
(1963) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 866 of 1961

S.M. Yousoof Sahib

APPELLANT

Vs

The Additional Commercial Tax Officer (Evasions) and
Another

RESPONDENT

Date of Decision : 18-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) 19 STC 210

Hon'ble Judges : Gopal Rao Ekbote, J

Bench : Single Bench

Advocate : Adavi Rama Rao and A.V.R.K. Murthy, for the Appellant; E. Kalyan Ram, for Third Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Gopal Rao Ekbote, J.—The petitioner is a dealer in pulses, paddy, rice etc., and carries on his business at Vijayawada. The Assistant Commercial Tax Officer, Vijayawada, visited the petitioner's shop on 4th July, 1957. He found in his inspection two bills evidencing the purchase and sale transactions. The first related to Rs. 4,496.75 nP. of 2nd July, 1957, and the second was for an amount of Rs. 7,697.36 nP. for 3rd July, 1957.

2. The petitioner, however, in his monthly return of August included the said two transactions and submitted the return. He was taxed on that return which included the above-said two transactions. The tax seems to have been paid, After a lapse of considerable time on 16th February, 1959, a notice u/s 14(4), Andhra Pradesh General Sales Tax Act, was served on the petitioner alleging that a portion of his turnover has escaped the assessment, the escaped assessment being Rs. 2,79,203.94 nP. This amount was arrived at by adding 50 per cent, of the turnover totalling Rs. 1,86,135.96 nP. The petitioner was subsequently served with a. revised notice on 9th August, 1959, that the escaped turnover was not Rs. 2,79,203.94 nP. but Rs. 2,81,952.55 nP. An amount of Rs. 2,000

seems to have been added to the previous amount. For reasons best known to the authorities another revised notice was served on the petitioner on 1st May, 1961. This time a, new formula was adopted in arriving at the escaped turnover. The two transactions mentioned above were taken as the basis multiplied by 82 days under the presumption that similar transactions were suppressed for all the 82 days and then the amount of Rs. 3,15,591.76 nP. was arrived at as the turnover of business which has escaped assessment to tax. Subsequent to that on 11th June, 1961, the petitioner was served with a notice asking him as to why penalty should not be levied, the amount of penalty being Rs. 9,322. On 10th July, 1961, the said penalty was directed to be paid by the petitioner. I should have mentioned that the assessment for the relevant period was made on 10th May, 1961. The petitioner thereafter preferred an appeal to the Deputy Commissioner, Guntur, which was made over to the Assistant Commissioner, as he was then competent to hear the appeals. When the appeal came for hearing on 10th July, 1961, the Assistant Commissioner directed that the tax must be paid before the appeal could be heard. The petitioner without paying the tax and arguing the appeal filed this petition under Article 226 of the Constitution on 10th July, 1961, impugning the order dated 10th May, 1961, given by the assessing authority.

3. A preliminary objection was taken that as the appeal is pending before the Assistant Commissioner no recourse can be had to an application under Article 226 of the Constitution. It has now been a settled law that there is no rule with regard to certiorari, as there is with mandamus, that it will lie where there is no other equally effective remedy. Provided the requisite grounds exist certiorari, will lie although a, right of appeal has been conferred by statute. The fact that the aggrieved party has another adequate remedy, must be taken into consideration by the High Court, in arriving at a conclusion as to whether it should in exercise of its discretion issue a writ of certiorari to quash the proceedings and decisions of inferior Tribunals. Ordinarily the High Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ should be granted is a rule of policy, convenience and discretion rather than a rule of law. The High Court will readily issue a certiorari in a case where there have been reasonable grounds for the issue of the same. It must be remembered that the existence of other adequate legal remedy is not per se a bar to the issue of a writ of certiorari. In a proper case it is the duty of the High Court to issue a writ of certiorari to correct the errors of an inferior Tribunal called upon to exercise judicial or quasi-judicial functions. The petitioner cannot be compelled to adopt the other legal remedies even when he has a proper case under Article 226 of the Constitution.

