
(1970) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 23 and 24 of 1966

Sait Goverchand Manchalal

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-01-1970

Acts Referred:

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

Citation : (1971) 1 AnWR 120 : (1971) 28 STC 498

Hon'ble Judges : Ramachandra Raju, J;Obul Reddi, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; P. Venkatrami Reddy, for Principal Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Obul Reddi, J.—These two revision cases are directed against the order of the Sales Tax Appellate Tribunal in Appeals Nos. 345 and 346 of 1965 by which it dismissed the appeals preferred by the petitioner. The two appeals which were heard by the Tribunal were against the orders of the Assistant Commissioner of Commercial Taxes, Kakinada, relating to the assessment and penalty imposed upon the petitioner for the assessment year 1959-60.

2. The facts leading to the filing of these two revisions are not in dispute, and therefore they may be briefly set out. The assessee is one Sait Goverchand Manchalal, a bullion merchant at Amalapuram. The Deputy Commercial Tax Officer, on the return submitted by the assessee for 1959-60, made an assessment on a net turnover of Rs. 96,000. The special staff of the commercial taxes department inspected the business premises of the assessee and found from a note-book seized on that occasion that he suppressed purchase of gold to an extent of about 1,294 tolas. On the basis of this suppression, the suppressed turnover was estimated at Rs. 1,35,932.25. A further verification revealed that on certain slips, transactions amounting to Rs. 782.75 were not brought to account; and the net result was that the total suppressed turnover was fixed at

Rs. 1,36,715. The Commercial Tax Officer, Amalapuram, issued a show cause notice and after obtaining representations from the petitioner, passed an order fixing the escaped turnover as stated in the notice and subjected the assessee to an additional tax on that turnover. A notice was also issued u/s 14(4B) and after affording an opportunity to the assessee, a penalty of Rs. 1,025.35 was imposed upon him. Aggrieved by the aforesaid orders, viz., (1) estimating the escaped turnover and assessing him to tax on that basis, and (2) levying penalty, he preferred appeals to the Assistant Commissioner of Commercial Taxes (Appellate Authority) and as the appeals were dismissed, the assessee appealed to the Sales Tax Appellate Tribunal with no better result. Hence these two revision cases.

3. Mr. M. Suryanarayana Murthy, the learned Counsel appearing for the assessee, vigorously contended that when admittedly the Deputy Commercial Tax Officer is the assessing authority, the Commercial Tax Officer has no jurisdiction to revise the assessment made by the Deputy Commercial Tax Officer, that the assessment proceedings cannot be said to be completed until after the expiry of the four years period provided in Sub-section (4) of Section 14, that when that assessment proceedings are not completed, the Commercial Tax Officer cannot interfere with the assessment proceedings initiated by the Deputy Commercial Tax Officer, that the Commercial Tax Officer erred in issuing a notice to show cause why penalty should not be imposed even before the assessment was made on the escaped turnover and that the question of taking further action as to penalty will arise only after an order is made relating to the escaped turnover and not before an order is passed as to whether there was any escapement of turnover under Sub-section (4) of Section 14.

4. We may, at the outset, observe that the argument of the learned Counsel that the Commercial Tax Officer has no jurisdiction to act u/s 14(4) in respect of assessment proceedings initiated by the Deputy Commercial Tax Officer has no substance. To answer the point raised by the learned Counsel, it is necessary to refer to certain provisions of the Act including the definition of "assessing authority".

Assessing authority" as defined in Section 2(1)(b) means: "any person authorised by the State Government or by any other authority empowered by them in this behalf, to make any assessment under this Act." By virtue of the powers conferred upon the State Government a notification was issued in G.O. Ms. No. 1091, Revenue, dated 10th June, 1957. By and under this notification, a Deputy Commercial Tax Officer was empowered to exercise the powers of an "assessing authority" in the case of dealers whose total turnover exceeds Rs 50,000 but is less than Rs. 3,00,000 a year. The Commercial Tax Officer was empowered to exercise the powers of an "assessing authority" in the case of dealers whose total turnover is Rs. 3,00,000 or more a year. A proviso is added which reads :

(i) any of the higher authorities mentioned above may, in his discretion, exercise the powers of a lower authority within his jurisdiction in respect of any dealer or

class of dealers...

