(1996) 07 AP CK 0046

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No''s. 35 and 39 of 1988

Sree Kumar and Company — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Andhra Pradesh General Sales Tax (Amendment) Act, 1985 — Section 4
Andhra Pradesh General Sales Tax Act, 1957 — Section 38(4), 4
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 31(3)

Citation : (1997) 104 STC 25

Hon'ble Judges : S.S. Mohammed Quadri, J;B. Sudershan Reddy, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—The order of the Sales Tax Appellate Tribunal, passed on August 20, 1987 in T.A. Nos. 200 and 201 of 1983, is assailed by the dealer-assessee in these T.R.Cs.

2. In the assessment years 1979-80 and 1980-81 the petitioner was engaged in the business of spreading ballast along railway track. The transaction was treated as "sale" but not as "works contract" as claimed by the petitioner, and orders of assessment were made on September 30, 1981. Against that order, the petitioner filed appeals before the Appellate Deputy Commissioner but they were dismissed on February 1, 1983. The correctness of those orders was questioned by the petitioner in T.A. Nos. 200 and 201 of 1983 before the Sales Tax Appellate Tribunal. The Tribunal dismissed those appeals on August 20, 1987, as such the petitioners are before us in these revisions.

3. T.R.C. No. 39 of 1988 relates to the assessment year 1979-80 (T.A. No. 200 of 1983) and T.R.C. No. 35 of 1988 relates to the assessment year 1980-81 (T.A. No. 201 of 1983).

4. Sri P. Srinivasa Reddy, the learned counsel for the petitioner, submits that the orders of assessment were passed by the Commercial Tax Officer, Intelligence, and a Division Bench of this Court in Sri Balaji Rice Company Vs. Commercial Tax

Officer No. I, Nellore and Others, held that the notification vesting power in the authority was ultra vires the provisions of section 4 of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act") and arbitrary and that even section 38(4) of the Act does not cure the defect, therefore the order of assessment has to be set aside.

5. The learned Special Government Pleader for Taxes, on the other hand, contends that the basis of the judgment in Sri Balaji Rice Company Vs. Commercial Tax Officer No. I, Nellore and Others, and the defect pointed out by the Division Bench have been corrected by section 4 of the Andhra Pradesh General Sales Tax (Amendment) Act, 1985 (Act No. 18 of 1985) by amending section 4 of the main Act, therefore after the amendment, conferring of jurisdiction on the officer is not violative of section 4 of the main Act, as such the assessment is valid and legal.

6.The question raised in these tax revision cases is with regard to the validity of the assessments on the ground of jurisdiction the real question is, whether section 38(4) of the Act, as amended, and section 4 of the Act confer power on the assessing authority and the order of assessment dated September 30, 1981 is within jurisdiction of the assessing authority.

7. To determine the tenability of the above contentions and to answer the question that arises, it would be necessary to read the judgment of this Court in Sri Balaji Rice Company Vs. Commercial Tax Officer No. I, Nellore and Others, . The position of law as it obtained at that time was that the Deputy Commercial Tax Officers, Commercial Tax Officers and Commercial Tax Officers (Special), were assigned the local limits within which they had to perform the functions prescribed by the Government or any other authority or officer empowered in that behalf. The Government of Andhra Pradesh issued orders authorising certain officers to exercise the powers of an assessing authority vide orders issued in G.O.Ms. No. 1091, Revenue, dated June 10, 1957. u/s 4 of the Act as it stood before amendment then, the Government delegated this power to notify, the local limits within which officers mentioned above might perform their functions, to the Board to Revenue. Subsequently the Board of Revenue was replaced by the Commissioner of Commercial Taxes who redistributed the jurisdiction to certain Assistant Commissioners (CT) (Intelligence) and Commercial Tax Officers (Intelligence) by conferring jurisdiction on them in respect of the entire State of Andhra Pradesh by orders issued in the abovesaid notification. It appears that the Government amended the second proviso to rule 31(3) of the Andhra Pradesh General Sales Tax Rules, 1957 (for short, "the Rules") substituting certain officers and thereafter issued notification empowering the Joint Commissioners, Assistant Commissioners and Commercial Tax Officers specially appointed for the investigation of evasions to exercise the powers of assessing authority over the entire State of Andhra Pradesh in cases of dealers in respect of whose transactions any suppression or omission was detected by such officer. These orders were issued in G.O.Ms. No. 434, Revenue(s), dated March 30,