4. This apart, since the remedy provided by the Andhra Pradesh General Sales Tax Act is conditioned to the payment of tax, it cannot be said that the remedy is effective and expeditious. It has been held in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, as follows :

Moreover since the remedy provided by the Act (C.P. and Berar Sales Tax Act) is of an onerous and burdensome character and before the assessee can avail of it he has to deposit the whole amount of the tax, such a provision can hardly be described as an adequate alternative remedy.

5. To the same effect is a Bench decision of this Court in *Baroness Wilhelmine von Maltazan v. Collector of Customs Visakhapatnam* (1957) 2 An.W.R. 207. In the light of what has been decided in the above-said cases, I do not think that the preliminary objection can be sustained.

6. Section 14(4) confers powers on the Sales Tax Authorities to assess a dealer in regard to any turnover of business which has escaped assessment to tax. The material provision of that section is in the following terms :

14. (4) 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 under-assessed 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 etc. etc.

7. It is clear from the above-said provision that in order that it should apply, the turnover of business of a dealer must have escaped assessment to tax. Now according to Rule 13(2) the dealer is required to submit, a return in a prescribed form showing the gross and net turnover for the preceding month so as to reach the assessing authority on or before the 25th day of every month. Under this rule, therefore, the petitioner was entitled to submit the return of the month of July on or before 25th August, 1957. Both the bills which were caught during the inspection by the officer concerned related to the month of July. Although these two transactions were not entered in the account books they were entered in the return which was duly submitted according to the above-said rule on or before 25th August, 1957. Those two transactions were subject to the sales tax which was paid. It is therefore un-understandable how it can be said that there was any turnover of business of the petitioner which escaped the assessment to the tax. If these bills related to returns of prior months, the return of which has already been filed without incorporating these transactions and the assessing authority had levied the tax and these bills had escaped assessment, it could have been legitimately argued that these two transactions have escaped the assessment. But that is not the case here. It is nobody's case that although the two bills mentioned the 2nd and the 3rd of July as the dates of transactions, but in fact those transactions have taken place earlier. When it is admitted that the transactions took place on those dates in the month of July the return of which can only be filed in the month of August, it cannot be said that this part of the turnover escaped assessment to tax. In fact it has not escaped assessment, as it was taxed after the return in which these transactions were incorporated was filed. Section 14(4) therefore was not applicable to the facts of the case and the

assessing authority was not competent to start the, proceedings u/s 14(4).

8. That apart, the assessing authority went on shifting the grounds for assessing to tax the so-called escaped turnover of business. It is apparent from the facts narrated above that first on an ad hoc basis an increase of 50 per cent, was adopted. With no rhyme or reason Rs. 2,000 were added to it. This approach was totally given up and a new formula was adopted in the third notice issued to the petitioner. This time the said two bills were taken as the basis of suppression of the turnover, the amount of which was multiplied by 82 days under the assumption that similar transactions must have been suppressed for all those days. There was absolutely no material for any such assumption. It has been repeatedly held by this Court that such an assumption and multiplication on that basis is arbitrary and unwarranted. In this case nothing has been pointed out as to what was the basis on which a conclusion was reached that for 82 days a similar suppression must have taken place. While it is true that it can be argued that if the raid had not taken place and the two bills not found, the dealer may have suppressed it, but it cannot also be denied that although the amounts were not entered into the account books, the dealer may have subsequently incorporated that in the return. Mere guess in that respect cannot be allowed to form the basis for reaching a conclusion that a particular amount should be taken as suppressed turnover. It cannot be said that there is any material available for reaching that conclusion. I am therefore satisfied that the formula adopted by the assessing authority in taxing the so-called escaped turnover was arbitrary and bad in law. It follows that the amount of penalty levied on such an assessment is also bad. When the original assessment itself is bad, the penalty cannot be sustained.

9. For all the reasons stated above this petition is allowed. Writ will issue and the order of the assessing authority dated 10th May, 1961, is quashed. In the circumstances of the case however there will be no order as to costs.