5. This notification, therefore, makes it clear that the powers exercisable by a Deputy Commercial Tax Officer as an "assessing authority" are also exercisable by a Commercial Tax Officer in respect of any dealer or class of dealers within his jurisdiction. It is important to bear in mind that although the return in this case was filed before the Deputy Commercial Tax Officer and accepting the turnover mentioned in the return the Deputy Commercial Tax Officer completed the assessments and made an order assessing the assessee to tax on that turnover, no appeal was preferred against that order of assessment with the result that so far as that assessment order was concerned, it became final. It should also be remembered that the question of invoking Section 14(4) will arise only when it is found that the whole or any part of the turnover has escaped assessment to tax. It is the surprise inspection by the special staff that led to the discovery of a notebook and certain other slips showing the escaped turnover. The Commercial Tax Officer, therefore, issued a notice under Section 14(4) on the basis of what the inspection disclosed and then subjected the assessee to tax on the escaped turnover. Therefore, there is no substance in the argument of the learned counsel that the assessment proceedings were pending merely by reason of the fact that the return was filed before the Deputy Commercial Tax Officer. Sub-section (4) of Section 14 empowers an assessing authority, in a case where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under assessed or assessed at a rate lower than the correct rate, after issuing a notice to the dealer, to determine to the best of his judgment the turnover that has escaped assessment. In this case the power exercisable by the Deputy Commercial Tax Officer under Sub-section (4) of Section 14 was exercised by the Commercial Tax Officer by virtue of the powers conferred upon him under the notification referred to supra.

6. There is also no substance in the contention of the learned Counsel that the Commercial Tax Officer is not an authority who can revise an assessment order made by the Deputy Commercial Tax Officer as Sub-section (2) of Section 20 empowers the Commercial Tax Officer to exercise the functions of a revisional authority by suo motu calling for and examining the record of any order passed, or proceeding recorded by any authority, officer or person subordinate to him. Further, there is Sub-rule (5) of Rule 31 which lays down that the powers conferred by Sub-rules (1) and (4) of the same rule on the assessing authority may also be exercised by the revising authority referred to in Section 20. To say that the Deputy Commercial Tax Officer alone is competent since the total turnover of the assessee did not exceed three lakhs of rupees is to ignore the notification and the provisions of Section 20, and Sub-rule (5) of Rule 31. It is not a case where before the assessment was completed by the Deputy Commercial Tax Officer on the return submitted by the assessee the Commercial Tax Officer took over the assessment proceedings and then sought to act under Sub-section (4) of Section 14. It is a case where it was discovered, after the assessment was completed, that there was escapement of turnover, and the

Commercial Tax Officer is competent to exercise the powers of an "assessing authority", and take action under Sub-section (4) of Section 14.

7. The other argument of the learned Counsel is that even before the determination of the question of the escaped turnover, a notice was issued to show cause why penalty should not be levied. All that is required under Sub-section (4B) of Section 14 is that before issuing any direction for the payment of any penalty under Sub-section (2), Sub-section (3) or Sub-section (4), the assessing authority shall give the dealer a reasonable opportunity to explain the omission to disclose the turnover or to furnish correctly any particulars and shall make such inquiry as he considers necessary. The assessee was given an opportunity to explain the omission to disclose the information and necessary inquiry was held in that behalf. It was open to the assessee to show that he had not failed to disclose any information and that there was no suppression of any turnover. All that has to be seen is whether he had a reasonable opportunity to show that there was no omission or suppression and not whether a notice should have been given even before he was assessed to tax on the escaped turnover. Since there has been no violation of the requirements of Sub-section (4B) of Section 14, we see no reason to interfere with the order imposing penalty.

8. We, therefore, find no merits in these two revision cases and they are accordingly dismissed with costs in one case. Advocate's fee Rs. 200 (Rupees two hundred only).