1982. The orders issued in the first G.O., viz., G.O.Ms. No. 1091, as amended by G.O.Ms. No. 434, were further amended by notification issued u/s 2(1)(b) of the Act, in G.O.Ms. No. 1059, Revenue(s), dated July 27, 1982. The power under the second proviso to para 2 of the said G.O. was conferred with retrospective effect. There were certain other amendments with which we are not concerned here. The order of assessment which was questioned therein was passed by the Assistant Commissioner (CT) (Intelligence). The contention was that the Assistant Commissioner (CT) (Intelligence) and the Commercial Tax Officer (Intelligence) not being officers authorised to perform the functions within the local limits, had no jurisdiction to take any proceedings against the petitioner therein, therefore the notification issued by the Commissioner conferring jurisdiction over the entire State on those officers and the second proviso to G.O.Ms. No. 1091, as amended by G.O.Ms. No. 434, were ultra vires the Act is also violative of article 14 of the Constitution as no guidelines were laid down for the exercising of the powers of assessment and no appeal was also provided therefrom. It was also contended that G.O.Ms. Nos. 434 and 1091 had no retrospective effect and the officers mentioned therein could not exercise powers of an assessing authority with respect to turnovers relating to periods prior to the coming into force of the said notifications. The following conclusions can be deduced from the abovesaid judgment :

(i) Neither the State Government exercising the power u/s 4 of the Act nor the Board of Revenue (Commissioner of Commercial Taxes) could fix the territorial jurisdiction of the officers as comprising the whole of the State of Andhra Pradesh and they could only fix the territorial limits which were less than the territory of the whole of the State of Andhra Pradesh and the fixation of the territorial jurisdiction of the whole State in that case was held to be ultra vires the powers conferred by section 4 of the Act;

(ii) The plurality of officers was conferred power to assess a single dealer without laying down any guidelines as to who should exercise the power of assessment and that power was capable of being exercised in a discriminatory manner and therefore the conferment of power by impugned notifications was violative of article 14 of the Constitution; and

(iii) The notification conferring powers with retrospective effect on the Assistant Commissioner (CT) (Intelligence) and Commercial Tax Officers (Intelligence) was ultra vires the powers of the State Government, therefore the said officers could not exercise powers of assessment retrospectively.

8. In Mcdowell and Co. Limited Vs. Commercial Tax Officer, the notice issued by the Commercial Tax Officer (Intelligence) was questioned. In the said notice the petitioner was called upon to appear before the authority along with the documents specified in the notice and it was pointed out that the assessment for the year 1981-82 would be completed disallowing the exemption claimed if the petitioner failed to produce the proof in respect of the exemptions claimed. The Division Bench which dealt with that case noted that the notifications issued

conferring the concurrent jurisdiction over the entire State of Andhra Pradesh were struck down by the High Court on the ground that such conferment of power on certain officers over the entire State was inconsistent with section 4 of the Act and that conferment of concurrent jurisdiction on several officers in respect of the same area was likely to result in discrimination in violation of article 14 of the Constitution. The Bench also noted that by Andhra Pradesh General Sales Tax (Amendment) Act, 1985, section 4 of the Act was amended and later notification was issued delimiting the areas of the jurisdiction of the officers. It was held that although concurrent jurisdiction of all the Commercial Tax Officers (Intelligence) over the entire State was no longer operative, the notification delimiting the areas of operation would not have retrospective effect to validate the impugned notice and accordingly quashed the impugned notice. Subsequently another Division Bench of this Court had to consider the validity of the collection of tax by the Assistant Commissioner (CT) (Intelligence). Though it was contended that in view of the judgment in Sri Balaji Rice Company Vs. Commercial Tax Officer No. I, Nellore and Others, the conferment of concurrent jurisdiction on several officers in respect of the same area was held to be violative of article 14, yet rejecting the contention it was held that by virtue of amendment of section 4 and section 38(4) by Amendment Act 18 of 1985 the defect was cured. The Division Bench observed that the provisions of sub-section (4) of section 38 of the Act were not brought to the notice of the Bench which decided Mcdowell and Co. Limited Vs. Commercial Tax Officer, and therefore that judgment was passed in per incuriam and having regard to the validating provisions of section 38(4) the impugned action was held to be valid.

9. The question that has to be considered here is whether the impugned order of assessment dated September 30, 1981 could be said to be validated by virtue of the provisions of section 38(4) of the Act in view of the fact that section 4 was also amended.

10. We may notice here section 4 of the Act as it stands after its amendment by Act 18 of 1985. It reads as follows :

"4. Appointment of Commissioner of Commercial Taxes, Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers. - The State Government may appoint a Commissioner of Commercial Taxes and as many Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers as they think fit, for the purpose of performing the functions respectively conferred on them by or under this Act. Such officers shall perform the said functions within such area or areas or the whole of the State of Andhra Pradesh as the State Government or any authority or officer empowered by them in this behalf may assign to them."

11. From a perusal of section 4, extracted above, it is clear that the appointment of the officers specified therein, viz., Commissioner of Commercial Taxes, Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers, for the purpose of performing the functions respectively conferred on them by or under this Act, may be within area or areas specified or the whole of the State of Andhra Pradesh as empowered in that behalf; whereas the said section 4, as it stood before the 1985 amendment provided that such officers shall perform the said functions conferred on them by or under the Act as may be assigned to them either by the State Government or any officer empowered in that behalf within such local limits as the State Government or any other authority or officer, empowered by them in this behalf may assign to them. It was by virtue of the words "within such local limits" used in the unamended section that the Division Bench of this Court in Sri Balaji Rice Company Vs. Commercial Tax Officer No. I, Nellore and Others, held that the territorial jurisdiction of the said officers could not be fixed as comprising the whole State of Andhra Pradesh either by the Government or by the Board of Revenue (Commissioner of Commercial Taxes). Now the amended section gives a wide scope for purposes of prescribing the jurisdiction of the officers either with reference to area or areas or the whole of the State of Andhra Pradesh. Therefore, it follows that the amendment cured the defect pointed out by the earlier Bench.

