(1994) 06 AP CK 0035

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 95, 98, 100, 101 and 102 of 1991

Srinivasa Mineral Works — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 20-06-1994

Acts Referred:

Andhra Pradesh General Sales Tax (Amendment) Act, 1985 — Section 14(8)

Citation : (1994) 95 STC 118

Hon'ble Judges : S.S. Mohammed Quadri, J;P.L.N. Sarma, J

Bench : Division Bench

Advocate : P. Girish Kumar, for M.V. Pavan Kumar, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Syed Shah Mohd. Quadri, J.—These five tax revision cases relate to the same assessee and deal with levying of penalty for the assessment years prior to July 1, 1985. The Sales Tax Appellate Tribunal, Hyderabad, found that the assessing authority levied the penalty at three times the tax payable by the assessee on the assumption that the minimum penalty prescribed was three times the tax due and reduced it to two times. Challenging the validity of the offers of the Tribunal contending that the Tribunal erred in law, the present five revision cases are filed.

2. The learned counsel for the petitioner, Mr. Girish Kumar, submits that in the order dated July 1, 1985, no minimum was prescribed. But the Tribunal assumed that a minimum of two times the tax payable was prescribed as penalty to be imposed in a case where whole or part of the turnover was not disclosed correctly or there was wilful failure to submit the return before the prescribed date.

3. Heard the learned Government Pleader.

4. We find considerable force in the submission of the learned counsel for the petitioner. A perusal of the order of the Tribunal shows that the Tribunal was

under the mistaken impression that the minimum penalty provided was two times. On this aspect, the Tribunal recorded its findings as follows :

"Section 14(8) of the Andhra Pradesh General Sales Tax Act was amended on July 1, 1985, making three times as the penalty and prior thereto the minimum penalty provided was only two times."

5. The provisions of sub-section (8) of section 14 as they stood prior to amendment by Act 18 of 1985 with effect from July 1, 1985, read as follows :

"14(8). The penalty livable under sub-section (2), sub-section (3) or sub-section (4) shall not exceed -

(a) five times the tax or the fee, due in a case where the assessing authority is satisfied that the failure of the dealer to disclose the whole or part of the turnover or any other particulars correctly, or to submit the return before the prescribed date, was willful; and

(b) one half of the tax or the fee due in a case where such failure was not willful;

Provided that where such failure occurred due to a bona fide mistake on the part of the dealer, no such penalty shall be levied."

6. A plain reading of the provisions extracted above shows that the maximum penalty alone was prescribed by section 14(8) at five times of the tax or the fee due by the assessee and no minimum as such was prescribed where the non-submission of the return before the prescribed date or incorrect disclosure of the turnover was wilful.

7. In these cases though it is argued by the learned counsel for the petitioner that the non-disclosure was not wilful, yet, we are unable to accept this contention, as the Tribunal found that the omission was wilful. However, as the Tribunal proceeded on the assumption that minimum penalty was two times the tax due we are unable to sustain the penalty levied. But in view of the fact that the omission has been found to be wilful, we consider that ends of justice would be met by reducing the penalty of half the penalty imposed by the Tribunal.

8. The revisions are accordingly allowed but in the circumstances, without costs.

9. Petitions allowed.