

(1961) 08 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 127 and 915 of 1959

Sri Radhakrishna and Co.

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1961) ALT 897 : (1961) 2 AnWR 389 : (1962) 13 STC 117

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : K. Venkataramaiah, for the Appellant; The Advocate-General and The Third Government Pleader, for the Respondent

Judgement

P. Chandra Reddy, C.J.—This matter is referred to a Bench by our learned brother, Seshachalapati, J., as, in his opinion, it involves an important point of law bearing on the interpretation of Section 14(2) of the Andhra Pradesh General Sales Tax Act (VI of 1957) and it is bare of authority.

2. The point for decision is a short one, namely, whether penalty u/s 14(2) can be levied after the best judgment assessment was made u/s 14(1). The facts relevant to this enquiry may be shortly stated. The petitioner is a partnership firm carrying on the business of manufacture of groundnut oil and cake and paddy and rice. For the assessment year 1957-58, they submitted monthly returns of their transactions. In the course of that year, a sudden inspection of the business premises led to the recovery of accounts which disclosed that the assessee suppressed a good part of the turnover. As the partnership did not disclose several taxable items in the monthly returns with the deliberate intention of evading sales tax, the assessing authority proceeded to make the assessment to the best of his judgment u/s 14(1). After having completed the assessment, he called upon the assessee to show cause why penalty should not be levied on the turnover not disclosed. The explanation furnished by the petitioner was not acceptable to the proper officer with the result that a penalty

of Rs. 4,182 was levied.

3. The appeal carried by the petitioner to the Deputy Commissioner of Commercial Taxes proved unsuccessful.

4. A further appeal was preferred before the Sales Tax Appellate Tribunal without paying the penalty imposed on him. Hence the appeal was rejected. It is under these circumstances that the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution.

5. The chief contention of Sri Venkataramaiah, learned counsel for the petitioner, is that as the penalty was levied after making an order u/s 14(1), it was invalid and unenforceable. The assessment to the best of judgment of the Commercial Tax Officer was made on 19th March, 1958, while the notice requiring the petitioner to show cause why the provisions of Section 14(2) should not be put into effect was served on the petitioner on 17th April, 1958, and the penalty was imposed on 8th May, 1958.

6. The argument of the learned counsel is that the imposition of penalty should be simultaneous with the making of the best judgment assessment order or, at any rate, that the notice for this purpose should issue on the same day when an order u/s 14(1) was passed. As the answer to the question that presents itself before us turns upon Section 14, it is convenient to quote it here in so far as it is relevant for present enquiry :

14. (1) If the assessing authority is satisfied that any return submitted u/s 13 is correct and complete, he shall assess the amount of tax payable by the dealer on the basis thereof ; but if the return appears to him to be incorrect or incomplete he shall, after giving the dealer a reasonable opportunity of proving the correctness and completeness of the return submitted by him and making such enquiry as he deems necessary, assess to the best of his judgment, the amount of tax due from the dealer. An assessment under this section shall be made only within a period of four years from the expiry of the year to which the assessment relates.

(2) When making an assessment to the best of judgment under Sub-section (1) the assessing authority may also direct the dealer to pay in addition to the tax assessed, a penalty not exceeding one and half times the tax due on the turnover that was not disclosed by the dealer in his return.

* * * *

7. The basis of the contention of the learned counsel for the petitioner is the language of Sub-section (2), namely, "when making an assessment to the best of judgment under Sub-section (1)". The prime duty which we have to discharge in this case is to consider whether the expression "when making an assessment etc..." would warrant the view pressed upon us by the learned counsel. The word "when" carries several meanings as could be seen from several of the dictionaries.

8. We may refer to some of the meanings contained in the Oxford English Dictionary (Vol. XII) which are extracted hereunder :

1. In a direct question : At what time ? on what occasion ? Sometimes passing into the sense : In what case or circumstances ?

2. In a dependent question or clause of similar meaning : at what time ; on what occasion ; in what case or circumstances.

* * * *

4. As compound relative, or as correlative to then (implied and sometimes expressed); at the (or a) time at which ; on the (or an) occasion on which.

