(1988) 06 AP CK 0022

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 73 of 1985

South India Agencies APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 29-06-1988

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 5(2), 7

Citation : (1988) 71 STC 437

Hon'ble Judges : Bhaskara Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : K. Srinivasa Murthy, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—South India Agencies, Hyderabad, the petitioner herein, is a dealer in asbestos cement sheets (A.C. sheets) and some other products. For the assessment year 1977-78, it filed a return disclosing a turnover of Rs. 92,28,018.93, out of which it claimed exemption in respect of a turnover of Rs. 60,98,149.10 as representing the second sales of asbestos cement sheets. The petitioner claimed to have purchased the same from Hyderabad Asbestos Cement Industries. Asbestos cement sheets are taxable at the first point of sale in the State. The exemption claimed by the petitioner was granted by the assessing authority in the order of assessment dated 8th January, 1979.

2. During the course of inspection by an officer of the department in the year 1983, it was found that asbestos cement sheets valued at Rs. 7,48,595.34 out of the exempted turnover claimed by the petitioner (Rs. 60,98,149.10) during the assessment year 1977-78 were purchased by the petitioner at Vallabh Nagar, in the State of Haryana and that, therefore, the sale of the said A.C. sheets by the petitioner did not represent second sales in the State; they were first sales in the State and, therefore, not exempt from tax. On the basis of the report of the inspecting officer, the assessing authority sought to reopen the assessment; but, the said proposal was given up when it was realised that the reopening of the

assessment was barred by that date. Thereafter, on 12th March, 1984 the assessing authority issued the notice calling upon the petitioner to show cause why penalty should not be levied upon it under sub-section(2) of section 7-A of the Andhra Pradesh General Sales Tax Act, inasmuch as by furnishing a false statement containing false particulars, the petitioner-dealer had obtained an exemption to which it was not entitled, and thereby evaded the tax legitimately due. Having received the notice the petitioner did not submit any explanation or objections, whereupon, by his order dated 3rd April, 1984, the authority levied penalty in a sum three times the tax evaded. The tax evaded was Rs. 53,806.31. The assessing authority was of the opinion that the petitioner was guilty of producing false exemption lists, and that it knowingly did not disclose that some of the A.C. sheets sold by it were purchased by it in Haryana State. It was pointed out that the petitioner had furnished C forms to its seller in Haryana, that the petitioner is a well-established firm doing business since 1961, and hence it was a deliberate suppression. Against the order levying penalty the petitioner preferred an appeal, which was dismissed. A further appeal to the Tribunal also failed.

3. Mr. K. Srinivasa Murthy, learned counsel for the petitioner, submitted that in this case it cannot be said that the petitioner knowingly issued or produced a false bill, voucher, declaration, or other document with a view to support or make any claim that a transaction of sale or purchase effected by it is not liable to be taxed, within the meaning of sub-section (2) of section 7-A. All that the petitioner did in this case, counsel submitted, was to produce a list of purchases made from Hyderabad Asbestos Cement Industries. Hyderabad Asbestos Cement Industries has a plant at Hyderabad and another plant at Vallabh Nagar (in Haryana). Over the years, the petitioner was getting its supplies from the Hyderabad factory. Even during the year 1977-78 the petitioner got its supplies from Hyderabad factory only. However, for a period of about three weeks or so, there was a strike in the Hyderabad factory, and it was closed. Therefore, the petitioner obtained its stocks from Vallabh Nagar unit of the Hyderabad Asbestos Cement Industries. It cannot, therefore, be said that the list furnished by the petitioner was false in any respect because, admittedly, all the purchases referred to in the said list were purchases from Hyderabad Asbestos Cement Industries. The petitioner did not mention in the said list that it made those purchases from Hyderabad factory. It, of course, did not mention that it purchased the material valued at Rs. 7,48,595.34, from Vallabh Nagar factory. The petitioner was under a bona fide impression that since the Vallabh Nagar factory also belongs to Hyderabad Asbestos Cement Industries, it is for them to supply the stock to the petitioner, and it makes no difference whether the supplies are made from Hyderabad factory, or Vallabh Nagar factory. The second contention urged by Mr. Srinivasa Murthy is that the penalty proceedings are barred by limitation. He submits that even though section 7-A does not mention the period within which the penalty proceedings should be taken, still it goes without saying that such proceedings must be taken within a reasonable time.