12. Sub-section (4) of section 38 of the Amendment Act 18 of 1985 which came into force with effect from July 1, 1985 reads as follows :

"38. Validation and exemption. - (1).............

(2)..............

(3)..............

(4) Notwithstanding anything contained in any order or judgment of any court, the amendment made by G.O.Ms. No. 434, Revenue, dated the 30th March, 1982 and by G.O.Ms. No. 1059, Revenue, dated the 27th July, 1982, shall always be deemed to have been incorporated in Notification-II of G.O.Ms. No. 1091, Revenue, dated the 10th June, 1957, and no assessment made, no demand raised, no seizure effected and no action connected with or incidental to the above actions shall be deemed to become invalid or ever to have been invalid on any ground whatsoever."

13. A plain reading of the above provisions shows that it validates the action taken by the officers mentioned in G.O.Ms. No. 1091, Revenue, dated June 10, 1957 with regard to exercise of power conferred on them with reference to assessment. The said G.O.Ms. No. 1091 dated June 10, 1957 was issued in exercise of the powers conferred u/s 2(1)(b) of the Act by the Governor of Andhra Pradesh. By this G.O. the powers of various officers as "assessing

authority" were prescribed. G.O.Ms. No. 434 dated March 30, 1982, as amended by G.O.Ms. No. 1059, dated July 27, 1982 which added the first proviso says that a Joint Commissioner, an Assistant Commissioner and a Commercial Tax Officer specially appointed for investigation of evasions - shall exercise and shall always be deemed to have been so empowered to exercise the powers of the assessing authority over the entire State of Andhra Pradesh in case of all dealers in respect of whose transaction any suppression or omission, whether or not fraudulent or wilful, is detected by such officer or is brought to his notice in any manner whatsoever. The second proviso says that in a case where any officer specified in the first proviso undertakes the assessment of any dealer in pursuance of the powers conferred by the said provision, the assessing authority of the area having jurisdiction to assess such dealer shall not exercise such jurisdiction for the relevant period of one year. The effect of section 38(4) and the proviso, read above, is to remove the defect pointed out by the Division Bench in Sri Balaji Rice Company Vs. Commercial Tax Officer No. I, Nellore and Others, wherein the Bench observed that the plurality of officers was conferred with powers to assess a single dealer without laying down any guidelines and that was discriminatory and violative of article 14 of the Constitution. A combined reading of section 38(4) and the proviso as amended, shows that having regard to the conditions specified in the G.O. guidelines have been provided and that provision is given retrospective.

14. Now reverting to Mcdowell and Co. Limited Vs. Commercial Tax Officer, , it may be pointed out that section 38(4) of the Amendment Act 18 of 1985 was not brought to the notice of the Bench. What all was stated before the said Bench was that the Government had issued a notification delimiting the jurisdictional areas of the officers and their jurisdiction was confined to certain specified areas and that the concurrent jurisdiction was no longer in force. That contention was rejected on the ground that the notification delimiting the area of jurisdiction could not have retrospective effect and would not therefore retrospectively validate the impugned notice. We may add here that sub-section (4) of section 38 of the Amendment Act, inter alia, provides that the amendment made by G.O.Ms. No. 434 and G.O.Ms. No. 1059 shall always be deemed to have been incorporated in Notification-II of G.O.Ms. No. 1091, Revenue, dated June 10, 1957.

15. In S.R. Traders v. Assistant Commissioner of Commercial Taxes IV [1994] 92 STC 626 (AP) when section 38(4) was brought to the notice of the Division Bench of this Court, the Bench did not strike down the impugned action on the ground of plurality of the officers.

16. In the instant case for the assessment years 1979-80 and 1980-81 the Commercial Tax Officer (Intelligence) assessed the petitioner and that was questioned on the authority of the judgment in Sri Balaji Rice Company Vs. Commercial Tax Officer No. I, Nellore and Others, . The Tribunal having noticed the provisions of section 38(4), held that the assessing authority had jurisdiction

at the relevant time and that the assessment made by the officer was validated by section 38(4) of the Amendment Act. Thus the Tribunal upheld the contention of the Revenue. The Tribunal also pointed out that the Commercial Tax Officer (Intelligence) had jurisdiction over two districts of Ananthapur and Kurnool as regular Commercial Tax Officer and therefore the assessment made by him was valid.

17. In view of the above discussion, we are unable to hold that the Tribunal has erroneously decided the question of law with reference to the jurisdiction or authority of the Commercial Tax Officer (Intelligence) in assessing the petitioner which led to these T.R.Cs., for the assessment year 1980-81.

18. The tax revision cases are, therefore, dismissed but in the circumstances of the case we make no order as to costs.

19. Petitions dismissed.