
(1977) 09 AP CK 0018
In the Andhra Pradesh High Court
Case No : C.R.P. No. 461 of 1976

Srinivasa and Co.

APPELLANT

Vs

Commercial Tax Officer

RESPONDENT

Date of Decision : 15-09-1977

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1979) 44 STC 309

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : S. Dasaratharama Reddi, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Rao, J.—This is a petition filed under Article 227 of the Constitution of India against the notice dated 5th February, 1976, issued by the respondent, the Commercial Tax Officer, Ongole, under Rule 14-A of the Central Sales Tax (Andhra Pradesh) Rules (hereinafter called the Rules), proposing to assess the petitioner on a net turnover of Rs. 5,32,899.60 for the year 1969-70 under the Central Sales Tax Act, and calling upon it to file its objections against the proposed assessment.

2. The main ground on which the notice is attacked is that it is barred by limitation under Rule 14-A(8)(b) of the Rules.

3. The brief facts relevant for the purposes of deciding the said question are as follows:

The petitioner is a registered firm carrying on business in ghee, which is taxable at the last purchase point under the Andhra Pradesh General Sales Tax Act, 1957. For the assessment year 1969-70, the petitioner was assessed to sales tax under the Act on 12th December, 1970, on the last purchase of ghee, to the extent of Rs. 47,46,190. The Deputy Commissioner of Commercial Taxes issued

notice on 31st October, 1974, to the petitioner proposing to assess the turnover of Rs. 5,32,900 under the Central Sales Tax Act. Challenging the said notice, the petitioner filed a writ petition, W.P. No. 6644 of 1974, in this Court contending that the Deputy Commissioner had no jurisdiction to assess the turnover under Rule 14-A(11) of the Rules beyond four years from the end of the assessment year, i.e., after 31st March, 1974. Accepting the said contention, this Court allowed the writ petition and quashed the notice by an order dated 18th July, 1975. It was however observed by this Court that the order would not preclude the assessing authority from proceeding to take action under Rule 14-A(4) of the Rules. Subsequently, the impugned notice was issued by the respondent. Hence the revision petition.

Rule 14-A(8) of the Rules reads as follows:

If, for any reasons, the whole or any part of the turnover of business of a dealer has escaped assessment to tax or has been under-assessed in any year, the assessing authority may after issuing a notice to the dealer and after making such inquiry as he considers necessary determine to the best of his judgment the correct turnover, and assess the tax payable on such turnover--

(a) within a period of six years from the expiry of the year to which the tax relates, if any such event has occurred on account of the failure of the dealer to disclose the turnover or any other particulars correctly;

(b) within a period of four years from the expiry of the year to which the tax relates, if any such event has occurred due to any other causes.

4. Sub-Clause (a) enables the officer to make reassessment within a period of six years if the escapement of assessment is on account of the failure of the dealer to disclose the turnover or any other particulars correctly. But if a turnover has escaped assessment due to causes other than the failure of the assessee to disclose the turnover or other particulars correctly, the assessment of the turnover which has escaped the assessment to tax has to be made within a period of four years from the expiry of the year to which the tax relates.

5. In the instant case, the contention of the petitioner is that it had fully disclosed the turnover of Rs. 5,32,900 as sales made to non-resident dealers who took delivery of the goods at Ongole within the State and the Commercial Tax Officer accepted the same and held that the said turnover was not liable to be taxed as the petitioner was not the last purchaser within the State.

6. On the other hand, it is contended by Sri Sardar Ali Khan, the learned Government Pleader, that the petitioner failed to file a return in respect of the said turnover which is liable to be taxed under the Central Sales Tax Act and, therefore, it should be held that there is no disclosure of the turnover under the Central Sales Tax Act.

7. I cannot accept this submission. It is not disputed that the turnover of Rs. 5,32,900 was disclosed in the return filed by the petitioner under the Andhra

Pradesh General Sales Tax Act for the assessment year 1969-70 and it is also indicated in the return that the said turnover represents sales made to nonresident dealers who took delivery of the same within the State at Ongole. Therefore, it cannot be said that there was any failure on the part of the petitioner to disclose the turnover or any other particulars. The Commercial Tax Officer who made the assessment accepted the sales as intra-State sales within the State of Andhra Pradesh and held the turnover not liable to be taxed either under the State Act or the Central Act. Now the impugned notice is issued by the same Commercial Tax Officer taking a different view that the sales represented by the said turnover of Rs. 5,32,900 are inter-State sales liable to be taxed under the Central Act. So it is a case where the turnover has escaped the assessment not on account of any failure on the part of the petitioner to disclose the turnover or any other particulars correctly, but on account of a change of opinion of the assessing authority with regard to the character of the said sales. Therefore, the case is governed by the provisions of Rule 14-A(8)(b) of the Rules, in which case, reassessment has to be made within a period of four years, i.e., before 31st March, 1974. As the impugned notice has been issued beyond four years, it is clearly barred by limitation and the respondent has no jurisdiction to issue the said notice.

8. It is contended by the learned Government Pleader that revision is not maintainable under Article 227 of the Constitution on the ground that the Commercial Tax Officer is not a Tribunal.

9. I do not think, there is any merit in this submission. The Commercial Tax Officer, in making assessment under the sales tax laws, exercises quasi-judicial functions and determines the rights of the parties and hence he is a Tribunal and is amenable to the jurisdiction under Article 227 of the Constitution.

10. It is next contended by the learned Government Pleader that the petitioner has an alternative remedy by way of appeal against the order making reassessment.

11. The contention of the petitioner is that the impugned notice issued by the respondent is wholly devoid of jurisdiction and this contention has been upheld by me. Therefore, when the notice proposing to make reassessment is found to be devoid of jurisdiction, I do not think the petitioner can be denied relief under Article 227 of the Constitution on the ground that it has an alternative remedy against the final order making reassessment.

12. Next it is contended that disputed questions of fact cannot be decided in a revision petition, and that the petitioner has to submit its explanation and representations in answer to the impugned notice and thereafter the respondent should investigate the facts and decide the matter.

13. I do not think in the circumstances of the present case, it can be said that the question of jurisdiction raised by the petitioner involves any further investigation into the facts. On the other hand, on the facts admitted and which

do not require any further proof or investigation, it is found that the impugned notice by the respondent is beyond the period of limitation prescribed by the relevant rule and, therefore, it is devoid of jurisdiction.

14. In the result, the revision petition is allowed with costs and the impugned notice is set aside.