What is reasonable time must be determined in this case having regard to the provisions in section 14 of the Act, which also provides for reopening of assessment and levying of penalties. During the relevant period, no such penalty could be levied u/s 14 beyond a period of four years from the date of service of the order of assessment. The same period must be treated as the maximum u/s 7-A too. In this case, the order of assessment was made in January, 1979, and served in the same month. The present proceedings were initiated long after the expiry of four years therefrom and must, therefore, be deemed to be barred, it is argued.

4. For the sake of convenience we shall take up the second contention urged by Mr. K. Srinivasa Murthy first for consideration, since it is a pure question of law. Section 7-A reads as follows :

"7-A. Burden of Proof and liability of the deder to pay penalty. - (1) In the case of an assessment made under sub-section (2) of section 5, section 6 or the notification issued u/s 9, the burden of proving that any sale or purchase effected by a dealer is not liable to any tax or is liable to be taxed at a reduced rate, shall lie on the dealer. (2) Where a dealer knowingly issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed or is liable to be taxed at a reduced rate, the assessing authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty -

(i) in the case of first such detection, three times the tax due in respect of such transaction; and

(ii) in the case of a second or subsequent detection, five times the tax due in respect of such transaction :

Provided that before issuing any direction for the payment of the penalty under this section, the assessing authority shall give to the dealer an opportunity of making representation against the levy of such penalty."

5. A reading of sub-section (2) shows that action thereunder has to be taken by the assessing authority "on detecting such issue or production". In other words, the sub-section itself specifies the starting point for the action thereunder. It is indeed a case of stating the obvious. There can be no question of taking proceedings for levying penalty for issuing or producing a false bill, voucher, etc., unless it is first found that such a thing has happened. The context thus excludes the importation of any other theory of limitation by analogy, inference, or reference. While we agree that proceedings under the said sub-section should be taken soon after, or within a reasonable period of such detection - the proceedings u/s 7-A(2) being penalty proceedings, it is but proper that they should be taken without unreasonable delay - we find no room, in view of the language employed in sub-section (2), to import the theory propounded by Mr. Srinivasa Murthy. The analogy of section 14 has no application at all. Section 14

provides a period of limitation for reopening an assessment and for levying penalties, but that is for its own purposes. As pointed out by this Court in Eswara Oil Company v. State of A.P. [1983] 63 STC 340 , levy of penalties u/s 14 of the Act and the levy of penalty u/s 7-A are distinct proceedings, based on distinct grounds. We see no warrant or justification for importing the period of limitation prescribed in section 14 into section 7-A, more so when sub-section (2) of section 7-A clearly says that such proceedings shall be taken on detecting the issuance or production of a false bill/voucher, or the document, as the case may be. As we have said earlier, it goes without saying that such proceedings must be taken within a reasonable time of the detection. But, what is reasonable time cannot be laid down as a rule of law. It depends upon the facts of each case, and no hard and fast rule can be enunciated in that behalf. In this case, the detection was on 19th April, 1983, and the show cause notice was issued on 12th March, 1984. It must also be seen that the detection was not by the assessing authority, but by another authority who, in turn, must have informed the assessing authority in due course. The penalty proceedings were initiated within one year of the detection. In such a situation, there is no room for contending that penalty proceedings have been initiated after an inordinately long interval. This contention of Mr. Srinivasa Murthy is, accordingly, rejected.

