

(1977) 10 AP CK 0018

In the Andhra Pradesh High Court

Case No : T.R.C. No"s. 68 of 1976 and 8 of 1977

State

APPELLANT

Vs

National Rubber Manufacturers Ltd.

RESPONDENT

Date of Decision : 31-10-1977

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4)(c)

Citation : (1978) 42 STC 392

Hon'ble Judges : Obul Reddi, C.J;Chennakesav Reddy, J

Bench : Division Bench

Advocate : The Government Pleader for Commercial Taxes, for the Appellant; G. Rajapu Reddi, for the Respondent

Final Decision : Dismissed

Judgement

Obul Reddi, C.J.—In these two revisions preferred by two different assessees, the common question that arises is whether the revisional order made by the Deputy Commissioner was time-barred. According to the learned counsel, Sri D. V. Sastry, appearing for the State, the revision Clause petitioner in these two revision cases, the order made by the Deputy Commissioner should be construed, as one made in exercise of his powers u/s 20 of the Andhra Pradesh General Sales Tax Act and, when so construed, his order was within the time prescribed under that section.

2. To determine the question involved, it may be relevant to state a few facts as appear in Revision No. 68. The assessee is a dealer dealing in cycle tyres and cycle rickshaw tyres besides other types of tyres. The assessing authority levied tax on a turnover of Rs. 3,43,260.36 relating to sales of cycle rickshaw tyres at the rate of 31/4 per cent treating both cycle tyres and cycle rickshaw tyres to be of the same kind and applying entry 17 of the First Schedule. This entry, as it then stood, read :

Cycles, their accessories At the point of first Rate of tax at and parts made of

rubber sale in the State. 31/4 percent paise or other material. in the rupee.

3. The order of assessment was made on 17th March, 1972. The Deputy Commissioner by his order dated 11th November, 1975, revised the said order of assessment u/s 20, Sub-section (2) and levied tax at 91/4 per cent on the disputed turnover invoking entry 15 of the same schedule, which reads as "tyres and tubes and accessories used therewith made of rubber or other material". On appeal to the Sales Tax Appellate Tribunal by the assessee, the Tribunal by its order dated 31st August, 1976, set aside the order of the Deputy Commissioner holding that the power of revision u/s 20(2) cannot be invoked as it was a case of under-assessment falling u/s 14(4)(b) or 14(4)(c). In that view, the Tribunal held that the order made by the Deputy Commissioner was beyond 4 years from the date of expiry of the assessment year and hence barred by time u/s 14(4-A). What Mr. Sastry contends before us is that it is not open to the assessing authority to change its opinion and make a reassessment u/s 14(4) and, therefore, the order made by the Deputy Commissioner should be deemed to be one made in exercise of his revisional jurisdiction u/s 20. According to him, the original assessment cannot be reviewed by the assessing authority and it could only be revised by an authority in whom the revisional jurisdiction is vested. So, what requires to be seen is whether these two cases are covered by Section 14(4) or by Section 20(2) of the Act.

4. Section 14 deals with assessment of tax and to the extent relevant, it reads:

Section 14. (4) In any of the following events, namely, where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax, or has been under-assessed or assessed at a rate lower than the correct rate, or where the licence fee or registration fee has escaped levy or has been levied at a rate lower than the correct rate, the assessing authority may, after issuing a notice to the dealer and after making such enquiry as he may consider necessary, by orders, setting out the grounds therefore-

(a)...

(b) assess the correct amount of tax payable on the turnover that has been under-assessed ;

(c) assess at the correct rate the turnover that has been assessed at a lower rate.

5. In this case, the Deputy Commissioner was exercising the powers of the assessing authority as in his opinion the original assessing authority had not assessed the turnover at the correct rate. In his opinion, the rate to be applied for assessment was the one provided in entry 15 and not the one in entry 17. Sub-section (4-A) of Section 14 provides for limitation and it says :

An assessment or levy under Sub-section (4) shall be made-

(a)...

(b) within a period of four years from the expiry of the year aforesaid, if such

event has occurred due to any other cause.

6. If we are to compute the period of 4 years from the expiry of the year of assessment, the impugned order made by the Deputy Commissioner would be time-barred. The learned counsel for the department, however, relied upon Section 20 to contend that it is the revisional jurisdiction that has been exercised by the Deputy Commissioner and, therefore, the period of limitation of 4 years should be computed from the date on which the original order of assessment was served on the dealer. Section 20 to the extent relevant reads :

Section 20. (1)...

(2) Powers of the nature referred to in Sub-section (1) may also be exercised by the Deputy Commissioner and the Commercial Tax Officer in the case of orders passed or proceedings recorded by authorities, officers or persons subordinate to them.

(2-A)...

(3) In relation to an order of assessment passed under this Act, the powers conferred by Sub-sections (1) and (2) shall be exercisable only with Clause in such period not exceeding four years from the date on which the order was served on the dealer, as may be prescribed.

7. This is not a case where it could be said that the Deputy Commissioner in exercise of his revisional jurisdiction made the impugned order. The order made by him relates to the assessment made by the original assessing authority at an incorrect rate. The Deputy Commissioner's view was that the correct rate to be applied is prescribed in entry 15 and it falls within the ambit of Clause (c) of Sub-section (4) of Section 14. It is for that reason that he sought to reassess on the basis of the rate provided in entry 15. The Tribunal was, therefore, right in holding that it is for the assessing authority alone to determine the correct rate of turnover that has been assessed at a lower rate and, therefore, it is a case where the power conferred by Sub-section (4) of Section 14 on the assessing authority was exercised by the Deputy Commissioner who as a higher authority is empowered to exercise also the powers of the assessing authority. The impugned order of the Deputy Commissioner dated 11th November, 1975, in Revision No. 68 is therefore time-barred. It is not in dispute that if this view is to prevail, the order of the Deputy Commissioner in T. R. C. No. 8 of 1977 would be time-barred.

8. In the result, both the revisions fail and they are accordingly dismissed with costs. Advocate's fee Rs. 200 in each.