(1996) 07 AP CK 0068

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 288 of 1988

Srikanth Trading Company — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 35
Andhra Pradesh General Sales Tax Rules, 1957 — Rule 12, 17(3), 58

Citation : (1998) 109 STC 590

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

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner is a dealer registered under the Andhra Pradesh General Sales Tax Act, 1957. It challenges the validity of the order of the Sales Tax Appellate Tribunal in T.A. No. 722 of 1984 dated March 22, 1988 as illegal and arbitrary.

2. The short question that arises for consideration is whether an auditor is an agent within the meaning of clause (a) of rule 58 of the Andhra Pradesh General Sales Tax Rules, 1957.

3. The petitioner is a dealer in groundnuts. For the assessment year 1981-82, the Commercial Tax Officer completed the assessment. One of the items of assessment was based on the check of the lorry by the Commercial Tax Officer who found that 739 bags of groundnut seeds were purchased by the petitioner and on that he added an estimated turnover of Rs. 3,15,500 in the assessment. The petitioner, however, denied the purchase of 739 bags of groundnut seeds and its sale.

4. The assessee object to the assessment before the Appellate Deputy Commissioner on the ground that no pre-assessment notice was issued as

contemplated under rule 12 read with rule 17(3) of the Rules. But the Appellate Deputy Commissioner rejected the contention holding that notice was given to the assessee, but no objections were filed. On further appeal to the Sales Tax Appellate Tribunal, the Tribunal observed that notice was served on the auditor of the petitioner on November 17, 1983 and the assessee had not denied any connection with the said auditor. The Tribunal, therefore, held that notice was sufficient and remanded the matter to the assessing authority for giving opportunity in regard to levy of penalty allowed u/s 14 of the Andhra Pradesh General Sales Tax Act and thus partly allowed the appeal on March 22, 1988. It is that view of the Tribunal that is assailed in this tax revision case.

5. Mr. Girish Kumar, the learned counsel for the petitioner, submits that service of notice on the auditor is not proper service within the meaning of rule 58 of the Rules. Therefore, there was no notice to the petitioner and as such the order of assessment was without any notice to the petitioner and the same has to be set aside.

6. The learned Special Government Pleader submits that notice was served on the assessee through the auditor on November 17, 1983 and therefore, it must be deemed to be a proper service.

7. A perusal of the order of assessment shows that notice was served on the assessee on November 17, 1983. It is perhaps on that basis, the appellate authority also held that notice was served on the assessee, but no objections were filed by the assessee. However, the Tribunal, while meeting this contention, observed that the assessment file was perused and it was noticed that the show cause notice dated November 14, 1983 in which all the material gathered by the assessing authority was noted, was served on Sri G. V. Ramanayya, auditor of the appellant-assessee on November 17, 1983. The learned Government Pleader also does not seriously dispute that the service mentioned in the assessment order as well as in the order of the Appellate Deputy Commissioner is service on the auditor. Then the question would arise whether the service on the auditor would be proper service within the meaning of rule 58 of the Rules. Rule 58 of the Rules reads as follows :

"58. The service on a dealer of any notice, summons, order or proceedings under the Act or under these rules may be effected in any of the following ways, namely :

(a) by giving or tendering it to such dealer or his manager or agent; or

(b) if such dealer or his manager or agent is not found, by leaving it at his last known place of business or residence or by giving or tendering it to some adult member of his family; or

(c) if the address of such dealer is known to the assessing or licensing authority, by sending it to him by registered post; or

(d) if any or all of the modes aforesaid is not practicable, by affixing it in some conspicuous place at his known place of business or residence."

8. A plain reading of the rule, extracted above, shows that service on the dealer of any notice, summons, order or proceedings under the Act or under the Rules may be effected in any one of the ways mentioned in clauses (a) to (d). Clause (a) speaks of giving or tendering it to such dealer, or his manager or agent. What is contended here is that no notice was tendered to the dealer or to the manager, it was tendered to the auditor, who does not come either within the meaning of manager or agent. The learned Special Government Pleader, however, relies on section 35(a) of the Act to show that the auditor falls within the meaning of agent. Section 35 deals with appearance before any authority in proceedings. It is in the following terms :

"35. Appearance before any authority in proceedings. - Any person who is entitled to appear before any authority other than the Special Appellate Tribunal in connection with and proceedings under this Act, may be represented before such authority -

(a) by his relative or a person regularly employed by him, if such relative or person is duly authorised by him in writing in this behalf; or

(b) by a legal practitioner; or

(c) subject to such conditions as may be laid down by the rules in that regard by a chartered accountant within the meaning of the Chartered Accountants Act, 1949 or by a person who was enrolled as a sales tax practitioner by such authority on payment of such fees and possessing such qualifications as may be prescribed if such accountant or sales tax practitioner is duly authorised in writing in this behalf."

9. It must be pointed out here that service of notice on persons as contemplated under rule 58 is entirely different from appearance of the persons u/s 35 of the Act. Merely because u/s 35 the chartered accountant is entitled to appear in the proceedings before the authorities under the Act, it cannot be held that the chartered accountant is an agent for purpose of receiving pre-assessment notice. Receiving of notice during the pendency of any proceedings where chartered accountant is appearing cannot be equated with receiving of pre-assessment notice for and on behalf of a dealer. There is nothing on record to show that the auditor appeared before the Commercial Tax Officer pursuant to the notice in the assessment proceedings. In the absence of such material, in our view, service of show cause notice on the auditor who happened to appear subsequently in penalty proceedings cannot be taken as sufficient notice. In this view of the matter, the impugned order of assessment is set aside. The assessing authority is at liberty to issue fresh show cause notice and proceed with the assessment, in accordance with law.

10. The tax revision case is accordingly allowed, but in the circumstances without costs.

11. Petition allowed.

