act make all the difference because of absolutely on such difference because of the words "shall run" there. There too, the language is mandatory providing that the dealer shall pay interest in addition to the amount of such tax. In the case of Supreme Court, there was stay of the proceedings. The learned Judges having regard to the language of S. 8(1-A) held that the period of stay cannot be excluded for purpose of calculating interest. The decision, therefore, squarely governs the present cases also.

11. The last contention of the learned counsel was that the Assessing Officer should have petitioners before levying interest on the tax assessed. According to him, the principles of natural justice and fair-play demanded such an action on the part of the Commercial Tax Officer. We see no justification for this comment. The provisions of the Act are quite clear. In default of payment within the time prescribed, the statute provides for payment of interest at the rate prescribed therein. Tax assessed is a debt due, and when it is not paid, interest it attracted as provided in the statute, payment of interest cannot be equated to or mixed up with levy of penalty. As pointed out by the Supreme Court, liability to pay interest is automatic and arises by operation of law, and when the liability is by operation of law, the question of issuing a show cause notice of violation of principles of natural justice or fair play does not arise.

12. In the result, the order of the Tribunal, in so far as these revisions are concerned, is confirmed and the revisions are dismissed. No costs. Advocates fee Rs. 200/- in each.

13. We are unable to certify that any substantial question of law of general importance, which in our opinion, requires to be considered by the Supreme Court, arises in this batch of cases. The oral application for leave to appeal made by Mr. Venkatarama Reddi, is therefore rejected.