

(1991) 12 AP CK 0008
In the Andhra Pradesh High Court
Case No : T.R.C. No. 35 of 1991

State of Andhra Pradesh

APPELLANT

Vs

Venkateswara Oil Producers

RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14, 14(2)

Citation : (1992) 86 STC 127

Hon'ble Judges : V. Sivaraman Nair, J;S. Parvatha Rao, J

Bench : Division Bench

Judgement

S. Parvatha Rao, J.—The question of law to be decided in this tax revision case is whether the Sales Tax Appellate Tribunal is correct and justified in allowing the appeal. It is unfortunate that the question is not framed with any specificity.

2. The facts are in a narrow compass. The Commercial Tax Officer, Narasaraopet, by his assessment order dated March 14, 1983, assessed the turnover of the assessee. Long afterwards, i.e., more than 3 years after the assessment order was made, another Commercial Tax Officer at Narasaraopet issued a show cause notice dated March 19, 1986, to the petitioner to show cause why penalty should not be imposed on the petitioner on the ground that the petitioner suppressed certain turnover which was added and assessed under the said assessment order dated March 14, 1983, and thereafter by his order dated March 31, 1986, imposed a penalty of Rs. 33,584 at five times the tax due on the suppressed turnover of Rs. 1,94,551. On appeal by the petitioner, the Additional Appellate Deputy Commissioner (C.T.), Guntur, reduced the penalty to three times. On further appeal, the Sales Tax Appellate Tribunal, Andhra Pradesh, following the decision of this Court in Nagabandi Mallaiah Vs. The State of Andhra Pradesh, , set aside the levy of penalty on the ground that firstly, penalty proceedings were not initiated by the very same assessing authority and secondly, that penalty proceedings were not initiated simultaneously by the very same assessing authority.

3. We find that the decision in Nagabandi Mallaiah Vs. The State of Andhra Pradesh, , fully answers the question raised in this tax revision case in favour of the petitioner. This Court held :

"The language employed in section 14(2) of the Act admits of no doubt and empowers the assessing authority to levy penalty while making the assessment to the best of his judgment. The expression, "while making the assessment", leaves no doubt in our mind that the very same authority, who makes an order of assessment to the best of his judgment, should derive satisfaction that the assessee did not disclose the entire taxable turnover and that penalty should be levied, simultaneously."

4. The actual language employed in sub-section (2) of section 14 of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called as "the Act") is not "while making the assessment" but "when making an assessment". It is as follows :

"(2) When making an assessment to the best of judgment under sub-section (1), the assessing authority may also direct the dealer to pay in addition to tax assessed a penalty as specified in sub-section (8) on the turnover that was not disclosed by the dealer in his return."

5. This provision makes it very clear that the point of time when the penalty should be imposed is the time when the assessment "order is made. Admittedly, on the facts of the present case, penalty was sought to be levied three years after the assessment order was made. That was not permissible under sub-section (2) of section 14 of the Act.

6. Even under sub-section (3) or (4) of section 14 of the Act, penalty has to be imposed at the time when the assessment is made. The relevant portion of sub-sections (3) and (4) of section 14 of the Act for this purpose, are as follows :

"(3) assess to the best of his judgment, the amount of tax due from the dealer on his turnover for that year, and may direct the dealer to pay in addition to the tax so assessed penalty as specified in sub-section (8).

(4) In addition to the tax assessed or fee levied under this sub-section, the assessing authority may also direct the dealer to pay a penalty as specified in sub-section (8)."

7. Under these provisions also it is when making the relevant assessments that the assessing authority may also direct the dealer to pay penalty in addition to the tax assessed.

8. In the present case it was not stated under what sub-section of section 14 the penalty was imposed. However, whether the penalty sought to be imposed was under sub-section (2) or under sub-section (3) or under sub-section (4) of section 14, the result is the same. In view of the fact that the penalty was sought to be imposed on March 31, 1986, long after the assessment was made

and not at the time when the assessment was made by order dated March 14, 1983, it was clearly unauthorised.

9. We see no error in the order of the Appellate Tribunal. The tax revision case is therefore dismissed. No costs.

10. Petitions dismissed.