(a) In reference to a definite actual occurrence or fact, chiefly with verb in past tense ; At the time that, on the occasion that; sometimes with verb in present tense ;

* * * *

(c) Indefinitely or generally : At any time, or at the several times, at which; on any occasion that; most commonly with verb in present tense.

5. Introducing a clause as the object of a verb, or (later) governed by a preposition : The or a time at which ; a case in which.

* * * *

8. With notion of time modified by or merged in that of mere connexion : In the, or any, case or circumstances in which ; sometimes nearly.

The clause with when is often equivalent to a phrase with . preposition and gerund (when he sees or saw "on seeing"; when he says or said , "in saying").

9. Similar are the meanings to be found in the Webster's New International Dictionary (Vol. II).

10. Of the various meanings attributable to this term "when", we must adopt the one which accords with the context.

11. If we now examine the scheme of Section 14, the object thereof discloses itself, viz., that penalty should be levied in cases of deliberate suppression of turnover with a view to avoid tax liability. The Legislature intended to discourage the deliberate omission by making it unprofitable.

12. Is it necessary to achieve this object to insist upon levy of penalty or the issue of notice simultaneous with the making of the best judgment assessment ? We do not think that the purpose of the section is accomplished by requiring the authority concerned to initiate proceedings u/s 14(2) simultaneously with taking action u/s 14(1). In this connection, it should be borne in mind that the levy of penalty does not automatically follow upon assessment being made u/s 14(1). The officer concerned should exercise his mind and consider whether a particular

case is a proper one for resorting to Section 14(2). It is apparent from the section that the best judgment assessment should form the basis of proceedings u/s 14(2). It does not envisage proceedings u/s 14 (2) being initiated along with making the best judgment assessment.

13. If the literal and mechanical way of interpretation suggested by the learned counsel for the petitioner is to be followed, the levy of penalty should be a part of the best judgment assessment. But this is what the proviso to Section 14 reads :

Provided 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 information, and make such inquiry as he considers necessary.

14. This precludes the imposition of penalty without affording an opportunity to the assessee to explain the omission to disclose the information.

15. It is clear from the proviso that an inquiry should be made by the assessing authority before imposing penalty on the assessee. This is inconsistent: with the interpretation the learned counsel for the petitioner seeks to put upon Section 14(2). A combined reading of Sub-section (2) and the proviso inevitably leads us to the conclusion that the proper officer, after ascertaining the turnover to the best of his judgment u/s 14(1), has to examine the question of the levy of penalty and if he is satisfied that there was a case for proceeding under Sub-section (2), he should give a reasonable opportunity to the assessee to explain the omission to disclose the information. This result is achieved by interpreting, "when making an assessment to the best of judgment under Sub-section (1)" to mean "on making an assessment to the best of judgment under Sub-section (1)" or "in a case of assessment to the best of judgment under Sub-section (1)" or "in the circumstances in which an assessment to the best of judgment under Sub-section (1) is made". This interpretation will carry out the legislative intent and gives effect to the object of the section.

16. In our opinion, Sub-section (2) only vests jurisdiction or power in the authority concerned to levy on the assessee penalty in certain cases and there is nothing to compel the officer to levy a penalty or issue a notice for that purpose at the same time when assessment u/s 14(1) is made. Section 14(2) is only a provision enabling the revenue to have recourse to it in certain contingencies. It does not indicate the time at which it should be put into operation.

17. On this discussion, it follows that the notice issued in Connection with the levy of penalty is not rendered invalid by reason of its having been served on the petitioner after the best judgment assessment was made u/s 14(1).

18. The learned, counsel for the petitioner then fell back upon the argument that the order levying penalty does not reveal that the omission to disclose the turnover in question was intentional or deliberate. We do not think that there is

any substance in this point. The order clearly discloses that the petitioner suppressed several taxable items with the dishonest intention of evading sales tax. The officer remarks:

Had it not been for the detection of these private set of accounts on 14th January, 1958, the above company would have successfully evaded tax due on the above items to the State.

19. There is, therefore, no force in this submission either. In the result, this writ petition is dismissed with costs. Advocate's fee Rs. 75.

20. W.P. No. 915 of 1959.-For the reasons mentioned in W.P. No. 127 of 1959, this petition is also dismissed with costs. Advocate's fee Rs. 75.