6. Now coming to the first contention, let us first notice the factual situation. It is clear from the show cause notice dated 29th December, 1978 that the petitioner filed A-2 return disclosing the total turnover of Rs. 92,60,795.42 out of which it claimed that a turnover of Rs. 90,96,681.33 is exempt. This exempted turnover comprised second sales of asbestos cement sheets in a sum of Rs. 60,98,149.10. The petitioner also filed purchase bills in respect of the exemption claimed. The assessment order dated 8th January, 1979 shows that the assessing authority verified the purchase bills for the exemption claimed, and finding that they are in order, allowed the exemption. It is not in dispute that the petitioner did file a list containing the details of A.C. sheets purchased by it from Hyderabad Asbestos Cement Industries, in support of its claim made in the return. In other words, the petitioner''s case was that inasmuch as it has purchased the said A.C. sheets within the State, the sales of A.C. sheets effected by it are second sales and are, therefore, exempt. Neither in the return filed, nor in the list of purchases did the petitioner disclose that some of the purchases of A.C. sheets mentioned by it in the list were made outside the State. Yet the fact is that out of the total turnover of Rs. 60,98,149.10, which the petitioner claimed to be exempted turnover, a turnover of Rs. 7,48,595.34, related to those A.C. sheets which were purchased in Haryana, which means that sales of those sheets were not second sales within the State and were, therefore, exigible to tax. By this means the petitioner evaded tax in a sum of Rs. 53,805.31.

7. The question is whether the requirements of sub-section (2) of section 7-A are satisfied in this case ? According to the said sub-section, the dealer must have knowingly issued or produced a false bill, voucher, declaration, certificate, or other document, with a view to support or make any claim that a transaction of

sale or purchase effected by him is not liable to be taxed, or is liable to be taxed at a reduced rate. In this behalf the first fact to be noticed is that when a show cause notice was issued to the petitioner u/s 7-A(2), he failed to submit an explanation. The several facts which are being urged by the learned counsel for the petitioner before us were never put forward by the dealer by way of an explanation. And the fact remains that he did produce a list of purchases in support of his claim that the sales of A.C. sheets in an amount of Rs. 60,98,149.10, are exempted from tax, inasmuch as they represent second sales at his bands. In other words, the statement was produced in support of his claim that the said A.C. sheets were purchased by him within the State and, therefore, the seller, Hyderabad Asbestos Cement Industries, was liable to pay the tax, being the first seller in the State. This was evidently false with respect to a turnover of Rs. 7,48,695.34. The A.C. sheets covered by the said turnover were purchased by the petitioner at Ballabgarh (Vallabh Nagar), i.e., outside the State. It is true that even the Ballabgarh factory was owned by Hyderabad Asbestos Cement Industries Ltd., but it is too much to presume that the dealer, who is in this business for the last several years, did not know the distinction between the sales effected within the State, and the sales effected outside The State, and the liability to pay sales tax in that behalf. In any event, he made no effort to prove his bona fides either by submitting an explanation, or filing an affidavit or other material before the Commercial Tax Officer. In the circumstances, the inference is irresistible that the petitioner knowingly produced the said list of purchases - i.e., a "document" within the meaning of sub-section (2) of section 7-A - to support his claim that a certain turnover is exempt from tax. This is the inference drawn by, and the conclusion arrived at by the Commercial Tax Officer and the first and second appellate authorities, and we cannot say that the Tribunal or the lower authorities have acted unreasonably, or arbitrarily in doing so. There are no grounds warranting interference by this Court.

8. Mr. Srinivasa Murthy filed before us an affidavit of the Senior Manager-Commercial in M/s. Hyderabad Industries Ltd., Ballabgarh (Haryana), stating that they had requested the petitioner herein to send C forms in respect of purchases made by him at Ballabgarh in November, 1980 and that, accordingly, the petitioner sent C forms. From this circumstance, Mr. Srinivasa Murthy wants us to infer that the petitioner was not aware, when he filed the list of purchases in 1978, that the sales of A.C. sheets effected by him, which were purchased in Haryana State, were not exempt from tax. His effort is to show that only in 1980 did the petitioner come to know of the said fact when he was asked to furnish C forms by the Ballabgarh factory. We are unable to see how the said inference follows. As we have observed hereinbefore, the petitioner did not submit an explanation when a show cause notice was issued to him u/s 7-A(2). He never stated all these facts before the appropriate authority. The said failure cannot be rectified, nor the lacuna filled up by producing documents at the stage of revision. The fact that the dealer furnished C forms in 1980 does not necessarily show that in 1978, when he furnished the list of purchases, he was not aware

that the sales effected by him of A.C. sheets, purchased outside the State, were not exempt from tax.

9. For the above reasons, the tax revision case fails and is, accordingly, dismissed. In the circumstances, there shall be no order as to costs.

10. Petition dismissed.