(1996) 07 AP CK 0070

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 10 of 1989

State of Andhra Pradesh — APPELLANT

Vs

Andhra Pradesh Mining Corporation — RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 22(1)
Central Sales Tax (Andhra Pradesh) Rules, 1957 — Rule 14

Citation : (1997) 106 STC 276

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

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—The State is the petitioner in this revision petition filed u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the APGST Act").

2. That learned Special Government Pleader for Commercial Taxes has argued that the exercise of revisional power by the Deputy Commissioner (C.T.) u/s 9(2) of the Central Sales Act (for short, "the CST Act") read with section 20(2) of the APGST Act, is within limitation.

3. To appreciate the contention of the learned Government Pleader, it would be necessary to refer to the facts giving rise to this revision. The respondent herein was assessed to tax on its turnover for the assessment year 1972-73 by the order of the Commercial Tax Officer dated February 28, 1977. That order was served on the respondent-assessee on March 31, 1977. In exercise of power conferred u/s 9(2) of the CST Act read with section 20(2) of the APGST Act, Deputy Commissioner of Commercial Taxes revised the order of assessment and on February 27, 1981 and subjected a turnover of Rs. 48,253.35 to sales tax. As we are not concerned with the merits of the case, we are not narrating the facts on that aspect. Against the said order of the Deputy Commissioner the respondent filed an appeal before the Sales Tax Appellate Tribunal. On August 4, 1986 the Tribunal set aside the order of the Deputy Commissioner and allowed

the appeal. It is that order that is the subject-matter of this revision.

4. The short question that arises for consideration in this tax revision case is - whether the order passed by the revising authority (Deputy Commissioner of Commercial Taxes) on February 27, 1981, is barred by limitation.

5. The learned Government Pleader contends that as the power has been exercised by the Deputy Commissioner u/s 20(2) of the APGST Act, the period of limitation contained in sub-section (3) of section 20 would apply. Sri Girish Kumar, the learned counsel for the respondent-assessee, contends that as the assessment is made under the CST Act and the power of revision is exercised u/s 9(2) of the CST Act, the period of limitation prescribed under the CST Act and the Rules made thereunder, alone will govern.

6. Here it will be useful to read section 9(2) of the CST Act :

"9. Levy and collection of tax and penalties. - (1) ....

(2) Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

7. From a plain reading of the provision extracted above, it is clear that the authorities empowered to assess, reassess and enforce payment of tax under the General Sales Tax Act of the appropriate State have been empowered on behalf of the Government of India to assess, reassess, collect tax or penalty payable by such a dealer, as if the tax, penalty, etc., were payable under the general sales tax law of the State. It further provides that for the abovesaid purpose, the authorities may exercise all or any of the powers vested in them under the general sales tax law of the State. But, the exercise of power under this sub-

section is subject to the provisions of the CST Act and the Rules framed thereunder.

8. The relevant provision dealing with the aspect is found in sub-rule (8) of rule 14-A of the Central Sales Tax (Andhra Pradesh) Rules, 1957. Sub-rule (8) of rule 14-A read as under :

"Rule 14-A(1) to (7).............

(8) If, for any reason, 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 document 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."

Before we note the contents of this rule, it would be apt to read sub-rule (11) also :

"(11) The powers conferred by sub-rules (8), (9) and (10) on the assessing authority may also be exercised by the appellate or revising authority subject to the same limitation and conditions as are applicable in the case of assessing authority."

Sub-rule (11) says that the powers conferred by sub-rules (8), (9) and (10) on the assessing authority may also be exercised by the appellate or revising authority subject to the same limitations and conditions as are applicable in the case of the assessing authority. Now reverting into sub-rule (8), which contains the power of assessing authority, a close reading of the sub-rule discloses that where for any reason any part of the turnover of the dealer has escaped assessment to tax or has been under-assessed in any year, the assessing authority is empowered to issue notice to the dealer, make such enquiry as he considers necessary, determine to the best of his judgment the correct turnover and assesses the tax payable on such turnover. Limitations on this power are contained in clauses (a) and (b) thereof. Clause (a) imposes a limitation of six years from the date of expiry of the year to which the tax relates, if the escaped assessment or under-assessment has occurred on account of failure of the dealer to disclose the turnover or any other particulars correctly. Admittedly this clause does not apply to this case. Clause (b), which is attracted to the facts of this case, enjoins that the power should be exercised within a period of four years from the expiry of the year to which tax relates, if any such event has occurred due to any other reason.

9. Sub-section (3) of section 20 of the APGST Act, prescribed the period of limitation for exercising power of revision, which reads as under :

"20. Revision by Commissioner of Commercial Taxes and other prescribed authorities. - (1), (2), (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 within such periods not exceeding four years from the date on which the order was served on the dealer, as may be prescribed.

(4) to (6) ...."

10. In fact, the provision of the APGST Act, extracted above, fixes the starting point of limitation as the date on which the order was served on the dealer, whereas under the Central Rules, the period of limitation runs from the expiry of the year to which the tax relates. It is this difference in the phraseology of the provisions under the APGST Act or the Central Sales Tax Rules that would determine the validity of the order of the Deputy Commissioner on the ground of limitation.

11. Inasmuch as, the exercise of the power u/s 9(2) is subject to the provisions of the Central Act and the Rule made thereunder, in our view, the period of limitation prescribed under the Central Rules in rule 14-A(8)(b) would apply to the order passed by the Deputy Commissioner. If that period of limitation is applied, the starting point of limitation would be from the date of expiry of the year to which the tax relates. In the instant case, the tax relates to the assessment year 1972-73 and that year expired on March 31, 1973. The period of four years from that date would come to an end by March 31, 1977. The Deputy Commissioner passed the order of revision on February 27, 1981 which is far beyond the period of four years, as such it is barred by limitation.

12. In this view of the matter, we do not find any illegality in the order of the Tribunal warranting our interference. The tax revision case is dismissed accordingly; but, in the circumstances of the case, without costs.

13. Petition dismissed.