(1997) 02 AP CK 0038

In the Andhra Pradesh High Court

Case No : T.R.C. No. 4 of 1997

Sri Balaji Paddy and Rice Merchant — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 27-02-1997

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

Citation : (1997) 106 STC 280

Hon'ble Judges : Lingaraja Rath, J;B. Sudershan Reddy, J

Bench : Division Bench

Judgement

Lingaraja Rath, J.—The sole question urged, on admission of the case, is that the reopening of the assessment proceeding u/s 14(4-A) of the A.P. General Sales Tax Act (for short "the Act") was barred by limitation inasmuch as the original order of assessment was passed on December 16, 1983 which order was served upon the assessee on January 19, 1984, and the escaped assessment order was passed on January 8, 1988 and served upon the assessee on March 9, 1988. Placing reliance on a decision of the Supreme Court in State of Andhra Pradesh v. Ramakishtaiah & Co. [1994] 93 STC 406 it is urged that not only that the escaped assessment must be made within four years from the date of service of the original assessment order upon the assessee, but that unless such assessment order is served upon the assessee also within four years of the service of the original assessment order has been made, the fresh assessment must be held to be barred by time. Referring to the decision cited, we do not find any such principles to have been decided. The facts in that case are that the original assessment order had been passed in September, 1969 and the revisional order was shown to have been passed on January 6, 1973. Though it was so, yet the order was served upon the assessee only on November 21, 1973. The assessee had come up with the case that though the order of revision was purported to have been passed on January 6, 1973, yet it was not actually so and had been ante-dated to bring it within the four years period u/s 22(2). Their Lordships held that when the department has not come forward with any explanation as to why the order purportedly made on January 6, 1973 was served 10 1/2 months later on November 21, 1973, it must be presumed that the order was actually ante-dated and that it might have been passed after expiry of four years period. Even at the High Court stage the Revenue had lost though on a different interpretation and it had gone up in appeal before the Supreme Court.

2. A reading of the decision shows no general proposition to have been laid down that wherever the fresh assessment order is communicated to the assessee beyond four years, even if after a day or two, the fresh assessment order must be taken to have been barred by limitation. Their Lordships were dealing with the case with a peculiar set of facts where the conduct of the Revenue was suspicious in not communicating the order for 10 1/2 months and hence argument was raised that the order had not been passed on the day on which it was purported to have been passed. It was specifically observed in the judgment that the department had not come with an explanation and that had there been a proper explanation, that would have been a different matter. Reliance is also placed by Mr. S. Krishna Murthy, learned counsel for the petitioner, on a decision in State of Andhra Pradesh Vs. Toshiba Anand Batteries Ltd. and Another, wherein this Court observed "that a consistent view has been taken by this Court which has been affirmed by the apex Court that the period of limitation of four years prescribed by section 20(3) of the APGST Act covers the whole proceedings of the revision including passing of the final order and of communicating the same promptly to the party concerned." This decision was rendered placing reliance on the decision of the Supreme Court [State of Andhra Pradesh v. Ramakishtaiah [1994] 93 STC 406 referred to above]. Even in this case no different view was taken and all that was said was that a revisional order must be promptly communicated to the party concerned. The requirement to communicate the order promptly is not a question of limitation in itself, but is a requirement of fairness and propriety, i.e., of natural justice. Section 14(4-A) of the Act no doubt is couched in the same language as section 20(3) of the Act, but on the facts of the present case we do not think that there was such unexplained or inordinate delay so as to throw out the fresh assessment order.

3. It is conceded by Mr. S. Krishna Murthy that the assessee has never challenged either before the first appellate authority or the second appellate authority or even before this Court that the fresh assessment order was ante-dated so as to bring it within four years limitation. Hence on facts, the Supreme Court decision is not applicable.

4. The application has no merit and is accordingly dismissed. No costs.

5. Petition dismissed.

