(1994) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : T.R.C. No. 60 of 1986

State of Andhra Pradesh — APPELLANT

Vs

Kedia Vanaspati (P) Ltd. — RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 14(4)

Citation : (1994) 2 AnWR 463 : (1994) 95 STC 208

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

Bench : Division Bench

Advocate : The Government Pleader for CT, for the Appellant; P. Srinivasa Reddy, for the Respondent

Judgement

Syed Shah Mohammad Quadri, J.—The State questions the order of the Sales Tax Appellate Tribunal, in T.A. No. 79 of 1982 dated August 21, 1985, allowing the appeal of the assessee and holding that the order of the assessment which was completed before January 17, 1978, when clause (cc) of sub-section (4) of section 14 of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act"), came into force, cannot be reopened.

2. The assessee is a trader and deals in groundnuts. The dispute related to the assessment year 1974-75. The assessment for the said year was completed on September 27, 1977, granting certain exemptions in respect of turnover relating to groundnuts. Subsequently, the assessing authority revised the said order in exercise of the power u/s 14(4)(cc) of the Act on September 25, 1981. On appeal, the appellate authority partly allowed the appeal in regard to a part of the turnover and remanded the matter with regard to the balance of the turnover by order dated December 14, 1981. The assessee then carried the matter in appeal before the Sales Tax Appellate Tribunal. The contention that was urged before the Tribunal was that as section 14(4)(cc) came into force on January 17, 1978 and the final assessment was completed on September 27, 1977, the same could not be reopened after insertion of clause (cc) in section 14(4). The Tribunal

came to the conclusion that in view of the judgment of this Court in Fatechand and Sons v. Commercial Tax Officer [1983] 54 STC 166, the assessing authority could not have reopened the assessment and accordingly allowed the appeal of the assessee on August 21, 1985.

3. The learned Government Pleader contends that in view of the judgment of this Court in State of Andhra Pradesh v. Sreenivas Trading Co. [1989] 75 STC 206, the assessing authority has power to reopen assessment where the exemption was wrongly granted u/s 14(4)(a) and/or (b) of the Act, and that the order of the Tribunal has to be set aside.

4. Mr. Srinivasa Reddy, learned counsel for the respondent, submits that the order of the Tribunal can be maintained on the ground that there was no fresh material before the assessing authority to reopen the assessment even assuming that it had power to reopen the assessment u/s 14(4)(a) and (b) of the Act and, therefore, the revision has to be dismissed.

5. A perusal of the judgment of this Court in Fatechand and Sons [1983] 54 STC 166 shows that the question whether an assessment which has become final can be reopened after insertion of clause (cc) of section 14(4) of the Act, did not arise in the said case. What was contended there was as the orders of assessment related to the assessment years 1976-77 and 1977-78, the assessing authority had no jurisdiction to reopen the assessment orders in respect of turnover relating to a period anterior to the date of enforcement of section 14(4)(cc). The following observation of the Bench has to be understood in the light of the controversy before the Bench :

"In our view, the mere fact that the assessment orders related to an assessment year when section 14(4)(cc) of the Act was not in force, it does not preclude the Commercial Tax Officer from exercising his powers thereunder if in fact the assessment order was made on or after 17th January, 1978, when the amendment came into force. The exercise of the power is with reference to the order and not the year to which the turnover relates and the assessment not having become barred by limitation and the finality of the assessment order being subject not only to appeal or revision but also subject to the power u/s 14(4)(cc), the Commercial Tax Officer was competent to issue the notices."

6. From a reading of the judgment extracted, we are of the opinion that it does not lay down that where the assessment has become final before January 17, 1978, the same cannot be reopened in exercise of power u/s 14(4)(cc).

7. We may refer to another judgment of a Division Bench of this Court in State of Andhra Pradesh v. Sreenivas Trading Co. [1989] 75 STC 206. In that case assessment for the year 1975-76 was finalised on September 29, 1976, by granting exemptions pertaining to sales of fertilizers. The assessing authority reopened the assessment in exercise of the power conferred under clause (cc) of section 14(4). The Division Bench held that the power to reopen assessment in case where the turnover has escaped assessment or in cases where the turnover

has been underassessed can be exercised under clause (a) or (b) respectively of sub-section (4) of section 14 of the Andhra Pradesh General Sales Tax Act. The Bench further held that section 14(4)(cc) is merely clarificatory, and even without the incorporation of such a provision, the concerned authority had the power to assess the correct amount of tax payable in a case where exemption or deduction was wrongly granted. It was also held :

"......when a case of granting of exemption or deduction wrongly made comes within one or the other of the above two events mentioned in body of section 14(4) then it has to be held that the correct amount of tax payable on turnover in regard to which exemption or deduction was wrongly granted, can be assessed either u/s 14(4)(a) or (14)(4)(b) of the Act."

8. We are in agreement with the view expressed by the Division Bench and following the same we have to accept the contention of the learned Government Pleader and we accordingly do so.

9. However this opinion of ours would not put an end to the controversy. Mr. Srinivasa Reddy contended that there is no fresh material before the assessing authority to withdraw the exemption already made and therefore it is a clear case of change of opinion. The learned Government Pleader submits that it is only after verifying the nature of the exemption that the assessing authority came to the conclusion that the exemption has not been properly granted and proceeded to reopen the assessment. From the facts stated in the orders of the Tribunal as well as the appellate authority it is clear that the authority proceeded to make assessment on the basis of the available record and not de hors the record. The power section 14(4) can be exercised either on information which includes declaration of law by an authority under the Act whose orders are binding on the assessing authority or on fresh material. Therefore, though we agree with the contention of the learned Government Pleader, yet we are unable to grant any relief to the State. The order of the Tribunal is accordingly sustained, but on a different ground. Consequently, the tax revision case is dismissed. Having regard to the circumstances of the case, there will be no order as to costs.

10. Petition dismissed.

