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**(1989) 02 AP CK 0034**

**In the Andhra Pradesh High Court**

**Case No : Tax Revision Case No. 279 of 1985**

State of Andhra Pradesh

APPELLANT

Vs

Sreenivas Trading Co.

RESPONDENT

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**Date of Decision : 22-02-1989**

**Acts Referred:**

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

**Citation : (1989) 73 STC 245**

**Hon'ble Judges : V. Neeladri Rao, J;B.P. Jeevan Reddy, J**

**Bench : Division Bench**

**Advocate : The Government Pleader for Commercial Taxes, for the Appellant;**

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## **Judgement**

Neeladri Rao, J.—The respondent is a dealer in fertilizers at Kamareddy. For the assessment year 1975-76 as per the order dated 29th September, 1976, the assessing authority granted exemption on a turnover of Rs. 65,297 on the ground that it pertains to second sales of fertilizers. During the relevant time, fertilizers were subject to tax at the point of first sale within the State.

2. On the basis of some information, the assessing authority found that the said turnover represented first sales of fertilizers within the State. Hence he exercised the power u/s 14 of the A.P. General Sales Tax Act, 1957 (hereinafter referred to as "the Act") and by the order dated 10th January, 1980, he reassessed the said turnover, and tax on the same was demanded by holding that exemption or deduction in regard to the above turnover was wrongly granted. The order dated 10th January, 1980 was passed u/s 14(4)(cc) of the Act and it was confirmed in appeal by the Assistant Commissioner (C.T. Appeals), Hyderabad.

3. Section 14(4)(cc) had come into effect on 17th January, 1978. The Sales Tax Appellate Tribunal held that section 14(4)(cc) of the Act had no retrospective effect and hence it could not be invoked in respect of assessments that were finalised prior to 17th January, 1978. The decision of this Court in Udipi Vasanta Vihar v. Deputy Commercial Tax Officer (1969) 23 STC 6 was referred to in

support of the same. As in this case the order of assessment was passed prior to 17th January, 1978 and in the view that section 14(4)(cc) had no retrospective effect, the appeal was allowed and the order of reassessment dated 10th January, 1980 was set aside.

4. The learned Government Pleader contended as follows :

5. When exemption or deduction was wrongly granted then it is either a case where whole or any part of the turnover of business of a dealer has escaped assessment to tax or it has been under-assessed. In either case the power u/s 14(4) can be exercised and in such a case tax payable on the turnover for which exemption was wrongly granted or a deduction was wrongly made, can be determined u/s 14(4)(a) or (b) of the Act. Hence even before the incorporation of section 14(4)(cc), the concerned authority had the power to assess the correct amount of tax payable in such a case. Thus section 14(4)(cc) is merely clarificatory.

6. So the point for consideration is whether section 14(4)(cc) of the Act is merely clarificatory and even before the said provision had come into effect, the concerned authority had the power to assess the correct amount of tax payable in a case where any deduction or exemption has been wrongly allowed. In *Sri Balaganesh Textiles Vs. Commercial Tax Officer*, the assessment order for the assessment year 1973-74 was passed prior to 24th January, 1977. The assessing authority issued a show cause notice to the assessee that he proposed to assess some portions of the turnover which escaped assessment and the assessee was directed to file objections if any on 24th January, 1977. The said notice was issued by invoking the provisions contained in section 14(4). Therein it was found during the assessment proceedings of the purchasers from the assessee that sales of cotton yarn by the assessee were last sales within the State and hence the earlier exemption on the ground that they were not last sales within the State was erroneous. Therein it was observed that when exemption was wrongly granted at the time of the original assessment, it either amounts to escaped assessment or under-assessment and in either case the concerned authority had power to reopen the assessment u/s 14(4).

7. The above judgment was delivered on 14th December, 1977. By then section 14(4)(cc) of the Act had not come into effect. Even when section 14(4)(cc) had not come into effect, it was not even urged that the assessing authority had no power to assess the correct amount of tax payable in a case where any deduction or exemption has been wrongly allowed for, evidently the correct amount of tax payable could be assessed even in such a case either u/s 14(4)(a) or section 14(4)(b).

8. In *Udipi Vasanta Vihar Vs. The Deputy Commercial Tax Officer*, , it was urged for the department that the power to make best judgment assessment as per section 14(4)(a) of the Act is procedural and hence it can have retrospective effect. But the said contention was negatived. It may be noted that an assessing

authority cannot make a best judgment assessment unless such a power is conferred. But in the above judgment it was not considered as to whether section 14(4)(b) or section 14(4)(c) merely affect the procedure. Hence even on the basis of the decision in Udipi Vasanta Vihar Vs. The Deputy Commercial Tax Officer, , it cannot be held that section 14(4)(b) and (c) do not affect only procedure and hence they cannot be given retrospective effect.

9. Section 14(4) is as follows :

"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 order, setting out the grounds thereof -

(a) determine to the best of his judgment the turnover that has escaped assessment and assess the turnover so determined;

(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;

(cc) assess the correct amount of tax payable, in a case where any deduction or exemption has been wrongly allowed;

(d) levy the licence fee after determining to the best of his judgment the turnover on which such fee is payable;

(e) levy the registration fee that has escaped levy;

(f) levy the correct amount of licence fee or registration fee in a case where such fee has been levied at a rate lower than the correct rate.

....."

10. In this case, we are not concerned in regard to escapement of registration or licence fee. We are also not concerned about a case where the turnover was assessed at a lower rate than the correct rate. The only other two events which are referred to in section 14(4) and in regard to which we are concerned are :

(1) Where the whole or any part of the turnover of a business of a dealer has escaped assessment to tax or (2) where it has been under-assessed. They can be conveniently referred to as the turnover which had escaped assessment or turnover which had been under-assessed.

11. It may be noted that in the body of section 14(4) of the Act, a case where any deduction or exemption has been wrongly allowed is not specifically referred to. Can it be stated that such a case does not come within the sweep of section

14(4) ? The power u/s 14(4) can be exercised in either a case where turnover had escaped assessment or in a case where turnover had been under-assessed as held in *Sri Balaganesh Textiles v. Commercial Tax Officer* 1978 1 STC 445 (AP). So 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. So it has to be 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. Hence this point is held in favour of the department.

12. The record does not disclose that the finding of the assessing authority at the time of reassessment that the turnover pertains to first sales in the State is not correct. Hence the said turnover is liable to tax. The record also discloses that the assessing authority exercised power u/s 14(4) of the Act on the basis of the material de hors the record. So the order of reassessment dated 10th January, 1980 has to be confirmed.

13. In the result, the revision case is allowed, and the order of the Sales Tax Appellate Tribunal is set aside, and the order of reassessment dated 10th January, 1980, is confirmed. No costs. Advocate's fee Rs. 150.

14. Petition allowed.